

DATED


2nd September

2021

MID SUFFOLK DISTRICT COUNCIL	(1)
SUFFOLK COUNTY COUNCIL	(2)
RACHEL WINTOUR	(3)
HOPKINS HOMES LIMITED	(4)
GRAHAM HENRY DENNY AND CHRISTINE JOY DENNY AND JAMES ROBERT THOMAS DENNY	(5)

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990 relating to Land to the South of Fitzgerald Road at Bramford, Suffolk (relating to outline planning application reference ~~DC/19/01649~~)

DC/19/01401



Birketts

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

Norwich

www.birketts.co.uk

THIS AGREEMENT IS MADE this 2nd day of September 2021

BETWEEN:

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road Ipswich, IP1 2BX ("**the District Council**");
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road Ipswich, IP1 2BX ("**the County Council**");
- (3) **RACHEL WINTOUR** of 2 Malvern Road, London, E8 3LT ("**the Owner**");
- (4) **HOPKINS HOMES LIMITED** (Co. Reg. No 02875798) of Melton Park House, Melton, Woodbridge, Suffolk IP12 1TJ ("**the Developer**");
- (5) **GRAHAM HENRY DENNY** and **CHRISTINE JOY DENNY** both of Brewery Farm, Earl Stonham and **JAMES ROBERT THOMAS DENNY** of Three Gables, Stowmarket Road, Stonham Aspal, Stowmarket IP14 6AA ("**the Skylark Landowner**")

Together "the Parties"

INTRODUCTION

- (A) The District 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 and education authority for the area in which the Site is situation 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 SK252413
- (D) James Robert Thomas Denny is the freehold owner of the Skylark Mitigation Land registered with title SK390131 at the Land Registry. Henry Victor Denny is also registered as a freehold owner under title SK390131 but is deceased.
- (E) Graham Henry Denny and Christine Joy Denny have a leasehold interest in the Skylark Mitigation Land by way of a lease dated 18 March 1968 and assigned by deed of assignment and variation on 11 October 1968.
- (F) The Skylark Landowner enters into this Deed for the purposes of securing the skylark mitigation provisions at Part 5 of Schedule 2 of this Deed only and shall otherwise have no liability under this Deed.

- (G) The Developer has a legal interest in the Site by way of an option agreement dated 26 January 2018.
- (H) The Developer has submitted the Application to the District Council.
- (I) The District Council has resolved to grant 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.
- (J) The District Council enters into this Deed content that the requirements of the District Council's policies are met and that any objections by the District Council to the grant of planning permission on the basis of those policies are overcome.
- (K) The District Council consider and the Owner and Developer acknowledge that the Development should not proceed unless and until 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.
- (L) The District Council in resolving to approve the Application is 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 and defined in Annex 2 of the National Planning Policy Framework (February 2019) (as amended or replaced);

<p>“Affordable Housing Contribution”</p>	<p>The sum £3,058,584 calculated in accordance with the District Council's affordable housing policies to be paid to the District Council to spend on Affordable Housing within the administrative district of the District Council in the event that the Owner is unable to dispose of the Affordable Housing in accordance with Schedule 2; Calculation set out in schedule 6;</p>
<p>“Affordable Housing Scheme”</p>	<p>the scheme to be submitted to the District Council that</p> <p>(a) identifies the tenure and plot numbers of the Affordable Housing Units;</p> <p>(b) provides that not less than 35% of the Dwellings constructed within the Development shall be Affordable Housing Units;</p> <p>(c) includes the Affordable Housing Table;</p> <p>(d) includes a plan showing the precise location of the Affordable Housing Units; and</p> <p>(e) for the avoidance of doubt if a Phase is not to include any Affordable Housing Units the Affordable Housing Scheme for that Phase should specify this and the requirements detailed at points (a) to (d) above do not need to be met;</p>
<p>“Affordable Housing Table”</p>	<p>The table at Part 2 of Schedule 2 setting out the type and tenure mix of the Affordable Housing Units</p>
<p>“Affordable Housing Nomination Agreement”</p>	<p>an agreement substantially in the form set out in Schedule 6 (subject to such amendments 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>

