

DATED

15 April

2020

MID SUFFOLK DISTRICT COUNCIL	(1)
SUFFOLK COUNTY COUNCIL	(2)
ALISON RUTH BROMWICH AND ALAN NICHOLAS BROMWICH	(3)
HOPKINS AND MOORE (DEVELOPMENTS) LIMITED	(4)

Planning Obligation by Deed of Agreement under
Section 106 of the Town and Country Planning Act
1990 relating to land on the south west side of Main
Road Somersham, IP8 4PB

DC/18/03114

Birketts

Birketts LLP: Offices in Cambridge | Chelmsford | Ipswich | Norwich

www.birketts.co.uk

THIS AGREEMENT IS MADE this 15 day of April 2020

BETWEEN:

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ("the Council");
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ("the County Council");
- (3) **ALISON RUTH BROMWICH AND ALAN NICHOLAS BROMWICH** of Walnut Tree Cottage, Chapel Lane, Lower Somersham, Ipswich IP8 4QE ("the Owner");
- (4) **HOPKINS AND MOORE (DEVELOPMENTS) LIMITED** (company registration number 02162164) whose registered office is at Melton Park House, Scott Lane, Melton, Woodbridge, Suffolk, IP12 1TJ ("the Developer");

Together "the Parties"

INTRODUCTION

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The County Council is the local highway authority (except for trunk roads) and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- (C) The Owner is the freehold owner of the Site which is registered at the Land Registry with title SK156854.
- (D) The Developer entered into a contract with the Owner to purchase the Site dated 27 June 2018.
- (E) The Developer has submitted the Application to the Council for the Development and on 13 November 2019 the Council resolved to grant the Planning Permission for the Development pursuant to the Application subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed.
- (F) The Council and the County Council enter into this Deed content that the requirements of the Council and County Council's policies are met and that any objections by the Council and or the County Council to the grant of planning permission on the basis of those policies are overcome.

- (G) The Council and the County Council consider and the Owner acknowledges that the Development should not proceed unless certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to Section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- (H) The Council and the County Council (as appropriate) are satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

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

"Act"	the Town and Country Planning Act 1990 as amended;
"Affordable Housing"	subsidised housing that will be available to persons who cannot afford to buy or rent housing generally available on the open market in accordance with Annex 2 of the National Planning Policy Framework 2019, as amended;
"Affordable Housing Commuted Sum"	means the sum calculated in accordance with the Council's affordable housing policies in place at the time to be paid by the Owner to the Council to spend on Affordable Housing within the administrative district of the Council in the event the Owner is unable to dispose of the Affordable Housing in accordance with Schedule 3;

<p>"Affordable Housing Nomination Agreement"</p>	<p>an agreement substantially in the form set out in Schedule 7 (subject to such amendments as are necessary to reflect the Affordable Housing Scheme Affordable Housing tenures and/or as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of that agreement are met) dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units and "Nomination Agreement" shall have the same meaning;</p>
<p>"Affordable Housing Units"</p>	<p>means fifteen (15) Dwellings to be provided on the Site of which 75% shall be Rental Dwellings and the remaining 25% of which shall be Shared Ownership Dwellings (unless otherwise agreed in writing with the Council) pursuant to the Planning Permission to be occupied as Affordable Housing in accordance with the details in Schedule 3;</p>
<p>"Affordable Rent"</p>	<p>means housing made available by a Registered Provider as low-cost rental accommodation (as defined by Section 69 of the Housing and Regeneration Act 2008) with a rent charged at a level up to 80% of the equivalent market rent including any service charges applicable;</p>
<p>"Application"</p>	<p>means the application for full planning permission for the Development validated by the Council on 09 July 2019 and allocated reference number DC/18/03114;</p>
<p>"Chargee"</p>	<p>any mortgagee or chargee of the Registered Provider or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or chargee or any other person appointed under such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator appointed pursuant to the relevant provisions of the Housing and Planning Act 2016</p>
<p>"Chargee's Duty"</p>	<p>the tasks and duties set out in Schedule 3, Part 1, Paragraph 4;</p>

<p>"Choice Based Lettings Scheme"</p>	<p>an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme (or such other scheme as may be agreed) relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the Council is a party;</p>
<p>"Commencement of Development"</p>	<p>the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is first carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure ground surveys, erection of temporary fences, the temporary display of site notices and/or advertisements and "Commences" and "Commencement" shall be construed accordingly;</p>
<p>"Completion Date"</p>	<p>the date that the last Dwelling is first Occupied;</p>
<p>"Development"</p>	<p>the residential development of 42 dwellings together with associated public open space, access roads, garaging and car parking (duplicate application to DC/18/03115) as set out in the Application;</p>
<p>"Dwelling"</p>	<p>any dwelling (including a house flat maisonette or bungalow and including Shared Ownership Dwellings Market Housing Units and Affordable Housing Units) to be built on the Site as part of the Development and "Dwellings" shall be construed accordingly;</p>
<p>"Homes England"</p>	<p>the organisation as may from time to time be the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers;</p>

"Index"	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Council, the County Council and the Owner;
"Index Linked"	the increase in any sum referred to in Schedules 3 and 4 by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 13 of this Deed;
"Interest"	Interest at four (4) per cent above the base lending rate of the Bank of England from time to time;
"Management Company"	a company or body who will take over responsibility for the future maintenance of the Open Space and which definition may include a resident's association established for this purpose or a private limited company;
"Market Housing Unit"	any Dwelling which is for general market housing for sale or rent on the open market and which is not an Affordable Housing Unit;
"Notice of Actual Commencement"	notice in writing to advise of the actual date of Commencement;
"Notice of Expected Commencement"	notice in writing to advise of the expected date of Commencement;
"Occupation" and "Occupied"	occupation of any Dwelling on the Site for the purposes permitted by the Planning Permission and Occupation would be deemed to have taken place when the Council have evidence of the Occupation of any Dwelling on the Site but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied" shall be construed accordingly;

"Open Space "	an area of space which is for informal or (if laid out) formal recreational use by the public and the area of open space shown indicatively on the Open Space Plan;
"Open Space Plan"	means the plan approved by the Council showing the location of the Open Space;
"Open Space Specification"	means the landscape strategy for delivery of the Open Space including the specifications plans and drawings showing but not limited to the layout and design of the Open Space, the phasing and timing of the delivery of the Open Space including details of any proposed play areas and equipment landscaping, paths and access arrangements, street furniture and fencing together with details of the proposed future management regime for the Open Space to be agreed in writing by the Council in line with the Council's current policies and requirements in accordance with Part 2 of Schedule 3;

<p>"Open Space Transfer"</p>	<p>a transfer of the Open Space to be approved in writing by the Council and which inter alia shall contain the following provisions:</p> <p>a) The Owner shall transfer the fee simple estate free from encumbrances save those set out in the title;</p> <p>b) All easements and rights necessary in relation to access for the benefit of the Open Space;</p> <p>c) Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;</p> <p>d) Restrictive covenants by the Management Company;</p> <p>(i) Not to use or permit the Open Space to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open space as defined in this Deed and shown on the Open Space Plan;</p> <p>(ii) Not to use or permit the Open Space to be used in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of the Development;</p>
<p>"Plan"</p>	<p>the site plan attached to this Deed;</p>
<p>"Planning Permission"</p>	<p>a planning permission subject to conditions which may be granted by the Council pursuant to the Application or an appeal by the Planning Inspectorate such planning permission to be substantially in the form of the draft as set out in Schedule 2 or if the Council agrees (in its absolute discretion) in writing another planning permission for the Development granted pursuant to Section 73 of the Act or a replacement permission for the Development;</p>

"Practical Completion"	means the completion of a Dwelling to a standard which is wind and watertight and fit for habitation in terms of heating, plumbing, electrics and sanitation and "Practically Complete" shall be construed accordingly;
"Protected Person"	<p>any person who:</p> <ul style="list-style-type: none"> a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; c) any person who has staircased the equity in their Shared Ownership Dwelling to 100%; d) any successor in title to paragraph a- c above;
"Public Rights of Way Contribution"	means the sum of thirty-six thousand three hundred pounds (£36,300) Index Linked to be paid to the County Council to be used towards the costs of improving the existing local public rights of way network within the vicinity of the Development and serving the Development
"Registered Provider" or "RP"	an organisation which is a Registered Provider of social housing as defined in section 80 (2) of the Housing and Regeneration Act 2008 and listed in the registers kept by Homes England pursuant to Chapter 3 of that Act and approved in writing by the Council in accordance with Schedule 3 of this Deed. If another body is permitted to provide Affordable Housing by paragraph 2 of Schedule 3 then all references herein to a Registered Provider shall be to that body and which shall for the avoidance of doubt include the Council itself;

