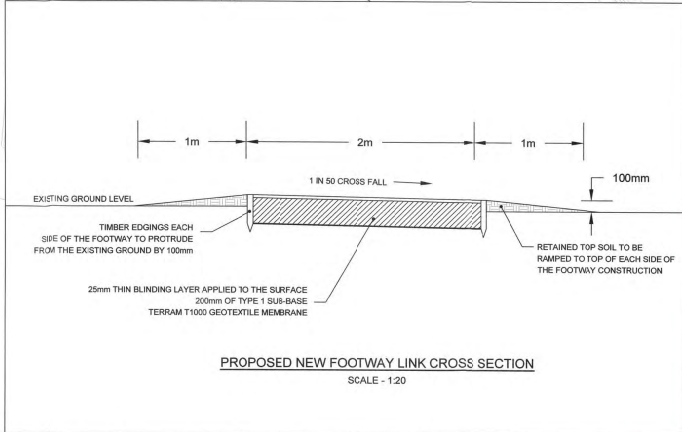
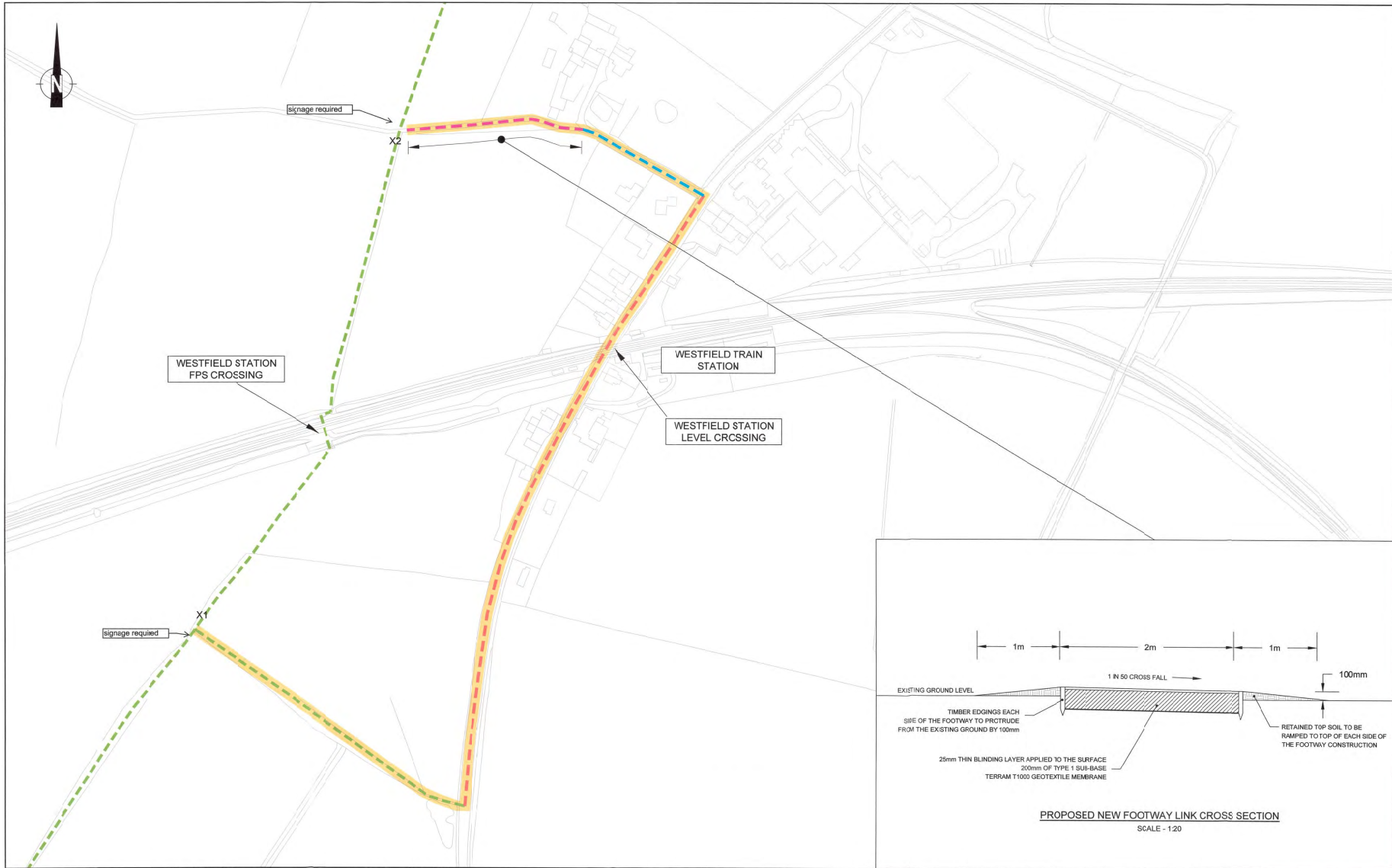


APPENDIX 13: TEMPORARY DIVERSION FRAMEWORK


RCO/UKDP/UKM/99432403.1

Classified as General

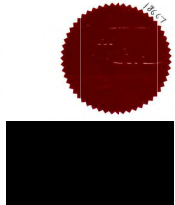


REV	DETAILS	DRAWN	CHECKED	DATE	REV	DETAILS	DRAWN	CHECKED	DATE	Notes
A	FOOTWAY LINK CROSS SECTION AMENDED	NL	MIS	13.6.19						

- KEY**
- Existing Public Right of Way
 - Temporary Diversion Route (Diversion)
 - Existing Footway
 - Existing Track
 - Proposed New Footway Link