"Affordable Housing Units"	means up to 35% Dwellings to be provided on the Site as Affordable Housing in accordance with the Affordable Housing Scheme and the Affordable Housing Table to be provided as a mix of 27.5% Shared Ownership Dwellings and 72.5% Affordable Rent Dwellings unless otherwise agreed in writing with the Council;
"Affordable Rent"	means housing made available by a Registered Provider as low cost rental accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% of the equivalent market rent including any service charges applicable or the local housing rate allowance;
"Application"	means the application for outline planning permission to develop the Site in accordance with the application plans and other materials submitted to the District Council for the Development allocated reference number DC/19/01649 ; DC/19/01401
"Chargee of the Registered Provider"	Any mortgagee or chargee of a Registered Provider's interest or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee;
"Chargee's Duty"	the tasks and duties set out in Schedule 2, Part 2, Paragraph 7;
"Choice Based Lettings Scheme"	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 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;

“CIL Regulations”	the Community Infrastructure Levy regulations 2010 (as amended);
“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be 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 and the temporary display of site notices or advertisements and “Commencement”, “Commence Development” and “Commencement Date” shall be construed accordingly;
“Completion of Development”	The date when the Development is capable of beneficial occupation and use;
“Development”	the residential development of the Site for residential development of up to 115 dwellings and access, including open space and landscaping (duplicate application);
“Dwelling”	any dwelling (including a house flat maisonette or bungalow and including Shared Ownership Dwellings Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly;
“Early Years Contribution”	The sum of £215,721 (Two Hundred and Fifteen Thousand Seven Hundred and Twenty One Pounds Index Linked based on the Retail Prices Index for the County Council to use towards the delivery of a new early years setting for Bramford;

“Habitats Sites”	means those sites on the Suffolk Coast which will be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations which include the Stour and Orwell Estuaries Special Protection Area and the Stour and Orwell Estuaries Ramsar Site;
“Habitats Sites Mitigation Contribution”	means the sum of up to £14,017.35 (fourteen thousand, seventeen pounds and thirty five pence) Index Linked to be calculated using the Habitat Mitigation Contribution Calculation to be paid by the Owners to the District Council as a contribution towards the impact of development on the Habitats Sites;
“Habitats Sites Mitigation Contribution Calculation”	means the sum of £121.89 (one hundred and twenty one pounds and eighty nine pence) multiplied by the total number of new Dwellings proposed pursuant to the Planning Permission to calculate the Habitats Sites Mitigation Contribution;
“Homes England”	means the non-departmental public body responsible for creating thriving communities and affordable homes in England and which is the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body that may replace it in either function;
“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 (where the context makes this clear) the Retail Price Index being the “All Items” index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the District Council, the County Council and the Owner;
“Index Linked”	the increase in any sum referred to in Schedule 2 or Schedule 4 by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 12 of this Deed;

"Interest"	Interest at four (4) per cent above the minimum 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 residents' 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;
"Nominated Body"	Means the body responsible for the management and maintenance of the Open Space being either: a) a Management Company b) Bramford Parish Council or such other body as the Council may elect;
"Notice of Actual Commencement"	notice in writing to advise of the actual Commencement Date;
"Notice of Expected Commencement"	notice in writing to advise of the expected Commencement Date;
"Nesting Season"	1 st March to 31 st August (inclusive) in any given year;
"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission 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 "Occupy" shall be construed accordingly;
"Open Space "	the areas of open space and onsite playing area to be made available for public use as shown on the Open Space Plan to be provided in accordance with the Open Space Specification;