"Rental Dwelling"	means an Affordable Housing Unit which is to be let at an Affordable Rent or social rent and is let on the Registered Provider's standard form of letting in accordance with the terms of this Deed by a Registered Provider;
"Shared Ownership Dwellings"	Dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed Eighty thousand pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in Home England's capital funding guide;
"Shared Ownership Lease"	Means a lease in a form approved by Homes England or where there is no such form in a form approved by the Council such lease to provide for the following: <ul style="list-style-type: none"> - not more than 70% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider; - power to the purchaser to increase their ownership up to 100% if they so wish ; - an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England;
"Site"	the land described in Schedule 1 against which this Deed may be enforced as shown edged red for identification purposes only on the Plan;
"Working Days"	means any day Monday to Friday inclusive except bank or public holidays in England.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause sub-clause paragraph sub-paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause sub-clause paragraph sub-paragraph schedule or recital in this Deed;
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 2.3 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 interchangeably in that manner;
- 2.4 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 severally unless there is an express provision otherwise;
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it;
- 2.6 References 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 Council and the County Council any successors to its relevant statutory functions;
- 2.7 References to a "Plan" in this Deed shall be references to the plans attached to this Deed of any amended plans as shall be agreed between all parties;
- 2.8 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person;
- 2.9 The headings are for reference only and shall not affect construction.

3. LEGAL BASIS

- 3.1 This agreement is a Deed made pursuant to section 106 of the Act section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers;
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council and or the County Council as local planning authority (as appropriate) against the Owner and their successors in title.

4. CONDITIONALITY

4.1 The planning obligations contained in the Schedules to this Deed save for paragraph 1 of Part 1 Schedule 3 are conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development;

the remainder of this Deed and paragraph 1 of Part 1 Schedule 3 shall come into effect immediately upon completion of this Deed.

4.2 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:

4.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the Owner shall not undertake any further works to implement the Planning Permission following the issue of such proceedings;

4.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed and is not superseded by a subsequent planning permission accepted by the Owner this Deed will cease to have any further effect; and

4.2.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Deed will apply in full;

4.3 Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used), the following provisions will apply:

4.3.1 proceedings by way of judicial review are concluded:

(a) when permission to apply for judicial review has been refused and no further application can be made;

(b) when the court has given judgment in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused; or

(c) when any appeal(s) is or are finally determined;

4.3.2 proceedings under Section 288 of the Act are concluded:

(a) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

(b) when any appeal(s) is or are finally determined.

5. THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council so as to bind the Site and each and every part thereof as set out in Schedule 3;

5.2 The Owner covenants with the County Council so as to bind the Site and each and every part thereof as set out in Schedule 4.

6. COUNCIL'S COVENANTS

6.1 The Council covenants with the Owner as set out in Schedule 5.

7. THE COUNTY COUNCIL'S COVENANTS

7.1 The County Council covenants with the Owner as set out in Schedule 6.

8. MISCELLANEOUS

8.1 The Owner shall act in good faith and shall co-operate both with the Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council and or the County Council and their duly authorised officers or agents to have access to any part or all of the Site (provided that at all times they comply with the requirements set out in clause 8.14) or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein;

8.2 The Owner agrees declares and covenants both with the Council and County Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Deed and further shall indemnify the

Council and/or the County Council (as appropriate) for any expenses or liability arising to the Council and/or the County Council in respect of breach by the Owner or any obligation contained herein save to the extent that any act or omission of the Council and/or the County Council its employees or agents has caused or contributed to such expenses or liability;

- 8.3 The Developer shall pay to the Council and to the County Council on completion of this Deed their reasonable legal costs incurred in the negotiation, preparation and execution of this Deed;
- 8.4 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999;
- 8.5 This Deed is a local land charge and upon completion shall be registered by the Council as such;
- 8.6 Where the agreement, approval, consent or expression of satisfaction is required by the Owner or the Developer from the Council or County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Chief Planning Officer (or the equivalent officer of the Council fulfilling such functions) and by the Executive Director of Growth, Highways and Infrastructure on behalf of the County Council (or the equivalent officer of the County Council fulfilling such functions);
- 8.7 Insofar as any clause, clauses or paragraphs of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed;
- 8.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development;
- 8.9 No person shall be liable for any breach of this Deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it;
- 8.10 This Deed shall not be binding on any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of

electricity gas water telecommunications or highways in connection with the Development of the Site;

- 8.11 This Deed shall be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission only in respect of any restriction on Occupation and use and likewise against those deriving title from them;
- 8.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed;
- 8.13 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council or of the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority;
- 8.14 The Owner covenants from the date that this Deed takes effect to allow the Council and the County Council and their respectively duly authorised officers or agents at all reasonable times to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed;
- 8.15 The Owner agrees that any rights to claim compensation arising for any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived;
- 8.16 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Council or to the County Council;
- 8.17 The Owner covenants and warrants to the Council and the County Council that they have the full power to enter into this Deed and there is no other person other than the Developer whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

9. WAIVER

- 9.1 No waiver (whether expressed or implied) by the Council, the County Council or the Owner 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 Council, the County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. CHANGE IN OWNERSHIP

10.1 As qualified by the following sub-clause the Owner agrees with the Council and the County Council to give each of them independently immediate written notice of any transfer in ownership of any of their interests in the Site occurring before all the obligations under this Deed have been discharged such notice to be served within 20 working days of such transfer quoting the Council's reference DC/18/ 03114 and giving details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan and the title number or numbers thereof;

10.2 The Owner shall not be obliged to notify the Council or the County Council of disposals of individual dwellings or to any statutory undertaker.

11. NOTICES

11.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 11.2;

11.2 The address for any notice or other written communication in the case of each party to this Deed shall be as follows:

The District Council	The Chief Planning Officer, Mid Suffolk District Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
The County Council	The Executive Director of Growth, Highways and Infrastructure, Suffolk County Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
The Owner	Alison Ruth Bromwich and Alan Nicholas Bromwich, Walnut Tree Cottage, Chapel Lane, Lower Somersham, Ipswich, IP6 4QE
The Developer	Hopkins and Moore (Developments) Limited, Melton Park House, Scott Lane, Melton, Woodbridge, Suffolk, IP12 1TJ

12. DISPUTE PROVISIONS

- 12.1 In the event of any dispute or difference arising between any of the Parties in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert ("the Expert") whose decision shall be final and binding on the Parties to the dispute in the absence of manifest error and any costs shall be payable by the Parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the Parties to the dispute in equal shares;
- 12.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 12.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all Parties to the dispute in the absence of manifest error 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 in equal shares;
- 12.3 Any Expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant Parties to the dispute 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 any file or written representation;
- 12.4 The Expert shall be required to give notice to each of the said Parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten (10) Working Days;
- 12.5 The provisions of this clause 12 shall not affect the ability of the parties 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.

13. INDEXATION

Any sum referred to in Schedule 3 or 4 (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times C/D$ where:

A is the sum payable under this Deed;

B is the original sum calculated as the sum payable;

C is the Index for the month two (2) months before the date on which the sum is payable;

D is the Index for the month two (2) months before the date of this Deed; and

C/D is greater than 1.

14. INTEREST ON PAYMENTS

If any payment due under this Deed is paid late interest will be payable from the date payment is due to the date of payment.

15. DEVELOPER'S CONSENT

The Developer acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that their rights shall take effect subject to this Deed PROVIDED THAT the Developer shall otherwise have no liability under this Deed (save as expressly provided in this Deed) unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

16. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable and any VAT due must also be paid.

17. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

18. DELIVERY

The provisions of this Deed (other than this clause 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

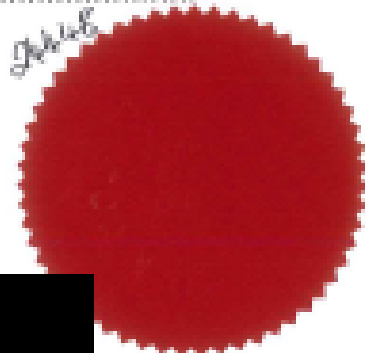
The Common Seal of)
MID SUFFOLK DISTRICT)
COUNCIL)
was hereunto affixed)
In the presence of)

A [Redacted]



The Common Seal of)
SUFFOLK COUNTY)
COUNCIL)
was hereunto affixed)
In the presence of)

Authorized Signatory [Redacted]



Executed by ALISON)
RUTH BROMWICH in the)
presence of:)

Witness Signature:
Witness Name:
Witness Address:

Witness Occupation:

[Redacted]

Executed by ALAN)
NICHOLAS BROMWICH)
in the presence of:)

Witness Signature:
Witness Name:
Witness Address:

Witness Occupation:

[Redacted]

Executed as a deed by
HOPKINS AND MOORE
(DEVELOPMENTS)
LIMITED acting by a
director and a director or
its secretary:

)
)
)



SCHEDULE 1

DETAILS OF THE OWNER'S TITLE AND DESCRIPTION OF THE SITE

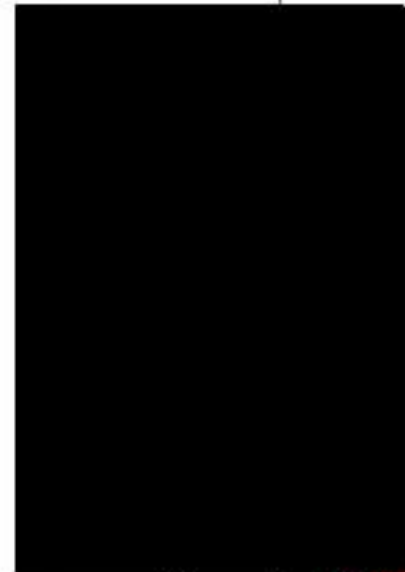
The freehold land being land on the south west side of Main Road, Somersham which forms the Site registered at the Land Registry under title number SK156854 shown edged with red for identification only on the Site Plan.



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Drawn
 On 10/06/2018
 Checked by 10/06/2018
 Approved by 10/06/2018



PLANNING

Project No	GCM1
Site No	001
Scale	1:1000 @ A1
Site Location Plan File	
Page No	42



SCHEDULE 2

DRAFT PLANNING PERMISSION

Philip Isbell – Chief Planning Officer
Sustainable Communities

Mid Suffolk District Council
Endeavour House, 8 Russell Road, Ipswich IP21 2BX

Website: www.midsuffolk.gov.uk



PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990
THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015

Correspondence Address:

Hopkins and Moore (Developments) Limited
Melton Park House
Scott Lane
Melton
Woodbridge
IP12 1TJ

Applicant:

Hopkins and Moore (Developments) Limited
Melton Park House
Scott Lane
Melton
Woodbridge
IP12 1TJ

Date Application Received: 09-Jul-18

Application Reference: DC/18/03114

Date Registered: 12-Jul-18

Proposal & Location of Development:

Planning Application - Residential development of 42 dwellings, together with associated public open space, access roads, garaging and car parking (Duplicate application to DC/18/03115).

Land South West Of, Main Road, Somersham, Suffolk

Section A – Plans & Documents:

This decision refers to drawing no./entitled SOM1-001 received 09/07/2018 as the defined red line plan with the site shown edged red. Any other drawing showing land edged red whether as part of another document or as a separate plan/drawing has not been accepted or treated as the defined application site for the purposes of this decision.

The plans and documents recorded below are those upon which this decision has been reached:

Drainage Details 1710-042-SK002 B - Received 20/02/2019
Drainage Details 1710-042-SK003 B - Received 20/02/2019
Drainage Details 1710-042-SK004 B - Received 20/02/2019
Drainage Details 1806-182-003 - Received 20/02/2019
Topographic Survey 20600se-01 - Received 20/02/2019
Topographic Survey 20600se-02 - Received 20/02/2019
Topographic Survey 20600se-03 - Received 20/02/2019
Plans - Proposed Figure 3 - Received 20/02/2019
Floor Plan - Proposed Plots 4-7 SOM1-105 A - Received 12/12/2018
Elevations - Proposed Plots 4-7 SOM1-105 A - Received 12/12/2018
Elevations - Proposed Plots 4-7 2 SOM1-107 A - Received 12/12/2018

Proposed Plans and Elevations Plot 9 SOM1-110 A - Received 12/12/2018
Floor Plan - Proposed Plots 1 and 14 SOM1-114 A - Received 12/12/2018
Elevations - Proposed Plots 1 and 14 SOM1-115 A - Received 12/12/2018
Floor Plan - Proposed Plots 15 and 38 SOM1-116 A - Received 12/12/2018
Elevations - Proposed Plots 15 and 38 SOM1-117 A - Received 12/12/2018
Floor Plan - Proposed Plots 10, 37 and 39H SOM1-121 A - Received 12/12/2018
Elevations - Proposed Plots 10, 37 and 39H SOM1-122 A - Received 12/12/2018
Floor Plan - Proposed Plots 40-42 SOM1-123 A - Received 12/12/2018
Elevations - Proposed Plot 40-42 SOM1-124 A - Received 12/12/2018
Proposed Plans and Elevations Plot 36 SOM1-129 - Received 12/12/2018
Appendices 1-8 - Received 05/09/2018
Plans - Proposed External works details. SOM1-006 External Works Layout - Received 30/10/2018
Plans - Proposed Floor plans - House type 2067 - Plot 12. SOM1-101 A - Received 30/10/2018
Elevations - Proposed House type 2067 - Plot 12 SOM1-102 A - Received 30/10/2018
Defined Red Line Plan SOM1-001 - Received 09/07/2018
Plans - Proposed Floor plans - plots 2-3. SOM1-103 - Received 09/07/2018
Elevations - Proposed Elevations - plots 2-3. SOM1-104 - Received 09/07/2018
Plans - Proposed Floor plans - plot 8. SOM1-108 - Received 09/07/2018
Elevations - Proposed Elevations - Plot 8. SOM1-109 - Received 09/07/2018
Proposed Plans and Elevations Plots 11, 16 and 17. SOM1-111 - Received 09/07/2018
Plans - Proposed Floor plans - Plot 13. SOM1-112 - Received 09/07/2018
Elevations - Proposed SOM1-113 - Received 09/07/2018
Proposed Plans and Elevations Plot 18. SOM1-118 - Received 09/07/2018
Proposed Plans and Elevations Plot 19. SOM1-119 - Received 09/07/2018
Proposed Plans and Elevations Plot 35. SOM1-120 - Received 09/07/2018
Plans - Proposed Floor plans - Plot 20. SOM1-201 - Received 09/07/2018
Elevations - Proposed Elevations - Plot 20. SOM1-202 - Received 09/07/2018
Plans - Proposed Floor plans - Plots 21-22. SOM1-203 - Received 09/07/2018
Elevations - Proposed Elevations - Plots 21-22. SOM1-204 - Received 09/07/2018
Plans - Proposed Floor plans - Plots 23-25. SOM1-205 - Received 09/07/2018
Elevations - Proposed Elevations - Plots 23-25. SOM1-206 - Received 09/07/2018
Plans - Proposed Floor plans - Plots 26-29. SOM1-207 - Received 09/07/2018
Elevations - Proposed Elevations - Plots 26-29. SOM1-208 - Received 09/07/2018
Plans - Proposed Floor plans - Plots 30-31. SOM1-209 - Received 09/07/2018
Elevations - Proposed Elevations - Plots 30-31. SOM1-210 - Received 09/07/2018
Plans - Proposed Floor plans - Plots 32-34. SOM1-211 - Received 09/07/2018
Elevations - Proposed Elevations - Plots 32-34. SOM1-212 - Received 09/07/2018
Proposed Plans and Elevations Garage - Plots 8H, 11H, 15, 18H, 19H, 35, 41H, 42. SOM1-301 - Received 09/07/2018
Proposed Plans and Elevations Garage - Plots 1, 12, 13 and 14. SOM1-302 - Received 09/07/2018
Proposed Plans and Elevations Garage - Plots 2-3, 4-5, 6-7, 9-10, 16-17 and 26-37. SOM1-303 - Received 09/07/2018
Transport Assessment Part 1 - Received 22/08/2018
Transport Assessment Part 2 - Received 22/08/2018
Plans - Proposed 18024-100 C - Received 04/04/2019
SOM1-004 C - Received 12/12/2018
SOM1-005 - Received 30/10/2018
Pedestrian Footpath Link. SOM1-007 A - Received 09/09/2019
External Works Layout. SOM1-002 G - Received 31/01/2020
Proposed Site Plan SOM1-003 G - Received 31/01/2020

Section B:

Mid Suffolk District Council as Local Planning Authority, hereby give notice that **PLANNING PERMISSION**

**1. ACTION REQUIRED IN ACCORDANCE WITH A SPECIFIC TIMETABLE:
COMMENCEMENT TIME LIMIT**

The works to which this consent relate must be begun not later than the expiration of three years beginning with the date of this consent.