PROJECT: Henley Gate, Ipswich		CLIENT: Mersea Homes
DRAWING TITLE: Proposed Temporary Public Right of Way (PROW) Diversion Plan		 <small>Network Building, 97 Tottenham Court Road, London, W1T 4TP T 020 7880 7373 e enquiries@vectos.co.uk</small>
DRAWN: NL	CHECKED: MIS	DATE: JUNE 2019
SCALE: 1:1250 @ A1		DRAWING NUMBER: VD19107 - SK100
		REVISIONS: B

LU0852019VD19107 Ipswich Garden Suburb - Railway bridge footway links2_DESIGN/CAO1_VD19107 - SK100 - Potential Diversion Route for PROW.dwg



Ipswich Garden Suburb

Pedestrian/Cycle Railway Bridge- Temporary Footpath Diversion Framework relating to Footpath 18

22 October 2019

131041/N54c

Introduction

1. Vectos are retained by Crest Nicholson and CBRE to provide transport advice in relation to Ipswich Garden Suburb. This note has been prepared on behalf of both Crest Nicholson who are seeking to develop the land to the north of the railway line and CBRE who are seeking to develop the land to the south of the railway line. The note sets out the framework which will be followed for the preparation of a strategy for the temporary diversion of Footpath 18 if and when such a strategy is submitted in accordance with the provisions of the respective planning agreements relating to the Crest Development and CBRE Development (as defined below)
2. A resolution to grant consent (16/00608/OUT) has been made for a mixed use development the key components of which are up to 1,100 residential dwellings, a local centre comprising A1-A5 use and a community centre, a primary school, sports facilities and a Country Park, two new vehicular accesses from Henley Road, one vehicular access from Westerfield Road and provision of access points to allow for pedestrian/cycle bridge over the railway and for a vehicular bridge over the railway (**Crest Development**).
3. The S106 Agreement relating to the Crest Development's planning application has been drafted and is under discussion.
4. There is a separate proposal for housing to the south of the railway line that has been submitted for planning consent by CBRE. A resolution to grant consent (14/00638/OUTFL) has been made for mixed use development as follows: " means the mixed use development to be provided on the site comprising up to 815 dwellings and district centre (with up to 6040 sqm of floor space in the following use classes: A1 retail (not exceeding 4,540 sqm), financial services (A2), restaurants, pubs and takeaways (A3, A4, A5), business uses (B1a), dwellings and institutional residential uses (C2,C3) and non-residential institutions (including health centre (D1) and leisure uses (D2)); a primary school (D1); vehicular access from Westerfield Road (x2) and Henley Road (cycle, pedestrian, emergency vehicle, temporary bus route only); provision of public amenity space; provision of infrastructure (including highways, parking, cycle, pedestrian routes, utilities and sustainable drainage systems); landscaping and engineering works (including ground remodelling and enabling works). works proposed will affect Tree Preservation Orders and public right of ways within the site".

5. Both of the applications for the Crest Development and the CBRE Development reflect and incorporate the existing footpath (Footpath (FP) 18 Ipswich described as **FP18** in this Framework document), known as the Fonnereau Way, which pre-dates the existence of the railway. The route was confirmed by the Secretary of State for Environment, Food and Rural Affairs in 2012.
6. The remainder of the Ipswich Garden Suburb consists of the Redhouse Farm site, located to the east of Westerfield Road, and the Ipswich School site, located immediately to the south of the Fonnereau Village site. To date, no planning application has been submitted for either of these sites
7. The strategy will review the provision of the pedestrian/cycle bridge that would cross the railway line on the line of the Fonnereau Way FP18. This framework provides a structure and summary of what the strategy will cover and how the strategy will outline how and when the proposed temporary diversion of the FP18 to the Westerfield Road Level Crossing would occur. The strategy will consider whether such a diversion would address public safety concerns and would provide adequate connectivity pending provision of a permanent bridge. The development sites, FP18, and railway line in relation to one another will be demonstrated on a plan to be appended to the strategy.

Background

8. The S106 Agreements for both the Crest and CBRE sites require the pedestrian/cycle bridge to be in place prior to the occupation of the 700th unit on each of the respective developments.
9. However, if the footbridge has not been constructed prior to 500 units being delivered on either side, then a detailed temporary diversion strategy will be produced by Crest and/or CBRE. The strategy will be submitted to Ipswich Borough Council and Suffolk County Council for agreement and will clearly outline the statutory mechanism and timescales for diverting FP18 and over what period.
10. The existing Westerfield Level Crossing provides for vehicular and pedestrian access along Westfield Road, being currently equipped with full barriers, CCTV, signage, lights and an audible warning.
11. During the summer of 2019 Network Rail completed improvements to the Westerfield Road level crossing to replace the historical half barriers with full barriers as part of a programme of a number of similar improvements with the stated objective being:-
"These modern level crossings provide additional safety for everyone wishing to cross the railway, either as a motorist or a pedestrian."¹
12. The improvements have made the Westerfield Road level crossing even safer to use.