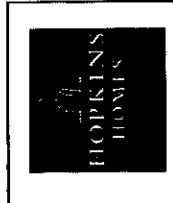
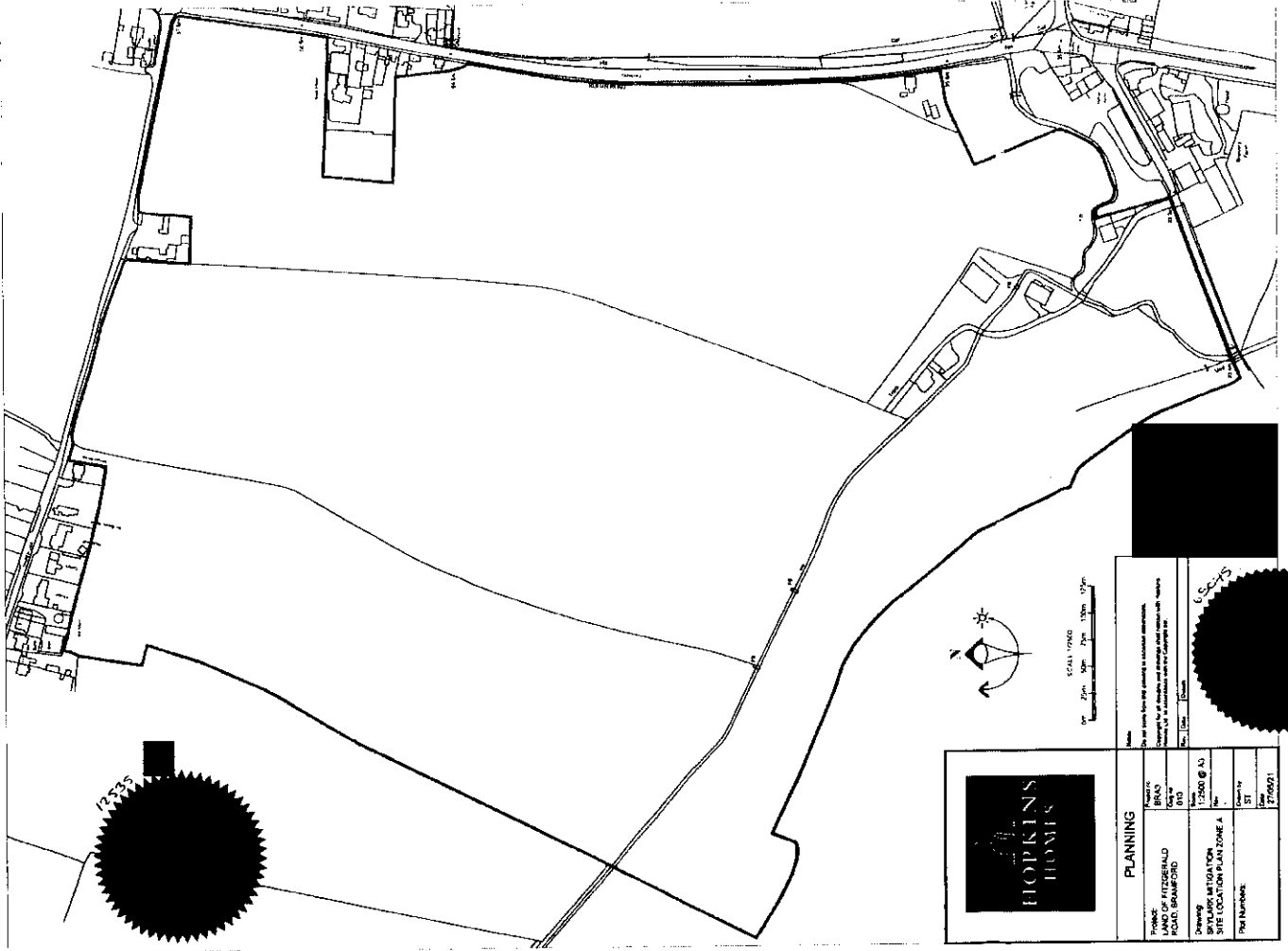
"Open Space Areas Plan"	Means a plan to be submitted to the District Council for approval indicating the location of the Open Space;
"Open Space Specification"	means the specification for delivery of the Open Space including the specifications plans and drawings showing but not limited to the layout 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 District Council in accordance with Part 2 of Schedule3;
"Open Space Transfer"	<p>A transfer of the Open Space to be approved in writing by the District 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 Nominated Body or the Nominated Bodies;</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>