Reason - To comply with the requirements of Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1980 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004

2. APPROVED PLANS & DOCUMENTS

The development hereby permitted shall be carried out in accordance with the drawings/documents listed under Section A above and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non material amendment following an application in that regard.

Reason - For the avoidance of doubt and in the interests of proper planning of the development.

3. HIGHWAYS: VISIBILITY SPLAYS

Before the access is first used visibility splays shall be provided as shown on Drawing No. 171 0-042-SK001 D with an X dimension of 2.4m and a Y dimension of 69m and 84m and thereafter retained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

Reason: To ensure vehicles exiting the drive would have sufficient visibility to enter the public highway safely and vehicles on the public highway would have sufficient warning of a vehicle emerging in order to take avoiding action.

4. HIGHWAYS: ESTATE ROADS AND FOOTPATHS

Before the development is commenced, details of the estate roads and footpaths, (including layout, levels, gradients, surfacing and means of surface water drainage), shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that roads/footways are constructed to an acceptable standard.

5. HIGHWAYS: BINDER COURSE LEVEL

No dwelling shall be occupied until the carriageways and footways serving that dwelling have been constructed to at least Binder course level or better in accordance with the approved details except with the written agreement of the Local Planning Authority.

Reason: To ensure that satisfactory access is provided for the safety of residents and the public.

6. HIGHWAYS: SURFACE WATER DRAINAGE

Before the development is commenced details shall be submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained thereafter in its approved form.

Reason: To prevent hazards caused by flowing water or ice on the highway.

7. HIGHWAYS: LOADING / UNLOADING

Before the development is commenced details of the areas to be provided for the [LOADING, UNLOADING] manoeuvring and parking of vehicles including secure cycle storage shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall thereafter be retained and used for no other purpose.

Reason: To ensure the provision and long term maintenance of adequate on-site space for the parking and manoeuvring of vehicles, where on-street parking and manoeuvring would be detrimental to highway safety.

8. HIGHWAYS: REFUSE / RECYCLING

No dwelling shall be occupied until the refuse / recycling bin details serving their respective dwelling have been constructed in accordance with drawing External Works Layout SOM1-002G in full. The approved details shall thereafter be retained and used for no other purpose.

Reason: To ensure that refuse recycling bins are not stored on the highway causing obstruction and dangers for other users.

9. HIGHWAYS: HGV TRAFFIC MOVEMENTS

All HGV traffic movements to and from the site over the duration of the construction period shall be subject to a Deliveries Management Plan which shall be submitted to the planning authority for approval a minimum of 28 days before any deliveries of materials commence.

No HGV movements shall be permitted to and from the site other than in accordance with the routes defined in the Plan.

The site operator shall maintain a register of complaints and record of actions taken to deal with such complaints at the site office as specified in the Plan throughout the period of occupation of the site.

Reason: To reduce and / or remove as far as is reasonably possible the effects of HGV traffic in sensitive areas.

10. ARCHAEOLOGY: PRE INVESTIGATION

No development shall take place within the area indicated [the whole site] until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording
- b. The programme for post investigation assessment
- c. Provision to be made for analysis of the site investigation and recording
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation
- e. Provision to be made for archive deposition of the analysis and records of the site investigation
- f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- g. The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

Reason - To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance with Core Strategy Objective SO 4 of Mid Suffolk District Council Core Strategy Development Plan Document (2008) and the National Planning Policy Framework (2019).

11. ARCHAEOLOGY: POST INVESTIGATION

No building shall be occupied until the site investigation and post investigation assessment has been completed, submitted to, and approved in writing by the Local Planning Authority, in accordance with the programme set out in the Written Scheme of Investigation approved under part 1 and the provision made for analysis, publication and dissemination of results and archive deposition.

Reason - To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance with Core Strategy Objective SO 4 of Mid Suffolk District Council Core Strategy Development Plan Document (2008) and the National Planning Policy Framework (2019).

12. PRIOR TO COMMENCEMENT: ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

All mitigation measures and/or works shall be carried out in accordance with the details contained in the Extended Phase 1 Habitat Survey (Southern Ecological Solutions, June 2018), as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECOW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason: To conserve Protected and Priority species and allow the LPA to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

13. PRIOR TO COMMENCEMENT: MITIGATION TO BE AGREED

No development shall be carried out until proposals for the mitigation of the impact of the development on protected Suffolk European Sites have been submitted to and approved in writing by the Local Planning Authority, and the Local Planning Authority has confirmed in writing that the provision of the proposed mitigation has been secured. Such proposals must provide for mitigation in accordance with the emerging joint (Draft) Habitats Regulations Assessment Recreational Disturbance Avoidance and Mitigation Strategy, or for mitigation to at least an equivalent effect. Provide details of the manner in which the proposed mitigation is to be secured.

The development shall be carried out in accordance with and subject to the proposals as may be approved.

Note:

You will need to secure the provision of appropriate habitat mitigation measures before the condition can be discharged. There are two ways in which you will be able to do this. You can either;

- i. contribute to funding the Council's suite of mitigation projects and secure such provision prior to occupation through a legal agreement between the Council and Developer/Applicant and site owners, or
- ii. provide your own mitigation project to mitigate the impact of the proposal prior to occupation.

You are advised to discuss this matter with the Local Planning Authority prior to submission of details to discharge this condition.

Reason: In order to safeguard protected wildlife species and their habitats in accordance with the NPPF and Habitats Regulations. This condition is required to be agreed prior to the commencement of any development as any construction process to ensure adequate time for any agreement to be secured and be implemented prior to occupation.

14. PRIOR TO OCCUPATION: BIODIVERSITY ENHANCEMENT STRATEGY

A Biodiversity Enhancement Strategy, providing the finalised details and locations of the enhancement measures contained within the Extended Phase 1 Habitat Survey (Southern Ecological Solutions, June 2018), shall be submitted to and approved in writing by the local planning authority. The works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.

Reason: To enhance Protected and Priority Species and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species)

15. ACTION REQUIRED PRIOR TO COMMENCEMENT OF DEVELOPMENT:
LANDSCAPING SCHEME

No development shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard and soft landscaping and boundary treatment for the site, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication BS 5837:2012 Trees in relation to design, demolition and construction. The soft landscaping plan should include plant species, number, location and sizes of the proposed planting. The plans should clearly show the position of new fencing in relation to existing and proposed planting.

Reason - In the interests of visual amenity and the character and appearance of the area. This condition is required to be agreed prior to the commencement of any development to ensure matters of tree and hedgerow protection are secured early to ensure avoidance of damage or loss due to the development and/or its construction. If agreement was sought at any later stage there is an unacceptable risk of loss and damage to important trees and hedgerow that would result in harm to amenity.

16. ACTION REQUIRED PRIOR TO COMMENCEMENT OF DEVELOPMENT:
LANDSCAPE MANAGEMENT PLAN

No development shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a landscape management plan for a minimum of 5 years. Both new and existing planting and SUDs features will be required to be included in a long-term management plan.

Reason - To support plant establishment and ensure appropriate management is carried out and to maintain functionality and visual aesthetic.

17. SURFACE WATER MANAGEMENT:

The strategy for the disposal of surface water and the Flood Risk Assessment (FRA) (dated January 2019, ref: 1710-042 Ref A) shall be implemented as approved in writing by the local planning authority. The strategy shall thereafter be managed and maintained in accordance with the approved strategy.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal, to ensure that the proposed development can be adequately drained

18. SUSTAINABLE URBAN DRAINAGE SYSTEM:

The 21st dwelling hereby permitted shall not be occupied until details of all Sustainable Urban Drainage System components and all piped networks have been submitted, in an approved form, to and approved in writing by the Local Planning Authority for inclusion on the Lead Local Flood Authority's Flood Risk Asset Register.

Reason: To ensure all flood risk assets and their owners are recorded onto the LLFA's statutory flood risk asset register as per s21 of the Flood and Water Management Act.

