

DATED

21st December

2020

EAST SUFFOLK COUNCIL (1)

And

SUFFOLK COUNTY COUNCIL (2)

And

SAINT FELIX SCHOOLS (3)

And

BARCLAYS BANK PLC (4)

DEED OF VARIATION OF A SECTION 106
AGREEMENT DATED 30 JANUARY 2019
RELATING TO
the development of land at Saint Felix School,
Halesworth Road, Reydon, Suffolk

Birketts

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

London

www.birketts.co.uk

THIS AGREEMENT is made on

21st December


2020

BETWEEN:

- (1) **EAST SUFFOLK COUNCIL** of Riverside, 4 Canning Road, Lowestoft, NR33 0EQ (**"the Council"**); and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavor House, 8 Russell Road, Ipswich IP1 2BX (**"the County Council"**); and
- (2) **SAINT FELIX SCHOOLS** (Co. Regn. No. 316883) of Saint Felix School, Halesworth Road, Reydon, Suffolk IP18 6SD (**"the Owner"**); and
- (3) **BARCLAYS BANK PLC** (Co. Regn. No. 01026167) of Lending Operations, PO Box 299, Birmingham B1 3PF (**"the Bank"**)

Together **"The Parties"**

BACKGROUND:

1. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
2. The County Council is the local highways authority (except for trunk roads) and is also a local planning authority for the areas in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
3. The Owner is the freehold owner of the Site which is registered at the Land Registry under title number SK234364, SK242772, SK234729, and SK234730
4. The Bank has a charge over the Site dated 5 January 2018 registered with the Land Registry under title number SK234364, SK242772, SK234729, and SK234730 
5. The Council's planning committee resolved on 11 July 2017 to grant the Planning Permission subject to the prior completion of the Original Agreement to regulate the Development and to secure the planning obligations contained in the Original Agreement which was entered into by the Original Parties and completed on 30 January 2019.
6. The Owner has agreed with the Council and Sport England the precise location and specification for the Replacement Playing Pitches and as a result a slight change to the plans and relevant definitions is required in the Original Agreement.
7. The Parties agree to enter into this Deed of Variation to vary the Original Agreement as set out in this Deed of Variation and for the purposes of ensuring

that Development carried out pursuant to the Planning Permission shall continue to comply with and be bound by the provisions of the Original Agreement as varied by this Deed of Variation.

IT IS HEREBY AGREED

1. In this Deed of Variation where the context so admits all words and expressions shall have the same meanings as given in the Original Agreement but in addition the following terms have the following meanings:

“The Original Agreement” means the unilateral undertaking dated 30 January 2019 which was entered into by the Original Parties pursuant to Section 106 of the Act and related to the Planning Permission;

“Original Parties” Means the Council, the Owner, the Bank and the County Council.

2. **CONSTRUCTION OF THIS DEED**

- 2.1 In this Deed of Variation, expressions defined in the Original Agreement and used in this Deed of Variation have the meaning set out in the Original Agreement. The rules of interpretation set out in the Original Agreement apply to this Deed of Variation.

3. **LEGAL BASIS**

- 3.1 This Deed of Variation is supplemental to the Original Agreement and is made pursuant to the provisions of Section 106 and Section 106A of the Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, and all other enabling powers;
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed of Variation create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council in the case of covenants made with them as local planning authority against the Owner and its successors in title;
- 3.3 The Original Agreement shall continue in full force and effect subject to this Deed of Variation.

4. **COMMENCEMENT**

4.1 This Deed of Variation shall come into effect upon the date of this Deed of Variation.

5. **VARIATIONS TO THE ORIGINAL AGREEMENT**

5.1 The Parties agree to vary the Original Agreement as follows:

5.1.1 Reference to 'figure 3' in the definition of "**Accessible Natural Green Space**" shall be replaced with reference to Plan C2423a;

5.1.2 The definition of "**Development Land**" shall have reference to "cross-hatched yellow on plan A.44.267g" changed to "shaded yellow on plan C2423a";

5.1.3 The definition of "**New Footpath Access Network**" shall have plan reference A44.2667i changed to C2423a;

5.1.4 The definition of "**Path Margins and Gorse Areas**" shall have plan references A44.267i changed to C2423a in both cases;