"Phase"	means a distinct phase of the Development as proposed within a Reserved Matters Application;
"Plan"	the site plan attached to this Deed with Drawing Number 001
"Planning Permission"	The outline planning permission subject to conditions which may be granted by the District Council pursuant to the Application or such further application referred to in clause 10;
"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;
"Preparatory Works"	the date on which any preparatory works forming part of the Development begin to be carried out on the Site including 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 and the temporary display of site notices or advertisements;
"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;

“Reasonable Consideration”	Offer prices from a Registered Provider which give the Owner a reasonable consideration having regard to current market conditions in the disposal of Affordable Housing of a similar type and location by a Registered Provider on a grant free basis via Section 106 Agreements;
“Registered Provider” or “RP”	an organisation which is a Registered Provider of social housing or other provider registered in accordance with the provisions of chapter 3 of the Housing and Regeneration Act 2008 and whom has been approved by the District Council in writing, for the avoidance of doubt this could include the Council;
“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;
“Reserved Matters Application”	means an application for reserved matters approval in relation to the Planning Permission;
“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 the HE’s capital funding guide;

<p>“Shared Ownership Lease”</p>	<p>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:</p> <ul style="list-style-type: none"> - not more than 75% and not less than ²⁵/₁₀% 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;
<p>“Site”</p>	<p>the land shown edged red for identification purposes only on the Plan and described in the First Schedule against which this Deed may be enforced;</p>
<p>“Skylark Mitigation Land”</p>	<p>The nearby land on which 6 (six) replacement skylark plots will be provided and which for the purposes of identification only the location is shown indicatively on the Skylark Plan and which is registered at Land Registry under title number SK390131;</p>

<p>“Skylark Scheme”</p>	<p>Mitigation</p> <p>Means a scheme to be submitted to and approved by the District Council to compensate for the loss of the Skylark territories. The contents of the scheme shall include the following:</p> <p>The purpose and conservation objectives for the proposed measures</p> <p>The methodology for measures to be delivered</p> <p>The location of the Skylark Mitigation Land by appropriate maps and/ or plans</p> <p>The timetable of when the mitigation works will be carried out and maintained;</p> <p>The mechanism for implementation of the scheme for no less than 10 years and which shall include a requirement that the crop rotation shall include winter cereals in at least 2 plots per 2 hectares in rotation such that 6 plots can be delivered;</p> <p>The reporting and monitoring safeguards for the District Council to ensure compliance with the approved Skylark Mitigation Scheme;</p> <p>and such other detailed provisions as the District Council shall reasonably require in the form approved by the District Council (such approval not to be unreasonably withheld or delayed) and provided pursuant to the provisions of this Deed;</p>
<p>“Skylark Plan”</p>	<p>The plans attached to this Deed with drawing numbers 010 and 011 showing the indicative position of the Skylark Mitigation Land;</p>



PLANNING	
Project No.	BRNO
Client	FORD & FITZGERALD ROAD, BRANFORD, CT
Date	1/2008 @ 1/3
Drawing Title	SITE LOCATION PLAN ZONE A
File Number	P1010001