¹ <https://www.networkrailmediacentre.co.uk/news/improved-level-crossing-safety-on-the-felixstowe-branch-line>

13. The strategy will assess the temporary diversion of FP18 based on a proposal that existing and future users of FP18 would be routed away from the Westerfield FPS Crossing to instead cross at the Westerfield Station Level Crossing. A proposed route is shown on the plan reference VD19107-SK100 Rev B attached to this note at **Appendix A**. The strategy will address safety concerns raised by Network Rail as a result of more people wishing to cross the railway line in this location, as well as ensuring the safety and appropriate connectivity for existing footpath users

Development Phasing

Crest Development

14. The Crest Development is located to the north of the railway line and will comprise a mix of uses including residential, non-residential (primary school, visitor centre and local centre) and a country park. The Crest Development site itself will be split predominantly in half with the residential uses built in the western half of the site, nearest to the existing dwellings to the west of Henley Road. The country park largely will be located in the eastern half of the site. Community facilities will be located within the centre of the residential phases in the form of a Local Centre and Primary School.
15. It is proposed that the residential uses and the country park will be constructed in separate phases. The order and timing of completions per annum (including cumulatively) of the proposed residential phases will be set out in the strategy.
16. The strategy will also set out a summary of the non-residential uses and county park phases and anticipated delivery timeframes.
17. As well as the development phasing that the strategy will set out, the information presented in **Table 1** summarises the proposed infrastructure delivery phases for the Crest Development:

Table 1: Current Infrastructure Phasing

Deliverables	Timing (prior to)
Northern primary access	1 st occupation
Primary school services	180 th occupation (or later date as agreed)
Pedestrian / cycle bridge	700 th occupation
Southern primary access	549 th occupation
Vehicular bridge	700 th occupation
Visitor centre	1200 th occupation of IGS site
Local centre	Subject to Section 106 agreement

CBRE Development

18. The CBRE Development site is located to the south of the railway line. Again, due to the scale of the development, it will be constructed in phases. The order and timing of completions

per annum (including cumulatively) of the proposed residential phases will be set out in the strategy.

Journey Times, Desire Lines & Distances for Existing FP18 Users

19. FP18 runs through the Ipswich Garden Suburb in a broadly north-south alignment, linking Valley Road to the south and Lower Road to the north and beyond. FP18 crosses the railway line at an uncontrolled crossing, with there being further PRow links to Picton Avenue to the south and The Grove to the west via FP71 and FP72.
20. A survey of usage of this part of FP18 will be undertaken. A summary of the journey distances and times through the Ipswich Garden Suburb using the existing PRow network will be provided in the strategy and the routes will be shown on a plan attached to the strategy. The method of calculation of journey times will be set out in the strategy.

Journey Times, Desire Lines & Distances

21. The strategy will contain a section which will assess separately for the Crest Development and the CBRE Development:
 - the location of the Crest Development/CBRE Development site in the context of existing local facilities and the connections with those facilities by foot and by cycle.
 - the safety and accessibility characteristics of alternative routes to using FP18, including whether the route comprises a safe route for pedestrians to school within the statutory minimum distances.
 - the amenities on the Crest Development/CBRE Development site that will be built in the appropriate phases and how accessible they will be to new residents and whether there will be a need or desire for new residents to cross the railway to access facilities including secondary schools and Country Park. In the event of demonstrated need, assessment will be made of desire lines, distances and timings involved in crossing the railway from the Crest Development/CBRE Development site to the primary destinations south/north of the railway that are within walking distance for residents to the north/south of the railway line, comparing the existing route, the temporary diversion and that of the pedestrian bridge (once constructed).
 - Whether the extended use of the proposed temporary diversion adversely affects the opportunities for encouraging sustainable travel at the Crest Development/CBRE Development site.
22. Any benefits of reduced walking distances for parts of the Crest Development/CBRE Development need to be considered in the context of the predicted number of pedestrian and cycle trips at the Crest Development/CBRE Development site.

Trip Impact

23. In order to understand the potential number of pedestrians and cyclists that may use the new Fonnereau bridge, the AM and PM peak hour forecasted trips (with mode shift targets) presented in the respective TA (in connection with each of the Crest Development/CBRE Development) will be utilised. These trips allow for all journey purposes including education, shopping, leisure & recreation, as well as commuting. These will be reproduced in the strategy along with details of the split of trips based on the proportion of the total residential units within each phase of the Crest Development/CBRE Development site to create details of the number of walking and cycling trips by each phase.
24. To determine the demand for commuting pedestrian trips from the Crest Development/CBRE Development to destinations south/north of the railway line the strategy will use relevant Census Journey to Work data based on the origins (residents) of the combined neighbouring Middle Super Output (MSOA) Areas (Ipswich 001 and 002 which are the most appropriate comparisons to the Crest Development/CBRE Development site. This data shows the destinations of walking and cycling trips to work (i.e. to which MSOA trips are made) and allows those areas to the south/north of the railway line and/or within the Town Centre to be identified. This methodology focuses on walking and cycling trips of residents to destinations where people work. From this data, each destination MSOA will be identified in the strategy together with the most appropriate route from the Crest Development/CBRE Development site such that proportions of pedestrian and cycle trips to the Town Centre can be determined and set out in the strategy. The anticipated number of pedestrian trips that are anticipated to travel south/north from each phase of the Crest Development/CBRE Development site will be assessed in the strategy.
25. The strategy will assess the level of pedestrian/cyclist demand and what impact it would have on the use of Henley Road bridge or Westerfield Road crossing by pedestrians or cyclists, and if there would be any material increase in the safety risk of pedestrians using these links.

Demand for Crossing of Railway

26. In addition to the users of FP18, the strategy will assess the actual demand for new and existing residents crossing north to south of the railway and vice versa and when this demand will materialise in the context of each of the Crest Development and CBRE Development. This will be in context of the phasing of delivery of both the Crest Development and CBRE Development; existing facilities; secondary schools; Country Park; proposed facilities to be provided as part of either the Crest Development and/or CBRE Development. The strategy will assess how the demand and temporary diversion crossing may affect new residents modal shift.

Safety

27. A proposed diversion route is shown on the attached plan and would be on segregated routes including passing through the Country Park to the north of the railway line or along the existing adopted footway on Westerfield Road. The route along this section of Westerfield Road will be enhanced through the provision of a toucan crossing and widening of the existing footway during the first phase of the CBRE Development. The strategy will assess the safety of the proposed diversion route through the use of the Westerfield Road level crossing and the diversion of the PROW to facilitate such use.