Link <https://www.suffolk.gov.uk/roads-and-transport/flooding-and-drainage/flood-risk-asset-register/>

19. CONSTRUCTION SURFACE WATER MANAGEMENT PLAN:

No development shall commence until details of a Construction Surface Water Management Plan (CSWMP) detailing how surface water and storm water will be managed on the site during construction (including demolition and site clearance operations) is submitted to and agreed in writing by the local planning authority. The CSWMP shall be implemented and thereafter managed and maintained in accordance with the approved plan for the duration of construction. The approved CSWMP shall include:

- a. Method statements, scaled and dimensioned plans and drawings detailing surface water management proposals to include :-
 - i. Temporary drainage systems
 - ii. Measures for managing pollution / water quality and protecting controlled waters and watercourses
 - iii. Measures for managing any on or offsite flood risk associated with construction

Reason: To ensure the development does not cause increased flood risk, or pollution of watercourses. Link <https://www.suffolk.gov.uk/roads-and-transport/flooding-and-drainage/guidance-on-development-and-flood-risk/construction-surface-water-management-plan/>

20. MATERIALS:

No dwelling shall be occupied until the external materials have been constructed and applied in accordance with drawing Materials Plan SOM1-004C in full. The approved details shall be fully applied prior to the first use / occupation of the development and shall be retained thereafter, unless otherwise agreed in writing by the Local Planning Authority.

Reason - To secure an orderly and well designed finish sympathetic to the character of the existing building(s) and in the interests of visual amenity and the character and appearance of the area.

21. ACTION REQUIRED IN ACCORDANCE WITH A SPECIFIC TIMETABLE:
FENESTRATION

Prior to the commencement of any works to alter fenestration of the hereby approved development, detailed large appropriately scale drawings which shall include details of materials, finishes, method of opening, glazing and colour of all new or replacement windows, roof lights and doors and their surrounds to be installed shall be submitted to and approved, in writing, by the Local Planning Authority and shall thereafter be entirely implemented as approved.

Reason - In the interests of the character, integrity and preservation of the building and in the interests of visual amenity and principles of good design in accordance with the NPPF. (Note: The large scale drawings should be of appropriate scale to clearly show the detailing of the fenestration and you are advised to discuss these with the Local Planning Authority in advance.)

22. ACTION REQUIRED IN ACCORDANCE WITH A SPECIFIC TIMETABLE: AGREEMENT OF LEVELS

Prior to the commencement of works in association with the dwelling/building/s hereby approved and/or any change in ground levels, details of existing and proposed levels of the site, finished floor levels and identification of all areas of cut or fill as measured from a fixed off site datum point shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall be carried out in its entirety in accordance with the levels agreed.

Reason - In order to secure a design in scale with development surrounding the site so as to protect the visual amenities, amenity of neighbouring properties and character of the area. This condition is required to be agreed prior to the commencement of works to buildings and/or ground levels as any construction process beyond this stage without this agreement risks having to be restarted resulting in delay and cost for the developer.

23. ACTION REQUIRED IN ACCORDANCE PRIOR TO OCCUPATION: FIRE HYDRANTS

Prior to the first occupation of the site, details of the provision of fire hydrants shall be submitted to and approved, in writing, by the Local Planning Authority. The fire hydrants shall be carried out in accordance with these details in their entirety and in accordance with the timetable as may be agreed.

Reason - To ensure the site is suitably served by fire hydrants.

24. HIGHWAYS IMPROVEMENTS:

The works within the public highway will be required to be designed and constructed in accordance with the County Council's specification under the provisions of Section 278 of the Highways Act 1980 relating to the construction and subsequent adoption of the highway improvements. Amongst other things the Agreement will cover the specification of the highway works, safety audit procedures, construction and supervision and inspection of the works, bonding arrangements, indemnity of the County Council regarding noise insulation and land compensation claims, commuted sums, and changes to the existing street lighting, bus stop(s) and signing.

Reason - In the interests of proper planning

SUMMARY OF POLICIES WHICH ARE RELEVANT TO THE DECISION:

- FC01 - Presumption In Favour Of Sustainable Development
- FC01_1 - Mid Suffolk Approach To Delivering Sustainable Development
- FC02 - Provision And Distribution Of Housing
- CS01 - Settlement Hierarchy
- CS02 - Development in the Countryside & Countryside Villages
- CS03 - Reduce Contributions to Climate Change
- CS04 - Adapting to Climate Change
- CS05 - Mid Suffolk's Environment
- CS06 - Services and Infrastructure
- GP01 - Design and layout of development
- HB14 - Ensuring archaeological remains are not destroyed
- H07 - Restricting housing development unrelated to needs of countryside

H13 - Design and layout of housing development
H14 - A range of house types to meet different accommodation needs
H15 - Development to reflect local characteristics
H16 - Protecting existing residential amenity
H17 - Keeping residential development away from pollution
T09 - Parking Standards
T10 - Highway Considerations in Development
RT04 - Amenity open space and play areas within residential development
CLO8 - Protecting wildlife habitats

NOTES:

1. HIGHWAYS: SECTION 278

The works within the public highway will be required to be designed and constructed in accordance with the County Council's specification. The applicant will also be required to enter into a legal agreement under the provisions of Section 278 of the Highways Act 1990 relating to the construction and subsequent adoption of the highway improvements. Amongst other things the Agreement will cover the specification of the highway works, safety audit procedures, construction and supervision and inspection of the works, bonding arrangements, indemnity of the County Council regarding noise insulation and land compensation claims, commuted sums, and changes to the existing street lighting and signing.

2. PUBLIC RIGHTS OF WAY:

It is an OFFENCE to carry out works within the public highway, which includes a Public Right of Way, without the permission of the Highway Authority.

Any conditions which involve work within the limits of the public highway do not give the applicant permission to carry them out. Unless otherwise agreed in writing all works within the public highway shall be carried out by the County Council or its agents at the applicant's expense.

A fee is payable to the Highway Authority for the assessment and inspection of both new vehicular crossing access works and improvements deemed necessary to existing vehicular crossings due to proposed development.

3. HIGHWAYS: SECTION 38

The Local Planning Authority recommends that developers of housing estates should enter into formal

agreement with the Highway Authority under Section 38 of the Highways Act 1980 relating to the construction and subsequent adoption of Estate Roads.

Babergh and Mid Suffolk District Councils have adopted Community Infrastructure Levy (CIL) charging which affects planning permissions granted on or after 11th April 2016 and permitted development commenced on or after 11th April 2016. If your development is for the erection of a new building, annex or extension or the change of use of a building over 100sqm in internal area or the creation of a new dwelling or holiday let of any size your development may be liable to pay CIL and you must submit relevant documents to our Infrastructure Team telling us more about your development, who will pay CIL and when the development will start. You will receive advice on the amount you have to pay and what you have to do and you can find more information about CIL on our websites here:

[CIL in Babergh](#) and [CIL in Mid Suffolk](#) or by contacting the Infrastructure Team on: infrastructure@baberghmidsuffolk.gov.uk

This relates to document reference: DC/18/03114

Signed: Philip Isbell

Dated:

**Chief Planning Officer
Sustainable Communities**

Important Notes to be read in conjunction with your Decision Notice

Please read carefully

This decision notice refers only to the decision made by the Local Planning Authority under the Town and Country Planning Acts and DOES NOT include any other consent or approval required under enactment, bylaw, order or regulation.

Please note: depending upon what conditions have been attached to the decision, action may be required on your part before you can begin your development. Planning conditions usually require that you write to the Local Planning Authority and obtain confirmation that you have discharged your obligations. You should read your decision notice in detail and make a note of the requirements placed on you by any conditions. **If you proceed with your development without complying with these conditions you may invalidate your permission and put your development at risk.**

Discharging your obligations under a condition:

You should formally apply to discharge your conditions and the relevant application forms are available on the Council's website. The Local Planning Authority has 8 weeks to write to you after you submit the details to discharge your conditions. You should always account for this time in your schedule as the Local Planning Authority cannot guarantee that conditions can be discharged quicker than this. A fee is applicable for the discharge of planning conditions.

Building Control:

You are reminded that the carrying out of building works requires approval under the Building Regulations in many cases as well as a grant of planning permission. If you are in doubt as to whether or not the work, the subject of this planning permission, requires such approval, then you are invited to contact the Building Control Section of Babergh and Mid Suffolk District Councils.