5.1.5 The definition of "**Plan**" shall have plan reference A44.267.f changed to C2423;

5.1.6 The definition of "**Retained Land**" shall have reference to plan A.44.267i changed to C2423;

5.1.7 The Definition of "**Sports Facilities**" shall have reference to plan A.44.267g changed to C2423b;

5.1.8 the definition of "**the Replacement Playing Pitches**" shall be deleted and replaced with:

replacement playing pitches of at least equivalent quality and quantity (16,000 sqm) to the existing playing pitches on the Development Land in accordance with details set out in the Feasibility Study prepared by Total Turf Solutions Limited dated 28 March 2017 but to be provided on the Retained Land to the south of the existing rugby pitch on the Retained Land and to the South of the main school building as shown indicatively on plan C2423c at precise location(s) to be agreed with the Council as part of the planning permission/consent for such pitches or (including if no formal consent is required) as generally agreed in writing with the Council;

5.1.9 Plan Figure 3, Plan A.44.267.f and Plan A.44.267.g and Plan A.44.267.i shall be removed from the Original Agreement and replaced with plans

C2423, C2423a, C2423b and C2423c attached to this Deed of Variation at Appendix 1;

5.1.10 Reference to "5.1.6 (northern area only)" shall be added to the list of Developer Covenants at the beginning of Schedule 3;

5.1.11 Reference to 5.1.6 in the list of Owner Covenants at the beginning of Schedule 3 shall have the words "(southern area only)" added immediately following it.

6. **THE OWNERS COVENANTS**

6.1 The Owner hereby covenants with the Council and the County Council for themselves and their respective successors in title and assigns to the Site that the Site shall be bound by and subject to the terms of the Original Agreement as amended by this Deed of Variation.

7. **COSTS**

7.1 On completion of this Deed of Variation the Owner shall pay the Council's reasonable legal costs associated with the drafting, negotiation and completion of this Deed of Variation, subject to a maximum figure of five hundred Pounds (£500) (no VAT);

7.2 On completion of this Deed of Variation the Owner shall pay the County Council's reasonable legal costs associated with the drafting, negotiation and completion of this Deed of Variation, subject to a maximum figure of four hundred and fifty Pounds (£450) (no VAT).

8. **BANK'S COVENANTS**

8.1 The Bank acknowledges and declares that this Deed of Variation has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed of Variation PROVIDED THAT the Bank shall otherwise have no liability under this Deed of Variation unless it takes possession of all or any 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. For the avoidance of doubt, the Bank shall only be liable for any continuing breaches or breach of this Deed of Variation if it has itself caused the breach whilst being mortgagee in possession and shall in no circumstances be liable for any pre-existing breach and it shall have no liability in relation to the Site (save for any breaches it has caused itself whilst a mortgagee in possession) after it has discharged its charge or has disposed of its interest in the relevant Site whether by sale or otherwise.

9. **GOVERNING LAW**

9.1 This Deed of Variation and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or

formation shall be governed by and construed in accordance with the law of England.

10. **JURISDICTION**

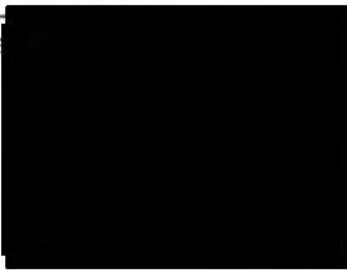
10.1 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed of Variation or its subject matter or formation.

11. **DELIVERY**

11.1 The provisions of this Deed of Variation (other than Clause 7 which shall be of immediate effect) shall be of no effect until this Deed of Variation has been dated.

THIS DEED OF VARIATION has been executed and delivered as a deed by the Parties on the date first above written

THE COMMON SEAL
OF **WAVENEY EAST SUFFOLK**
DISTRICT COUNCIL
was affixed in the
presence of:



Authorised Signatory:



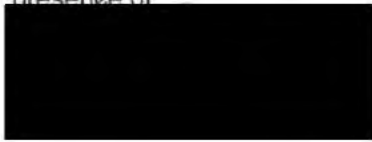
308

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

Authorised signatory



SIGNED AS A DEED
BY **SAINT FELIX**
SCHOOLS in the
presence of:



Executed as a deed by)
BARCLAYS BANK PLC)
acting by a director and)
a director or its)
secretary:

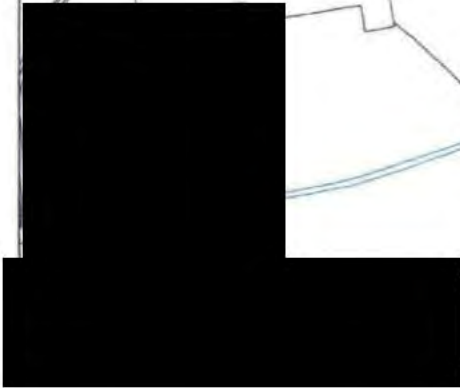
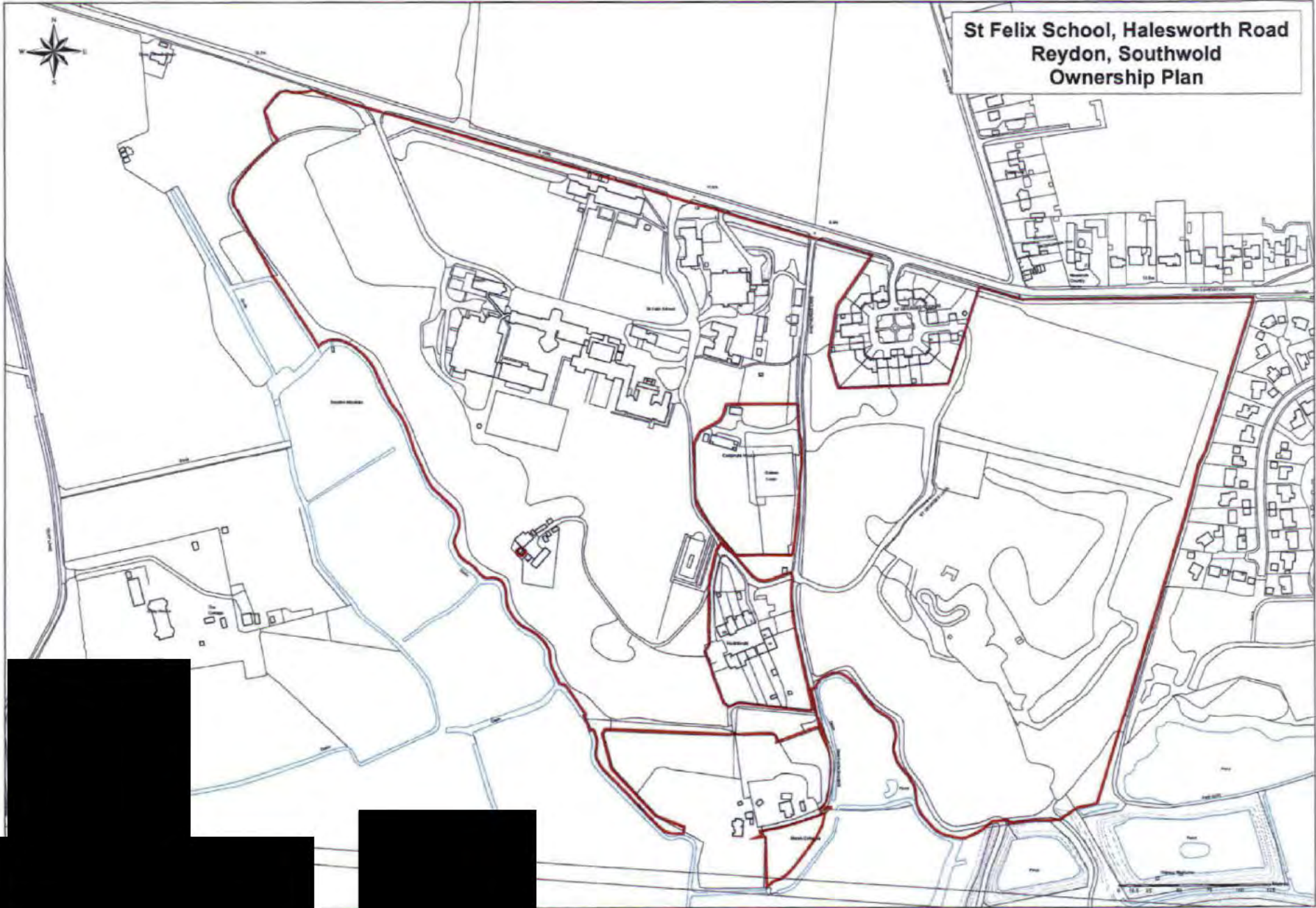
Director