Delivery of Temporary Diversion of PROW (Footpath 18)

28. A signed route shown indicatively on Drawing VD19107-SK100 Rev B attached to this strategy (**Temporary Diversion Route**) would be assessed in the strategy to divert the PROW users to cross at the Westerfield Station AHB Level Crossing instead of the Westerfield FPS Crossing.
29. The strategy will set out which legislative route to secure the diversion, the stages and timetables involved, including any additional authorisations required if the temporary period needs to be extended.
30. The strategy will provide further information, but it is anticipated that signage and information boards would be erected at the places shown on Drawing VD19107-SK100 Rev B attached to this strategy (or at alternative locations as may be required pursuant to any necessary statutory consents obtained) to advise the public of the following:
- the route of the Temporary Diversion Route;
 - when the Temporary Diversion Route is going to be in place for use,
 - that it is only a temporary diversion and the estimated period the Temporary Diversion Route is to be in place for;
 - reasons for the closure of the railway crossing and when the new Pedestrian and Cycle Railway Bridge is expected to be in place;
 - additional time and calories used by taking the Temporary Diversion Route, and
 - such other information associated with the Temporary Diversion Route as may reasonably be required by Ipswich Borough Council or the County Council.
31. Barriers would be erected (the specification of which shall be agreed in writing with the County Council) at the points identified on Temporary Diversion Strategy Drawing as X1 and X2 (or such other location as may be agreed in writing with the County Council or set out in the statutory consent) in order that the public would be prevented from using and are redirected away from the Westfield FPS Crossing so that they use the Temporary Diversion Route.
32. Construction of the stretch of new footpath shown indicatively on the Temporary Diversion Strategy Drawing as pink dashed lines so as to join into the existing track which is shown on the Temporary Diversion Strategy Drawing as blue dashed lines (together referred to as the

New Proposed Footpath Link) would be undertaken in accordance with the specification shown on the Temporary Diversion Strategy Drawing.

33. Implementation of the Temporary Diversion Route may not be required if the pedestrian/cycle bridge is constructed in advance of the triggers set out in the S106 Agreements for the Crest Development and CBRE Development.
34. The s106 Agreements for both the Crest Development and CBRE Development set out in detail the responsibilities for delivery and cost of the works, obtaining any necessary statutory consents and securing access for the works on both sites. This will also be set out in the strategy for clarity.

Plans to be appended to the Strategy

A: The locations of the Crest and CBRE development sites, FP18, and railway line in relation to one another

B: Drawing showing a proposed Temporary Diversion Route and specification for the New Proposed Footpath Link (as shown indicatively on Drawing VD19107-SK100 Rev B).

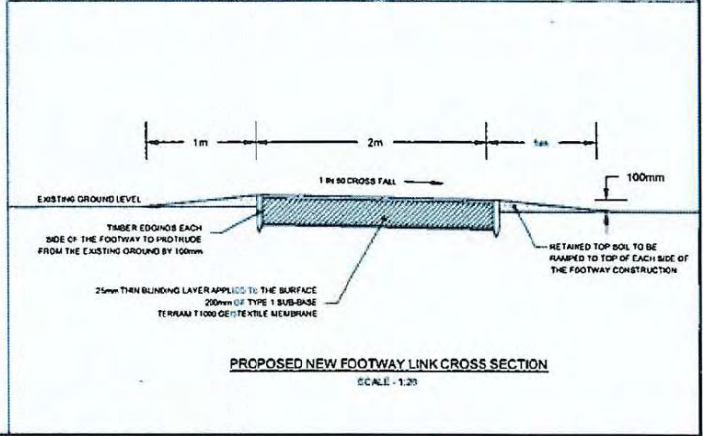
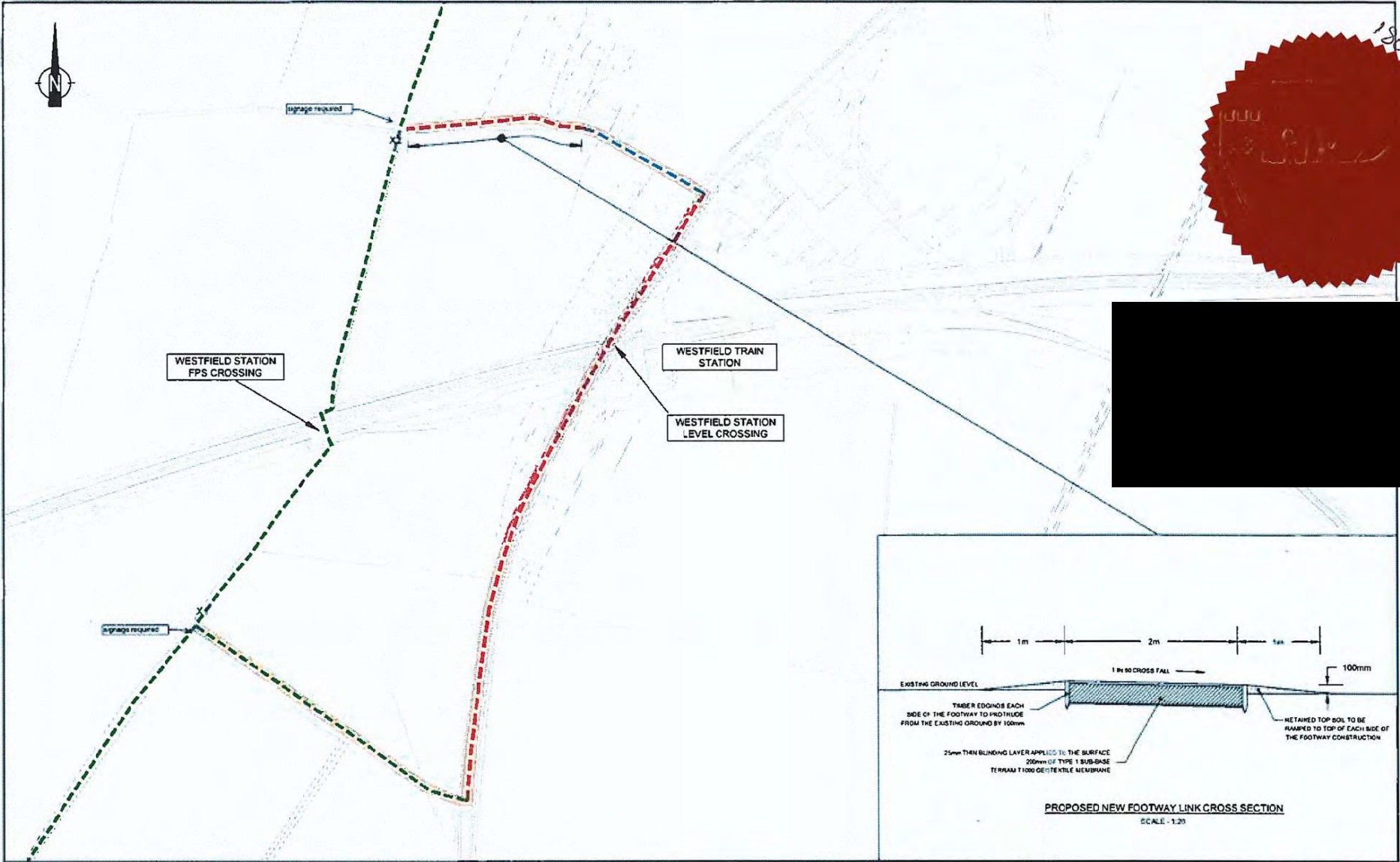
C: Drawing showing journey routes through the Ipswich Garden Suburb using the existing PRoW network and their primary destinations and the distance measurements of those routes.