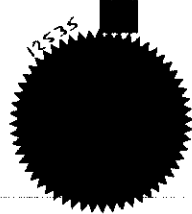
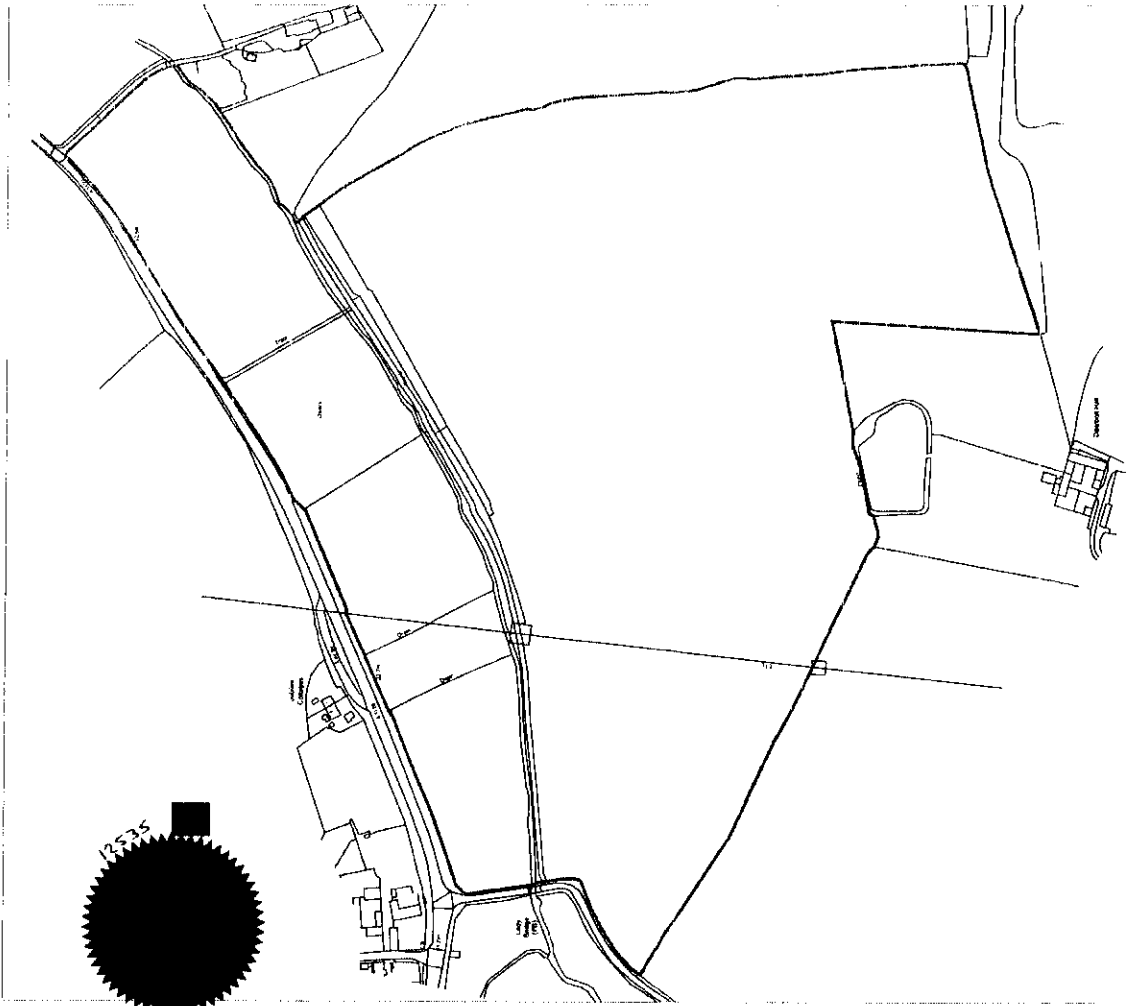
Notes:
 1. Do not scale from this drawing as indicated dimensions.
 2. Check for all details and dimensions that appear on the drawing.
 3. All dimensions are in feet and inches.