Director / Secretary

Appendix 1





Plans C2423, C2423a, C2423b and C2423c

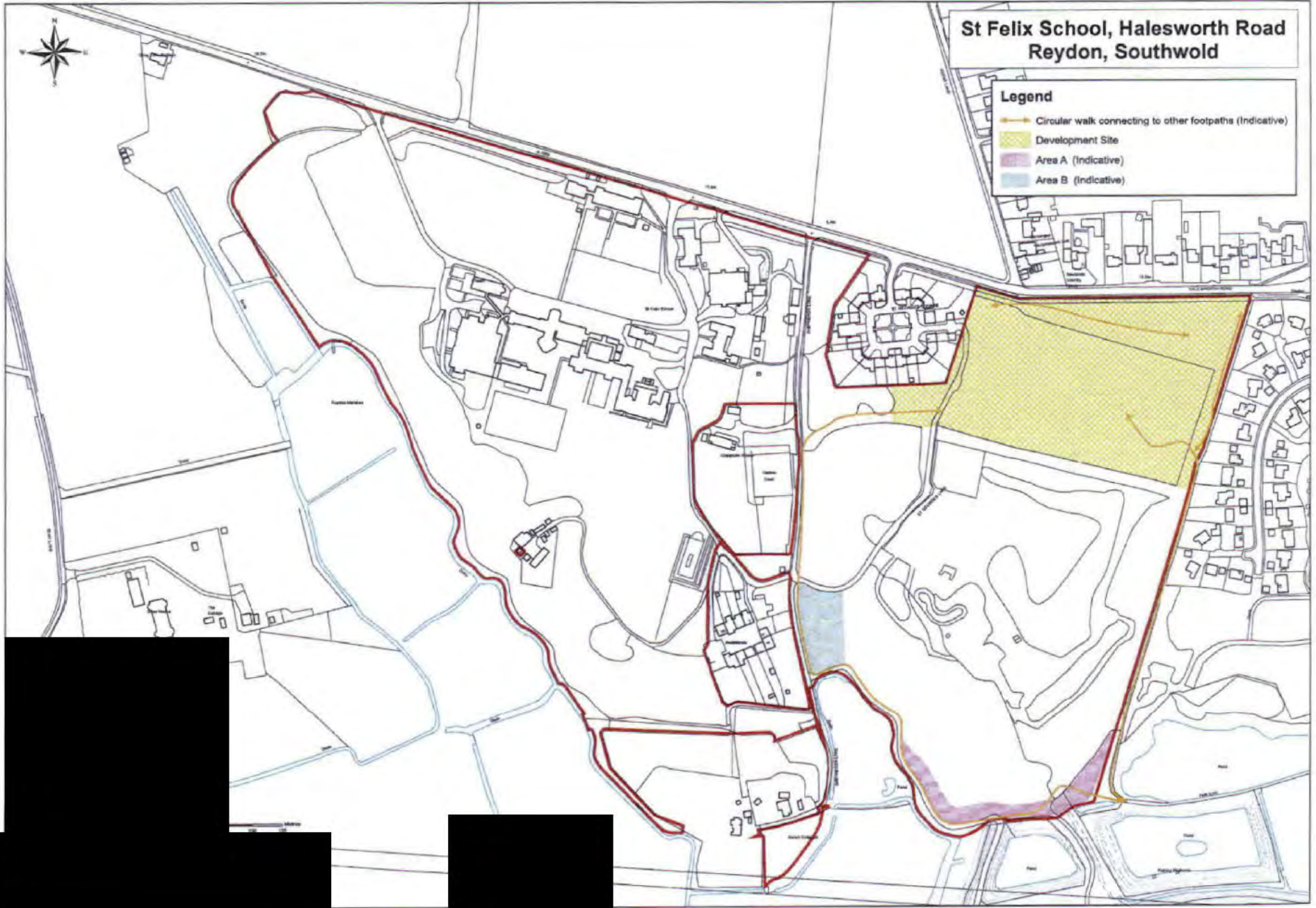
**St Felix School, Halesworth Road
Reydon, Southwold
Ownership Plan**