Appeals to the Secretary of State

1. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or consent, or to grant permission or consent subject to condition, they may appeal to the Secretary of State for Communities and Local Government. The applicant's right of appeal is in accordance with the appropriate statutory provisions which follow:

Planning Applications: Section 78 Town and Country Planning Act 1990

Listed Building Applications: Section 20 Planning (Listed Buildings and Conservation Areas) Act 1990

Advertisement Applications: Section 78 Town and Country Planning Act 1990
Regulation 15

Town and Country Planning (Control of Advertisements) Regulations 2007

Notice of appeal in the case of applications for advertisement consent must be served within eight weeks of receipt of this notice. Notice of Householder and Minor Commercial Appeals must be served within 12 weeks, in all other cases, notice of appeal must be served within six months of this notice. If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice. If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within: 28 days of the date of service of the enforcement notice, or within six months of the date of this notice, whichever period expires earlier.

Appeals must be made on a form which is obtainable from The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN or online at <https://www.gov.uk/government/publications/model-notification-notice-to-be-sent-to-an-applicant-when-permission-is-refused>

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he/she will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him/her that permission for the proposed development could not have been granted by the Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by it, having regard to the statutory requirements*, to the provisions of the Development Order, and to any directions given under the Order. The Secretary of State does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him/her.

2. If permission or consent to develop land or carry out works is refused or granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State and the owner of the land claims that the land has become incapable of reasonable beneficial use by the carrying out of any development or works which has been or would be permitted they may serve on the Council of the district in which the land is situated, a purchase notice requiring the Council to purchase his interest in the land in accordance with the provisions of Section 137 of the Town and Country Planning Act 1990 or Section 32 Planning (Listed Buildings and Conservation Areas) Act 1990.

*The statutory requirements are those set out in Section 79(6) of the Town and Country Planning Act 1990, namely Sections 70 and 72(1) of the Act.

SCHEDULE 3

THE OWNER COVENANTS WITH THE COUNCIL

Part 1

Affordable Housing

1. Notices

- 1.1 The Owner shall give the Council Notice of Expected Commencement not less than seven (7) days before the date that the Owners expect Commencement of the Development to occur and the Owners shall give the Council Notice of Actual Commencement within twenty-one (21) days of Commencement of Development in order to confirm Commencement has occurred;
- 1.2 The Owner shall give the Council not less than two (2) months' written notice of the anticipated date for the first Occupation of the first Dwelling to be Occupied;
- 1.3 The Owner shall give to the Council not less than seven (7) Days' written notice following:
 - 1.3.1 the date of Occupation of the first Dwelling;
 - 1.3.2 the date of Occupation of the final Dwelling; and
 - 1.3.3 Completion of the Development.

2. Owners obligation to construct Affordable Housing Units

- 2.1 Having given notice under paragraph 1 of Part 1 of this Schedule 3 above unless the Council is the Registered Provider the Owner shall nominate a Registered Provider. The Owner may Commence Development while this process is ongoing;
- 2.2 Unless the Council is the Registered Provider or otherwise agreed in writing the Owner shall endeavour to agree with the Council on the identity of the Registered Provider or other body to which the Affordable Housing Units are to be transferred prior to Commencement of Development;
- 2.3 The Owner shall construct the Affordable Housing Units in accordance with the Planning Permission;
- 2.4 The Owner shall not Occupy or permit Occupation of more than twenty-one (21) Market Housing Units unless and until all of the Affordable Housing Units have been made ready for residential Occupation and have been transferred to the approved Registered Provider and written notification of such has been received by the Council;

- 2.5 Unless otherwise agreed in writing by the Council as part of the Affordable Housing Scheme the mix and tenure of the Affordable Housing Units shall be as follows for Affordable Rent Dwellings:

Affordable Rent:

- 1 x 2 bed 3 person apartment - plot 20
- 4 x 2 bedroom 4 person house – plots 21-24
- 4 x 1 bedroom 2 person apartment – plots 26 - 29
- 2 x 3 bed, 5 person house – plots 25 and 32

Shared Ownership:

- 2 x 2 bedroom 4 person house – plots 30 and 31
- 2 x 3 bedroom 5 person house – plots 33 and 34

- 2.6. Unless the Council is the Registered Provider to procure a covenant in the transfer(s) of the Affordable Housing Units that the Registered Provider(s) will enter into the Affordable Housing Nomination Agreement within one (1) month of the date of the transfer(s) to it of the Affordable Housing Units (or such other time period as is otherwise agreed in writing with the Council);
- 2.7. The Owner covenants that the Shared Ownership Dwellings shall only be Occupied by persons allocated in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and the Rental Dwellings shall only be Occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the Council is a party or chosen pursuant to the Affordable Housing Nomination Agreement which confers nomination rights on the Council unless otherwise agreed by the Council in writing or in accordance with the Government's Help to Buy Agency requirements;
- 2.8. From the date of Practical Completion the Affordable Housing Units shall not be used other than for Affordable Housing as set out herein save that this obligation shall not be binding on:
- a) any Protected Person or any mortgagee or chargee of the Protected Person exercising the mortgagee protection provision within the Shared Ownership Lease or any person deriving title from a Protected Person or any successor in title thereto and their respective mortgagees and chargees; or
 - b) any Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or

- c) any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor; or
- d) any mortgagee of the Shared Ownership Dwelling lawfully exercising the mortgagee protection provisions in the Shared Ownership Lease or any person or body deriving title from any such person; or
- e) any successor in title of a)- d) above;

2.9. Unless the Council is the Registered Provider, any capital receipt received from a lessee purchasing further shares in the Shared Ownership Dwelling between 81% and 100% is to be retained by the Registered Provider and re-invested in affordable housing within the Mid-Suffolk District subject to any contrary requirements within the Homes England Capital Funding Guide. If after a period of five (5) years it has not been possible to spend the recycled funds within the Mid Suffolk District the funds may be spent elsewhere for the provision of affordable housing;

2.10. The Owner shall not Occupy or permit Occupation of any of the Affordable Housing Units for any purpose other than as Affordable Housing.

3. Future use of Affordable Housing Units

3.1. the Owner covenants that any transfer of land on which any of the Affordable Housing Units has been constructed to a Registered Provider shall be:

- 3.1.1 with vacant possession;
- 3.1.2 free from any incumbrance other than existing at the time of the disposition (save for any financial charge or the transfer of statutory apparatus by the Owner to any statutory undertaker);
- 3.1.3 Subject to a grant by the Owners to the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units;
- 3.1.4 subject to a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the construction, operation use, maintenance and management of the Development;
- 3.1.5 subject to a covenant to enter into an Affordable Housing Nomination Agreement substantially in the form of the agreement contained in Schedule 7 with the Council within three (3) months of the date the Site is transferred from the Owner to the Registered Provider;

- 3.1.6 subject to a covenant that the Registered Provider shall include a pre-emption provision in its own favour in any transfer of an Affordable Housing Unit from the said Registered Provider to the owner or tenant of an Affordable Housing Unit; and
 - 3.1.7 subject to a covenant that the Registered Provider shall use all capital receipts from the sale of Affordable Housing Units only for the purpose of providing Affordable Housing;
- 3.2. The obligations and restrictions contained in paragraph 3 of this Schedule 3 shall not be binding on:
- 3.2.1 a Chargee who has complied with the provisions of paragraph 4 of this Schedule 3;
 - 3.2.2 Any Affordable Housing Unit purchased by a tenant through Social Homebuy funded pursuant to Section 19(3) Housing and Regeneration Act 2008 or a voluntary grant scheme pursuant to Section 21 Housing Act 1996 or any replacement of said schemes; or
 - 3.2.3 any person or body deriving title through or from any other parties mentioned in this paragraph 3.