D: Comparison of routes identified in Appendix C and distance changes when using the existing PRoW or with the temporary diversion route.

E: Raw Census data

APPENDIX A TO FRAMEWORK
DRAWING SHOWING A PROPOSED TEMPORARY DIVERSION ROUTE AND
SPECIFICATION FOR THE NEW PROPOSED FOOTPATH LINK DRAWING
VD19107-SK100 REV B

1867



REV	DATE	BY	CHKD	APP'D	DESCRIPTION
A	13/01/18				FOOTWAY LINK CROSS SECTION AMENDED

- KEY**
- Existing Public Right of Way
 - Temporary Diversion Route (Diversion)
 - Existing Footway
 - Existing Track
 - Proposed New Footway Link

Henley Gate, Ipswich

Mersea Homes

Proposed Temporary Public Right of Way (PROW) Diversion Plan



1:1250 @ A1

VD19107 - SK100

DATED

30th January

2019

2020

(1) IPSWICH BOROUGH COUNCIL

- and -

(2) EAST SUFFOLK COUNCIL

- and -

(3) JOHN FONNEREAU

-
PLANNING OBLIGATION BY DEED
PURSUANT TO SECTION 106 OF THE
TOWN AND COUNTRY PLANNING
ACT 1990
RELATING TO
HENLEY GATE IPSWICH GARDEN
SUBURB, IPSWICH

Certified a true copy of the original document

AUTHORISED OFFICER Date 18/02/2020

Legal Services
Ipswich Borough Council
Grange House
Russell Road
Ipswich IP1 2DE

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THIS DEED is made on

30th January

2020 ~~2019~~

BETWEEN:

- (1) **IPSWICH BOROUGH COUNCIL** of Grafton House, 15-17 Russell Road, Ipswich, Suffolk, IP1 2DE ("**Borough Council**");
- (2) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton IP12 1RT ("**Council**"); and
- (3) **JOHN FONNEREAU** of Alma House, Dereham Lane, Great Fransham, Dereham, Norfolk, NR19 2HZ ("**Owner**");

BACKGROUND:

- A The Borough Council and the Council are the local planning authorities for the purposes of the 1990 Act for the area within which the Site is situated and by whom the obligations in this Deed are enforceable.
- B The Borough Council and the Council are the appropriate bodies to enforce this Deed for the purposes of section 106 of the 1990 Act.
- C The Owner is the freehold owner of the Site which is currently unregistered.
- D The Owner has agreed to enter into this Deed in order to provide the Skylark Plots on the Site as part of the discharge of condition 14 on the Planning Permission which requires the approval of the Site Wide Ecology Strategy prior to the approval of the first Reserved Matters Application submitted to the Borough Council in respect of the Development.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

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

"**1972 Act**" means the Local Government Act 1972;

"**1982 Act**" means Local Government (Miscellaneous Provisions) Act 1982;

"**1990 Act**" means the Town and Country Planning Act 1990;

"**2008 Act**" means the Housing and Regeneration Act 2008;

"**2011 Act**" means the Localism Act 2011;

"**Application**" means the application(s) for planning permission to authorise the Development on the Application Site with reference numbers: 16/00608/OUT and 16/2592/OUT made under the 1990 Act to the Borough Council and the Council;

"**Application Site**" means the land known as Henley Gate, Henley Road, Ipswich, Suffolk registered under title numbers SK364485 and SK88330;

"**Challenge Period**" means a period of six weeks and five days from the grant of Planning Permission;