**St Felix School, Halesworth Road
Reydon, Southwold**

Legend

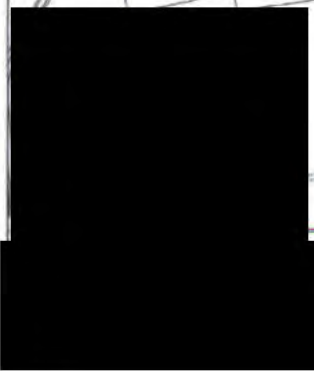
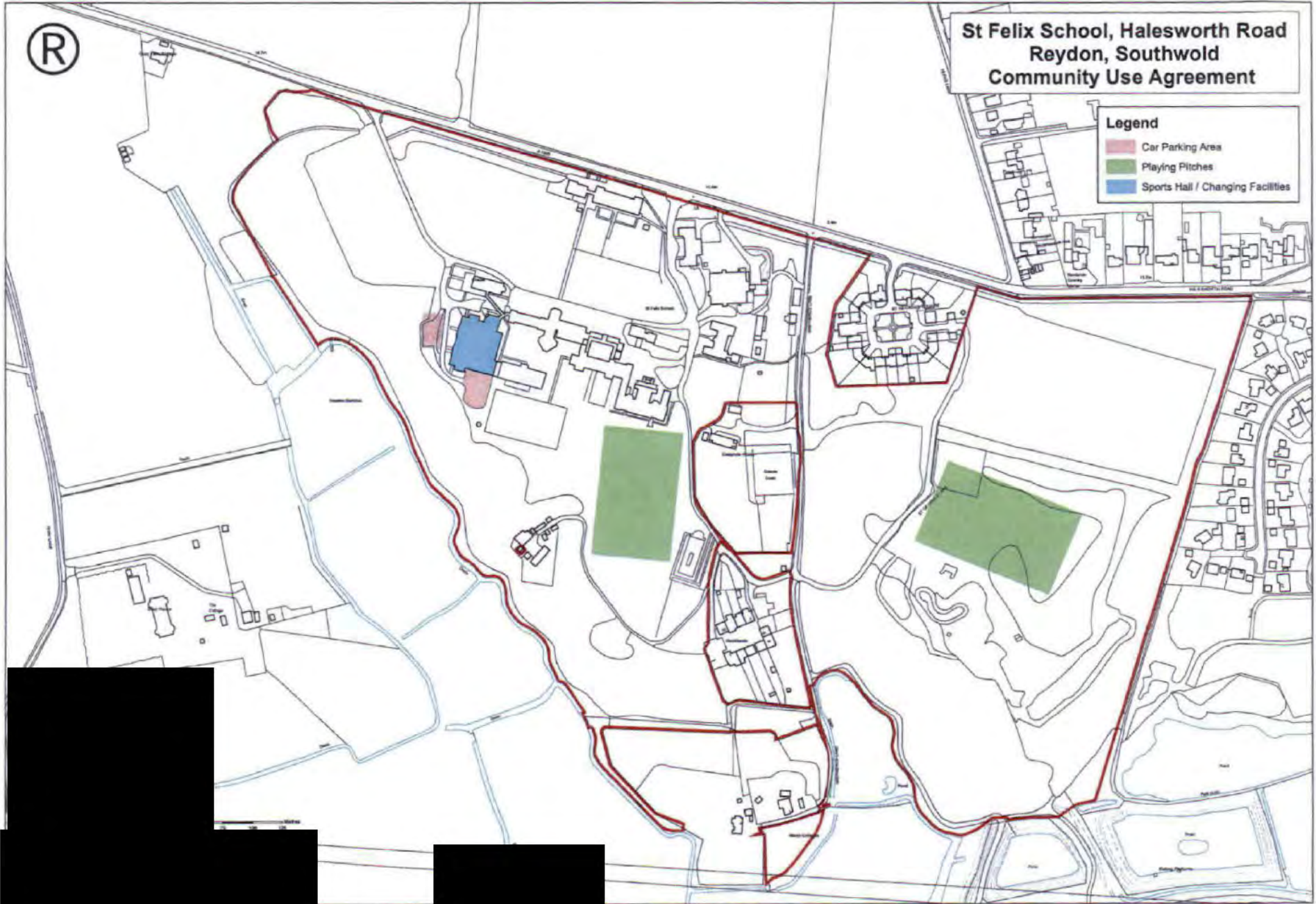
-  Circular walk connecting to other footpaths (Indicative)
-  Development Site
-  Area A (Indicative)
-  Area B (Indicative)