4 Chargee's Duty in relation to Affordable Housing Units

- 4.1 Any Chargee of a Registered Provider shall prior to seeking to dispose of any Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge shall first give written notice to the Council of its intention to dispose;
- 4.2 if notice is given pursuant to paragraph 4.1 of this Schedule the following provisions shall apply:
 - 4.2.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - 4.2.2 if such disposal has not completed within the three month period referred to in clause 4.2.1 above, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the restrictions set out in this deed

- 4.2.2 if such disposal has not completed within the three month period referred to in clause 4.2.1 above, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the restrictions set out in this deed regarding the provision of Affordable Housing on the Site restrictions in this Deed which provisions shall determine absolutely

PROVIDED that at all times the rights and obligations in this paragraph 4 shall not require the Chargee to act contrary to its duties under its mortgage or charge and the District Council must give consideration to protecting the interests of the Chargee of a Registered Provider in respect of monies, interest and costs outstanding under its mortgage or charge;

- 4.4 In the event that the Registered Provider (within two (2) months' of written invitation) is unable to make an acceptable offer to purchase the Affordable Housing Units or no longer wants to purchase the Affordable Housing Units to enable the Owner to transfer the Affordable Housing Units to the Registered Provider pursuant to paragraph 3 of this part of this Schedule the Owner shall:

4.4.1 notify the Council three (3) months' prior to the Practical Completion of the Affordable Housing Units;

4.4.2 set out the reasons (together with any supporting evidence) in writing why a transfer to the Registered Provider has not been entered into pursuant to paragraph 3 of this part of this Schedule

4.4.3 submit any other information reasonably requested by the Council to satisfy why the Owner has not been able to enter into a transfer with the Registered Provider pursuant to paragraph 3 of this part of this Schedule

4.4.4 offer the Affordable Housing Units to the Council to be purchased by the Council as Affordable Housing

- 4.5 In the event the Council make an acceptable offer to the Owner (within two (2) months' of written invitation) for the Affordable Housing Units then the Owner shall not Occupy or permit Occupation of more than 21 of the Market Housing Units until the Owner has provided the Council with a freehold transfer document unconditionally released for completion

- 4.6 In the event the Council does not make an acceptable offer to the Owner (within two (2) months' of written invitation) to purchase all of the Affordable Housing Units or the Council indicates that they do not want to purchase the Affordable Housing Units the Owner will be able to sell the Market Housing Units and pay the Affordable Housing Commuted Sum to the Council. The Affordable Housing Commuted Sum n shall be

- 4.6.1 Once 5 Affordable Housing Units are sold on the open market a sum equivalent to one third of the Affordable Housing Commuted Sum shall be paid to the Council;
- 4.6.2 Once 10 Affordable Housing Units are sold on the open market a sum equivalent to one third of the Affordable Housing Commuted Sum shall be paid to the Council; and
- 4.6.3 Once all the Affordable Housing Units have been sold on the open market a sum equivalent to one third of the Affordable Housing Commuted Sum shall be paid to the Council;

and the provisions of this paragraph 4 of part 1 of this Schedule shall no longer be applicable in respect of the Affordable Housing Units and the Owner shall be free to dispose of said Affordable Housing Dwellings as Market Housing Units.

Part 2 Open Space

1. The Owner covenants with the Council that it shall submit the Open Space Plan and the Open Space Specification prior to first Occupation of the Site for approval such approval not to be unreasonably withheld or delayed.
2. The Owner covenants to lay out the Open Space within the Development in accordance with the Open Space Specification, the Open Space Plan and in accordance with the Planning Permission. Following the laying out and landscaping of the Open Space in accordance with the Open Space Specification, the Open Space Plan and the Planning Permission the Owner covenants with the Council at their own cost to maintain and manage the Open Space strictly in accordance with the Open Space Specification, the Open Space Plan and the Planning Permission until the date of the Open Space Transfer has been completed.
3. The Owner covenants that following the Council's written confirmation that the Open Space has been laid out in accordance with the Open Space Plan and Open Space Specification and the Planning Permission to transfer the freehold or part thereof of the Open Space as agreed in writing by the Council to the Management Company and such transfer to include such items as necessary and outlined in the open Space Transfer and shall for the avoidance of doubt include a covenant that the Open Space shall thereafter be retained and maintained in accordance with the Open Space Plan the Open Space Specification and the Planning Permission for the benefit of the general public.

4. The Owner shall transfer the Open Space to the Management Company for the sum of One Pound (£1) within 18 months of Occupation of the last Dwelling in accordance with the Open Space Transfer.
5. The Open Space is to be transferred to the Management Company within eighteen (18) months of Occupation of the last Dwelling in accordance with the Open Space Transfer.
6. Until such time as the Open Space is transferred the Owner shall retain liability for the maintenance of the Open Space in accordance with the Open Space Specification.
7. Following completion of the Open Space it shall (in perpetuity):
 - 7.1 Not be used for any purpose other than for the provision of public open space for the benefit of members of the public;
 - 7.2 Be maintained and managed in a clean and tidy condition and free of defects and in accordance with the Open Space Specification;
 - 7.3 Not to be built on or allowed to be built on any building on the Open Space, subject to any reasonable restrictions imposed in the interest of public safety or for the ancillary use of the public open space.

SCHEDULE 4

THE OWNER'S COVENANTS TO THE COUNTY COUNCIL

Public Rights of Way

1. The Owner covenants to pay the Public Rights of Way Contribution to the County Council prior to the Commencement of Development.
2. The Owner covenants not to Commence Development until the Public Rights of Way Contribution has been paid to the County Council.
3. The Owner shall give the County Council Notice of Expected Commencement not less than seven (7) days before the date that the Owners expect Commencement of the Development to occur and the Owners shall give the Council Notice of Actual Commencement within twenty-one (21) days of Commencement of Development in order to confirm Commencement has occurred.

**SCHEDULE 5
COUNCIL'S COVENANTS**

1. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.
3. The Council shall hold any sums payable under this Deed in an interest-bearing account and at the end of five years from the date of receiving the payment the Council shall return to the party who made the payment all money in that account which has not been spent on the intended purpose as specified in this Deed.
4. The Council shall not unreasonably withhold approval or nomination of the RP in accordance with Part 2 of schedule 3.
5. The Council shall not unreasonably delay the entry into a deed of nomination with the RP in accordance with part 3 of schedule 3.

,SCHEDULE 6

COUNTY COUNCIL'S COVENANTS

1. The County Council shall hold the Public Rights of Way Contribution in an interest-bearing account and at the end of ten years from the date of receiving the payment the County Council shall return to the party who made the payment all money in that account which has not been spent on the intended purpose as specified in this Deed.

SCHEDULE 7

DRAFT AFFORDABLE HOUSING NOMINATIONS AGREEMENT

THIS DEED OF NOMINATION RIGHTS is made the _____ day of _____ 2020
BETWEEN:

- (1) XXXXXXXX whose registered address is XXXXXXXXXXXXXXXXXXXX
(the RP) and
- (2) MID SUFFOLK DISTRICT COUNCIL of Endeavour House, 1 Russell Road Ipswich
Suffolk, IP1 2BX (the Council)

1. Definitions

In this Deed:

- 1.1 'Affordable Housing' has the meaning given to it in Annex 2 of the National Planning Policy Framework dated March 2012 and revised on 19 February 2019 as may be varied from time to time or supplemental guidance policy or by law issued thereof;
- 1.2 'Affordable Housing Unit' means the 15 (fifteen) dwellings (35% of the consented Dwellings) all of which shall be Affordable Housing to be provided on the Property of which 12 (Twelve) Dwellings shall be an Affordable Rent Dwelling (unless otherwise agreed by the Council as part of the Affordable Housing Scheme) which shall be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the Council is a party or otherwise nominated by the Council pursuant to this Deed as varied from time to time and 3 (three) Dwellings shall be a Shared Ownership Dwelling and shall be occupied by persons in accordance with the Government's Help to Buy Scheme (or other subsequent scheme) and Affordable Housing Units shall be construed accordingly;

- 1.3 'Affordable Housing Scheme' means the affordable housing scheme to be submitted to the Council as part of the reserved matters application for written approval by the Council for the provision of Affordable Housing as part of the Development detailing:
- i) the plots and location;
 - ii) bedroom numbers per Dwelling;
 - iii) Dwelling size; and
 - iv) tenure
- 1.4 'Affordable Rent' means rent charged at a level up to 80% of the equivalent Market Rent including any service charges applicable;
- 1.5 'Affordable Rent Dwelling' means an Affordable Housing Unit made available by a RP as low-cost rent accommodation (as defined by the Housing and Regeneration Act 2008 Section 68) with a rent charged at a level up to 80% of the equivalent market rent (inclusive of any service charges applicable) for a dwelling of comparable size in the same location;
- 1.6 'Chargee' means any mortgagee or chargee of the RP who is in possession or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator;
- 1.7 'Chargee's Duties' means the tasks and duties set out in Clause 12.4 of this deed;
- 1.8 'Choice Based Lettings Scheme' means an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Lettings Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the Council is a party;
- 1.9 'Dwelling' means a dwelling (including a house flat or bungalow and including both Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly;
- 1.10 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings Scheme (or any replacement or similar system in place at the time;