"**CIL Regulations**" means the Community Infrastructure Levy Regulations 2010 (as amended);

"**Commencement of Development**" means the carrying out of a Material Operation pursuant to the Planning Permission within the Application Site (and related expressions such as '**Commence Development**' shall be construed accordingly);

"**Development**" means the mixed use development to be provided on the Application Site comprising up to 1,100 residential dwellings (use class C3); a local centre (to accommodate up to 250sqm (net) of convenience floor space (A1), up to 300sqm of comparison floorspace (A1), up to 250sqm in use classes A1-A5 and up to 500sqm community centre (D1); provision of land for a primary school (D1); provision of sports facilities, Country Park (including visitor centre (D1)) and open space (including amenity space, children's play areas and allotments) and sustainable urban drainage systems; and associated landscaping, infrastructure and engineering/earthworks; and the creation of two new vehicular accesses from Henley Road, one vehicular access from Westerfield Road (to serve country park only), and provision of access points to allow for pedestrian/cycle bridge over railway and vehicular bridge over railway as set out in the Application;

"**Expert**" means such expert as may from time to time be appointed for the purposes of resolving a relevant dispute or as otherwise agreed between the parties and if the parties to the dispute shall fail to agree upon the nature or difference in question then it should be referred to a solicitor or barrister of a least 15 years' standing agreed by the parties but in default of agreement appointed at the request of either party by or on behalf of the President of the Law Society;

"**Material Operation**" means any material operation within the meaning of sections 56(4) of the 1990 Act **PROVIDED THAT** the carrying out of:

- (a) archaeological investigations;
- (b) decontamination works;
- (c) environmental site investigations;
- (d) fencing erected for ecological reasons subject to the prior approval of the Borough Council of the details of such fencing;
- (e) investigation works;
- (f) site reclamation;
- (g) site clearance including earthworks, re-grading and landscape clearance works;
- (h) termination or diversion of existing services;
- (i) provision of temporary construction site accommodation;
- (j) erection of hoardings, temporary enclosures, fences and other security measures;
- (k) provision of temporary haul roads; and
- (l) works and operations to enable any of the foregoing to take place,

shall not constitute a material operation for the purposes of this definition and shall not therefore constitute Commencement of the Development for the purposes of this Deed;

"**Parties**" means the parties to this Deed and "**Party**" shall be construed accordingly;

"**Plan**" means the plan entitled "Site Location Plan" attached to this Deed at Appendix 1;

"**Planning Permission**" means the planning permission(s), subject to conditions, to be granted pursuant to the Application for the Development;

"**Reserved Matters Application**" means an application submitted to the Borough Council (and where applicable the Council) for approval of reserved matters in accordance with the Planning Permission and "**Reserved Matters**" and "**Reserved Matters Approval**" shall be construed accordingly;

"**Site**" means the land known as Sparrows Nest Farm as shown edged red on the Plan annexed at Appendix 1;

"**Site Wide Ecology Strategy**" means the Site Wide Ecology Strategy as approved by the Borough Council in accordance with condition 14 of the Planning Permission and which shall include details and measures for the ongoing management and maintenance of the Skylark Plots;

"**Skylark Plots**" means the provision of up to ²² ~~10~~ skylark plots on the Site in accordance with the details set out in the Site Wide Ecology Strategy;

"**Working Day**" means any day other than a Saturday, Sunday, statutory bank holiday and 24 December to 31 December (inclusive) in any year.

2. INTERPRETATION

- 2.1 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 2.2 Unless the context requires otherwise reference in this Deed to clauses, sub-clauses, paragraphs, recitals, sub-paragraphs, appendices and schedules are references to those contained in this Deed and references to plans and drawings are references to plans and drawings annexed to this Deed.
- 2.3 The word "including" shall mean "including without limitation or prejudice to the generality of any description defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly.
- 2.4 References in this Deed to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same.
- 2.5 In this Deed the expressions Borough Council, Council and Owner shall include their respective statutory successors in respect of the functions to which this Deed relates or successors in title to the Site or any party deriving title through or under that party as the case may be.
- 2.6 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person.

- 2.7 The Interpretation Act 1978 shall apply to this Deed.
- 2.8 In the event of any conflict between the provisions of this Deed and any document attached hereto the provisions of this Deed will prevail.
- 2.9 Where in this Deed the Borough Council and/or the Council is required to give any approval, consent, agreement or otherwise then such approval, consent, agreement or otherwise by the Borough Council and/or the Council shall be given in writing and unless otherwise specified in this Deed shall not be deemed to have been given unless in writing.
- 2.10 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.11 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed as interchangeable in that manner.
- 2.12 Wherever 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 severally unless there is an express provision otherwise.

3. LEGAL EFFECT

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act; section 111 of the 1972 Act; section 33 of the 1982 Act; section 1 of the 2011 Act and all other enabling powers and the obligations contained in this Deed constitute planning obligations for the purposes of the 1990 Act, binding the Owner's interest in the Site, shall be enforceable against the Owner and their successors in title and those deriving title from them in respect of the Site by the Borough Council and/or the Council as local planning authorities under the 1990 Act **PROVIDED THAT:**
- 3.1.1 neither the Owner nor their successors in title shall have any further liability under this Deed in respect of any part of the Site in which they no longer have an interest but without prejudice to any rights of the Borough Council and/or the Council in respect of any antecedent breach in respect of the Site or such part thereof disposed; and
- 3.1.2 this Deed shall not be binding on any statutory undertakers to the extent that one has an interest or apparatus in the Site.
- 3.2 So far as the obligations, covenants and undertakings in this Deed are given by the Borough Council or the Council they are entered into under the relevant powers referred to in clause 3.1 and those obligations, covenants and undertakings are enforceable against the Borough Council or the Council (as applicable).