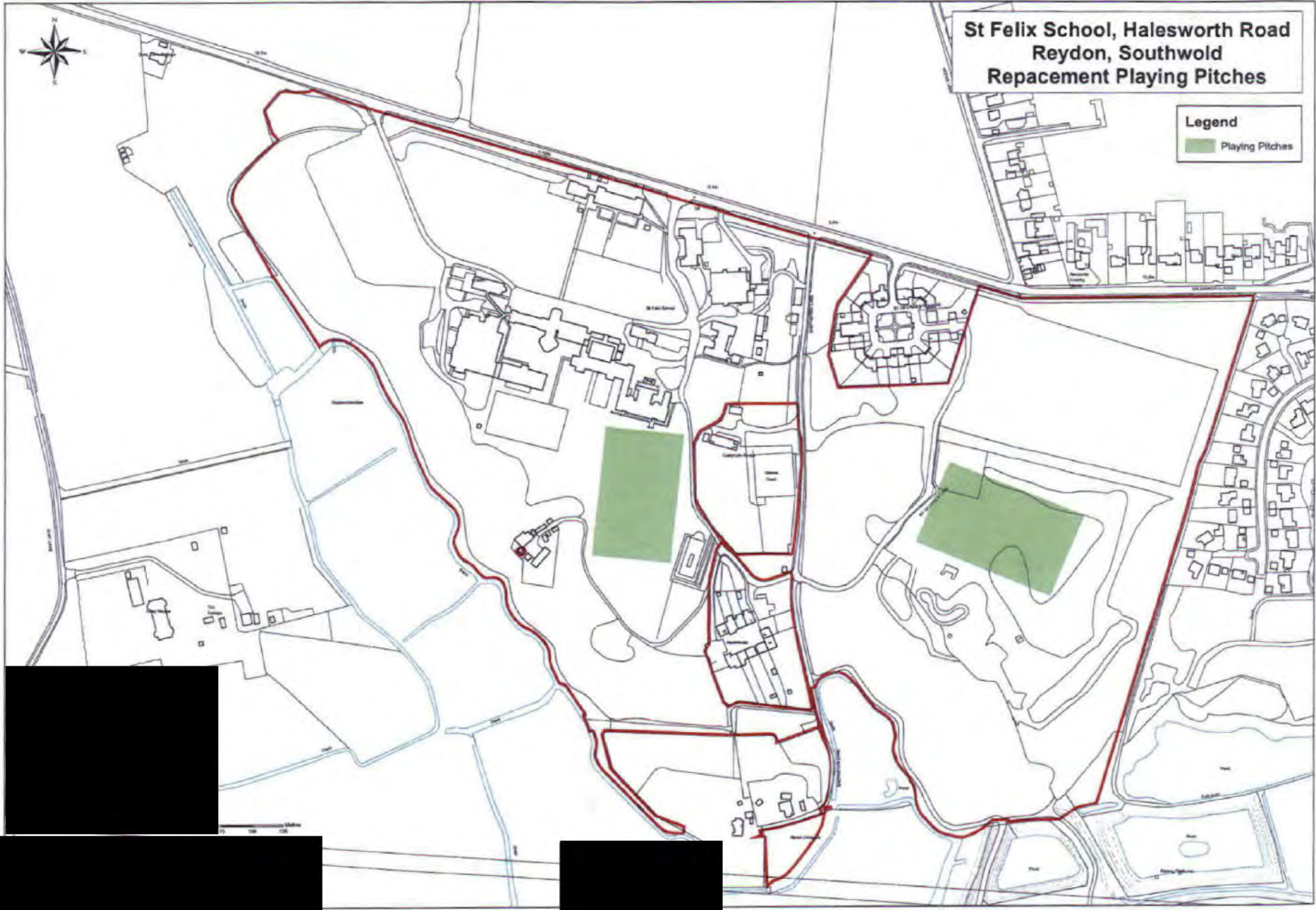




**St Felix School, Halesworth Road
Reydon, Southwold
Community Use Agreement**

- Legend**
- Car Parking Area
 - Playing Pitches
 - Sports Hall / Changing Facilities





**St Felix School, Halesworth Road
Reydon, Southwold
Replacement Playing Pitches**

Legend
■ Playing Pitches