- 1.11 'Homes England' means Homes England or such other organisation as may from time to time be the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating RPs;
- 1.12 'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Rent dwelling;
- 1.13 'Initial Purchase' means the first purchase of such newly constructed and previously unoccupied Shared Ownership Dwelling;
- 1.14 'Local Connection Criteria' means an individual who immediately before taking up occupation of an Affordable Housing Unit;
- 1.14.1 had his only or principal home in the district of Mid Suffolk for a continuous period of not less than two (2) years and in the event that there are no or insufficient individuals qualifying under this sub-paragraph then the choice of person shall default to (but with no preference in ranking order) to those individuals fulfilling the criteria set out in the following sub-paragraphs 1.14.2 to 1.14.4 inclusive;
- 1.14.2 has or a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for a continuous period of not less than two (2) years in the district of Mid Suffolk and wishes to be near that relative; or
- 1.14.3 is employed in the district of Mid Suffolk on the date of the consideration of the individual's entitlement for an Affordable Housing Unit and has been continuously so employed for two (2) years;
- 1.14.4 who during the period commencing from the date on which an Affordable Housing Unit to which such individual is eligible pursuant to this sub-paragraph becomes available (for the purposes of this sub-paragraph called the "Availability Date") can provide satisfactory written evidence to the Council of his or her former residency in the district of Mid Suffolk for either (i) six (6) months out of the preceding twelve (12) months or (ii) three (3) years out of the

preceding five years and in either case such period of former residency shall end with the Availability Date;

- 1.15 'Mutual Exchange' means the procedure by which a tenant may exchange their house with another council or housing association tenant;
- 1.16 'Nomination List' means the Gateway to Homechoice Short List produced in accordance with the Gateway to Homechoice SLA;
- 1.17 'Nominee' means a person named on the Gateway to Homechoice Short List who satisfies the Local Connection Criteria and is verified by the RP as best meeting the criteria for the category of Affordable Rent Dwelling in respect of which the RP is to select a person from the Nomination List and offer a Tenancy Agreement;
- 1.18 'Practical Completion' means issue of a certificate of practical completion by the RP's surveyor or in the event that the Affordable Housing Units are constructed by a party other than the RP the issue of a certificate of practical completion by that other party's surveyor;
- 1.19 'Property' means the land on the south west side of Main Road, Somersham, IP8 4PB shown edged red on the plan annexed;
- 1.20 'Protected Tenant' means any Nominee who has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- 1.21 'Registered Provider' and 'RP' means a registered provider of social housing as defined in section 80(2) of the Housing and Regeneration Act 2008 and listed in the register kept by Homes England under Chapter III of that Act and for the avoidance of doubt this could include the Council;
- 1.22 'Shared Ownership Dwelling' means an Affordable Housing Unit to be let on a Shared Ownership Lease in accordance with the terms as set out in Homes England's capital funding guide or any other such guidance as shall replace it;

- 1.23 'Shared Ownership Lease' means a lease in a form approved by Homes England or where there is no such form in a form approved by the Council such lease to provide for the following:
- (a) not more than 70% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the RP;
 - (b) power to the purchaser to increase their ownership up to 100% if they so wish;
 - (c) an initial rent not exceeding 2.75% of the value of the equity retained by the RP subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England;
- 1.24 'Service Level Agreement' or 'SLA' means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made between the RP (1) and the Council (2);
- 1.25 'Staircasing' means the acquisition after the date of the Initial Purchase of additional tranches of equity in the Shared Ownership Dwelling as set out in the Shared Ownership Lease for that Affordable Housing Unit;
- 1.26 'Tenancy Agreement' means an assured tenancy agreement in a form prepared by the RP and containing terms which accord with the form of tenancy agreement being used by the RP from time to time for its general lettings;
- 1.27 'Vacancy Notice' means a written notice (in a form to be agreed between the RP and given by the RP to the Council within five (5) weeks from the date of this Deed) the function of such notice being the notification to the Council by the RP of the expected date on which the construction and fitting out of the Affordable Rented Dwellings will be complete;

- 1.28 'Void' means an Affordable Rent Dwelling which is vacant otherwise than as a result of the tenant having:
- 1.28.1 moved to other accommodation either by transfer or decant provided by the RP;
 - 1.28.2 moved to other accommodation under a reciprocal arrangement provided by another RP;
 - 1.28.3 vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere;
- 1.29 'Void Notice' means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five (5) weeks from the date of this Deed) the function of such a notice being the notification to the Council of a void in respect of an Affordable Rent Dwelling.

2 Enabling Provisions

This Deed is made pursuant to the Local Government Act 1972 Section 111, Section 1 of the Localism Act 2011 as amended and all other enabling powers.

3 Procedure

The parties agree that the SLA procedure to which they are signatories and the Local Connection Criteria shall apply to the nomination of persons in respect of the Affordable Housing Units.

4 Initial Lets/Initial Sales

In relation to the Initial Let and Initial Sale of an Affordable Housing Units the following provisions shall apply:

4.1.1 The RP shall give the Council not less than four (4) months' written notice of the date when all the Affordable Housing Units will be ready for occupation;

4.1.2 The RP shall serve a Vacancy Notice upon the Council in respect of an Affordable Rent Dwelling not earlier than ten (10) weeks prior to an Affordable Rent Dwelling becoming available for occupation.

5. Voids

Should any Affordable Rent Dwelling become a Void after the Initial Let or the RP has reasonable cause to believe it will become a Void then the Gateway to Homechoice SLA procedure shall apply in each case.

6. Supplemental provisions relating to allocating Initial Lets and Voids

6.1 Where there are two or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in clause 1.14 of this Deed and thereafter subject to clause 6.2 of this Deed, preference must be given to the applicant/s who have the highest housing need according to the Council's current allocations policy.

6.2 If any of the Affordable Housing Units are designed or adapted for people with disabilities or in need of level access then any such dwelling may be first offered to a person or persons with disabilities or level access needs who require such accommodation even where such person(s) have a lesser local connection under clause 1.14 of this deed than someone who does not have disabilities or level access need.

7. RP covenants

The RP covenants with the Council to the intent that the Local Government (Miscellaneous Provisions) Act 1982 applies

- 7.1 To ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units;
- 7.2 To ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent or as low-cost home ownership and they are all retained and managed by a RP in accordance with the objectives of such RP;
- 7.3 To construct the Affordable Housing Units in accordance with Homes England's requirements.

8. Alteration of lists

- 8.1 The Council and the RP agree that the nomination rights contained in this Deed may be varied from time to time by agreement in writing by the parties.

9. Notices

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served two (2) working days after posting or in the case of electronic mailing the day such notice was transmitted by the party serving the notice.

10. Transfer to other RP

The RP shall use reasonable endeavours to ensure that any RP to which the Property and Affordable Housing Units erected thereon are transferred otherwise than by direction of Homes England under its statutory powers shall enter into a similar deed *mutatis mutandis* with the Council and Gateway to Homechoice simultaneously on completing the transfer of the Property.

11 Disputes

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by or on behalf of the President for the time being of the Chartered Institute of Housing on the application of either party.

12 Agreements and declarations

The parties agree:

12.1 Nothing in this Deed fetters or restricts the exercise by the Council of any of its powers;

12.2 The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33;

12.3 From the date of Practical Completion the Affordable Housing Units shall be let/purchased or sold? in accordance with the terms of this Deed save that the obligations and restrictions contained in this Deed shall not be binding on:

12.3.1 any Protected Tenant or any mortgagee or Chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and Chargees; or

12.3.2 any chargee and any successor in title to the Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duties; or

12.3.3 any mortgagee and any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any successor in title to either of them;

12.4 The Chargee shall prior to seeking to dispose of the Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge give not less than two (2) months' prior notice to the Council of its intention to dispose;and

12.4.1 in the event that the Council responds within one (1) month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer at a price and upon such terms as are reasonably acceptable to the Chargee;

12.4.2 if the Council does not serve its response to the notice within the said period of one (1) month contained in clause 12.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this Deed;

12.4.3 if the Council or any other person cannot within two (2) months of the date of service of its response under clause 12.4.1 secure such transfer then provided that the Chargee shall have complied with its obligations under clause 12.4 the Chargee shall be entitled to dispose free of the restrictions set out in this deed PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council shall give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

13. Mutual Exchanges

The requirements of this Deed shall apply to all requests for Mutual Exchanges.

14. Shared Ownership Dwellings - Capital Receipts from Staircasing

The capital receipt received by the RP for shares sold between 81% and 100% must be recycled and reinvested in new Affordable Housing within the District of Mid Suffolk.

AS WITNESS whereof the parties have executed this instrument as a Deed hereto the day and year first above written

Signatories:

District Council

Registered Provider