4. CONDITIONALITY

4.1 The covenants and obligations contained in this Deed are conditional upon both the:

4.1.1 grant of the Planning Permission; and

4.1.2 the Commencement of Development.

save for the provisions of clauses 10, 11, 12, 14, 15 and 19 and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5. PROVISIONS FOR RELEASE

5.1 It is agreed that this Deed shall determine at such time as the Planning Permission expires or is quashed, cancelled or revoked save insofar as it has already been complied with and without prejudice to any liability which may have arisen pursuant to this Deed beforehand.

5.2 Where this Deed determines pursuant to clause 5.1 above or upon the Owner satisfying all of their obligations under this Deed the Borough Council and the Council each covenants with the Owner that they will remove all entries made in the Register of Local Land Charges in respect of this Deed within 20 Working Days ceasing to have effect.

6. COVENANTS

The Owner covenants to comply with the management and maintenance elements of the Site Wide Ecology Strategy, for the lifetime of the Development only insofar as it relates to the Skylark Plots on the Site following and in accordance with the Borough Council's written approval of the Site Wide Ecology Strategy.

7. BOROUGH COUNCIL'S AND COUNCIL'S POWERS

Nothing in this Deed shall fetter the statutory rights, powers and duties of the Borough Council or the Council as local planning authorities.

8. WAIVER

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

9. REGISTRATION AS A LOCAL LAND CHARGE

It is hereby agreed and declared between the parties hereto that the Borough Council and the Council shall forthwith register this Deed as a Local Land Charge for the purposes of the Local Land Charges Act 1975.

10. THIRD PARTIES' RIGHTS

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1990 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

11. DISPUTE RESOLUTION

- 11.1 In the event of any dispute or difference arising between any or all of the Parties to this Deed (other than a dispute or difference relating to a question of law or in relation to the interpretation of the Deed) such dispute or difference may be referred to the Expert and it is further agreed that:
- 11.1.1 the determination of the Expert shall be:
 - 11.1.1.1 final and binding on the parties to the dispute; and
 - 11.1.1.2 complied with by the parties to the dispute, save in the case of manifest error;
 - 11.1.2 the parties to the dispute shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;
 - 11.1.3 the Expert's costs shall be borne in such proportions as he/she may direct failing which each party to the dispute shall bear its own costs of the reference and determination and the Expert's costs calculated by dividing the Expert's costs by the number of parties to the dispute (excluding the Expert) to the reference;
 - 11.1.4 the Expert shall be appointed subject to an express requirement that he/she reaches a decision and communicates it to the parties to the dispute within the minimum practicable timescales allowing for the nature and complexity of the dispute and in any event not more than 35 Working Days from the date of his/her appointment to act; and
 - 11.1.5 the Expert may be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function and such fresh appointee shall be appointed in the same manner as the Expert.
- 11.2 The provisions of this clause 11 shall not affect the ability of the Borough Council or the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.
- 11.3 The provisions of this clause 11 will not affect the ability of any Party to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

12. SECTION 73 APPLICATIONS

- 12.1 In the event that any new planning permission is granted in respect of the Development pursuant to section 73 of the 1990 Act then, subject to agreement between the Parties (or their successors) with effect from the date that the new planning permission is granted pursuant to section 73 of the 1990 Act:
- 12.1.1 the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind the Site in respect of any planning permission granted pursuant to section 73 of the 1990 Act; and

- 12.1.2 the definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under section 73 of the 1990 Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s),

PROVIDED THAT nothing in this clause shall fetter the discretion of the Borough Council or the Council in determining any application(s) under section 73 of the 1990 Act or the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to section 106 of the 1990 Act or a modification agreement pursuant to section 106A of the 1990 Act.

13. SERVICE OF NOTICES

- 13.1 All notices, requests, demands or other written communications to or upon the respective Parties hereto pursuant to this Deed shall be deemed to have been properly given or made if sent by hand or by courier service or letter by way of first class post or recorded delivery post to the Party to which such notice, request, demand or other written communication is to be given or made under this Deed and addressed as follows:

13.1.1 if to the Borough Council marked for the attention of Operations Manager and Principal Planning Officer - Special Projects, Ipswich Borough Council, Grafton House, 15-17 Russell Road, Ipswich IP1 2DE; and

13.1.2 if to the Council to East Suffolk Council of East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge, IP12 1RT marked for the attention of: Head of Service - Strategic Management.

- 13.2 Any notice request or demand or other written communication shall be deemed to have been served as follows:-

13.2.1 if delivered by hand, the next Working Day after the day of delivery unless the delivery was signed for in which case it shall be the time the delivery was signed for that service will be deemed to have occurred;

13.2.2 if sent by first class post, the day 2 Working Days after the date of posting; or

13.2.3 if sent by recorded delivery, at the time delivery was signed for

and in proving such service it shall be sufficient to prove that the envelope containing such notice request demand or other written communication was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate) as the case may be.

- 13.3 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

- 13.4 Any notice or other written communication to be given by the Borough Council or the Council will be deemed valid and effectual if on its face it is signed on behalf of the Borough Council or the Council (as applicable) by an officer or duly authorised signatory.

14. BOROUGH COUNCIL'S AND COUNCIL'S LEGAL COSTS

14.1 The Owner agree that upon completion of this Deed it will pay the Borough Council's reasonable legal costs properly incurred in the negotiation and completion of this Deed.

14.2 The Owner agree that upon completion of this Deed it will pay the Council's reasonable legal costs properly incurred in the negotiation and completion of this Deed.

15. VAT

If VAT becomes payable on payments made under this Deed that VAT will be additional to the specified payments and any VAT due will be paid following production of a valid VAT invoice in respect of any vatable supplies properly incurred under this Deed.

16. REASONABLENESS

Unless expressly stated otherwise where under this Deed any approval or consent, certificate, direction, authority, agreement, action, expression of satisfaction or response is required to be given by or reached or taken by any party or any response is requested by any such approval or consent, certificate, direction, authority, agreement, action, expression of satisfaction, or response, it will not be unreasonable or unreasonably withheld or delayed and the Parties will act reasonably at all times.

17. RIGHT OF ENTRY

At all times on not less than forty-eight (48) hours written notice except in case of emergency with or without notice the Owner shall allow any employee or agent of either or all of the Borough Council or the Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT the access to enter the Site as provided for by this clause shall only be permitted on the basis that if reasonably requested by the Owner the Borough Council's or the Council's (as applicable) duly authorised representatives shall undertake appropriate health and safety training to ensure compliance with relevant statutory requirements whilst on the Site AND will undertake appropriate induction training as may be directed by the Owner before entering the Site.

18. WARRANTY

The Owner covenants and warrants in respect of his ownership in the Site to the Borough Council and the Council that he has full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

19. JURISDICTION AND LAW

19.1 This Deed including its construction, validity, performance and enforcement 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 English and relevant European law.

19.2 Each Party irrevocably agrees that the courts of England (and on appeal from the Supreme Court the European Court of Justice) shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

19.3 If any provision of this Deed is declared by any court to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the Parties shall amend that provision in accordance with the decision of the court provided that any Party may seek the written consent of the other Parties to the termination of this Deed on such terms (including the entering into of another agreement) as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the Parties.

20. DATE OF DELIVERY

20.1 This Deed is delivered on the date of this Deed.

21. COUNTERPARTS

21.1 This Deed may be executed in any number of counterparts, each of which when executed (and delivered) shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

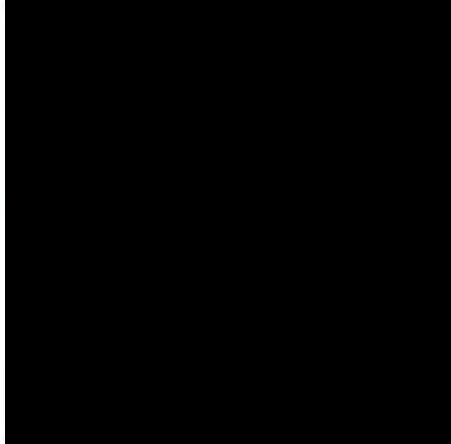
Executed as a Deed by the parties hereto and delivered on the day first written above.

THE COMMON SEAL OF
EAST SUFFOLK COUNCIL
was affixed in the presence of:-

Signatory Authorised

Signatory Authorised

THE COMMON SEAL OF
IPSWICH BOROUGH COUNCIL
Is hereunto affixed in the presence of: -



Authorised Signatory

Signed as a deed, but not delivered until the
first date specified on page 1, by **JOHN**
FONNEREAU in the presence of a witness:

)
)
)
)

Signature

Witness signature

Witness name
(block capitals)

Witness address

.....

.....

19.3 If any provision of this Deed is declared by any court to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the Parties shall amend that provision in accordance with the decision of the court provided that any Party may seek the written consent of the other Parties to the termination of this Deed on such terms (including the entering into of another agreement) as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the Parties.

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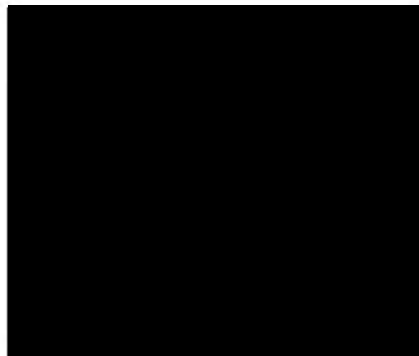
21. COUNTERPARTS

21.1 This Deed may be executed in any number of counterparts, each of which when executed (and delivered) shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

Executed as a Deed by the parties hereto and delivered on the day first written above.

THE COMMON SEAL OF
EAST SUFFOLK COUNCIL
was affixed in the presence of:-

Signatory



144
..... Authorised

Signatory

..... Authorised

Certified a true copy of the original document

Authorised Officer Date 15/02/2020

144
..... Authorised

**THE COMMON SEAL OF
IPSWICH BOROUGH COUNCIL**
Is hereunto affixed in the presence of: -

.....

Name:
Authorised Signatory

.....

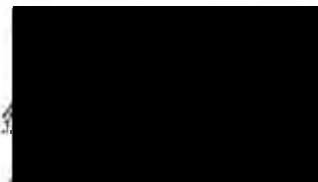
Name:
Authorised Signatory

Signed as a deed, but not delivered until the)
first date specified on page 1, by JOHN)
FONNEREAU in the presence of a witness:)

Witness signature

Witness name
(block capitals)

Witness address



Certified a true copy of the original document

.....
Authorised Officer Date 16/02/2020
.....

.....
..... Borough Council
.....
..... Road
..... IP1 2DE

APPENDIX 1



Location Plan (N.T.S)

KEY

 Skylark Mitigation Area
56.78 Acres / 22.98 Ha



Rev.	Description	Date	Initial

Site: Henley Gate
Ipswich

Dwg Title: Skylark Mitigation
Red Line Boundary

Scale: (As) 1:2500 Date: 25.07.19 Drawn: CN Checked: HS
Drawing No: IP-GEN-011 Revison:

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