SCALE: 1"=200'
 0' 20' 40' 60' 80' 100' 120'


1/2008


1/2008





SCALE 1:2500





12525

PLANNING

Project: LAND OF FITZGERALD ROAD BRAMFORD	Plan No: B043
Drawn: SITE LAYOUT PLAN ZONE B	Scale: 1:2500 @ A3
Rev: ST	Date: 10/06/21

“Sproughton Highway Mitigation Improvements Contribution”	The sum of £130,000 (One Hundred and Thirty Thousand) Index Linked based on the Retail Prices Index to be paid by the Owners to the County Council for the purpose of: A new Zebra Crossing north to the Wild Man access; Reduce kerb radii and install uncontrolled crossing points; Widening of approach lanes to Beagle roundabout; Cycle link on Loraine Way;
“Passenger Transport Contribution”	The sum £170,000 (one hundred and seventy thousand pounds) Index Linked based on the Retail Prices Index to be paid by the Owner to the County Council towards passenger transport services for Bramford;
“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 shall include any modification, extension or re-enactment of that Act of Parliament 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 District Council and the County Council the successor or successor in title to its relevant statutory functions;
- 2.7 Any covenant by the Owner or the Developer 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;
- 2.8 The headings are for reference only and shall not affect construction;
- 2.9 References to a "Plan" or "Drawing" in this Deed shall be reference to the plans attached to this Deed bearing the relevant plan number or any amended plans as shall be agreed in writing between the Owner the District Council;
- 2.10 None of the covenants contained in this Deed on the part of the Owner shall be enforceable against:-
- 2.10.1
those persons who purchase (including purchasers by way of long lease) any Dwelling for Occupation by themselves or their lessees tenants or individuals or their mortgagees of the Dwellings; or
- 2.10.2 any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services;
- 2.11 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.

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 and or the Developer under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the District Council and or the County Council (as appropriate) as local planning authority against the Owner and its successors in title;
- 3.3 This Deed is a Deed and may be modified or discharged in part or in total at any time after the date of this Deed by Deed between the Parties in the form of a Deed.

4. **CONDITIONALITY**

4.1 The planning obligations contained in the Schedules to this Deed 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 paragraphs 1 and 2 of Part 1 and Part 5 of Schedule 2 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, THE DEVELOPER'S COVENANTS AND THE SKYLARK LANDOWNER'S COVENANTS

5.1 The Owner covenants with the District Council so as to bind the Site and each and every part thereof as set out in Schedule 2;

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 and clause 8.2;

5.3 The Developer covenants with the District Council to comply with its covenants at clause 8.1 and agrees to be bound by the terms of this Deed on becoming an owner of the Site as a successor in title to the Owner but shall otherwise have no liability under this Deed;

5.4 The Skylark Landowner covenants with the District Council so as to bind the Skylark Mitigation Land only that they shall comply with the obligations contained within Part 5 Schedule 2 and for avoidance of doubt the Skylark Landowner shall otherwise have no other liability under this Deed.

6. DISTRICT COUNCIL'S COVENANTS

6.1 The District Council covenants with the Owner as set out in Schedule 3.

7. COUNTY COUNCIL'S COVENANTS

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

8. MISCELLANEOUS

- 8.1 The Developer shall pay to the District Council on completion of this Deed its reasonable legal costs incurred in the negotiation, preparation and execution of this Deed;
- 8.2 The Developer shall pay to the County Council on completion of this Deed its reasonable legal costs incurred in the negotiation, preparation and execution of this Deed;
- 8.3 The Owners shall pay to the County Council the monitoring fee of £1236.00 (one thousand and two hundred and thirty- six pounds) on completion 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 shall be registered as a local land charge by the District Council;
- 8.6 Where the agreement, approval, consent or expression of satisfaction is required by the Owner or the Developer from the District 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 District Council by the Professional Lead or officer acting under his hand and on behalf of the County Council by the Executive Director of Growth Highways and Infrastructure or officer acting under his hand and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party;
- 8.7 The Owner agrees declares and covenants both with the District Council and County Council to 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 District Council and/or the County Council (as appropriate) for any expenses or liability arising to the District Council and 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 District Council and the County Council its employees or agents has caused or contributed to such expenses or liability;
- 8.8 Insofar as any clause or clauses 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;
- 8.9 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;

- 8.10 No person shall be liable for any breach of any of the planning obligations or other provisions 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;
- 8.11 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;
- 8.12 The Skylark Landowner shall not be liable for any breach of the planning obligations contained within Part 5 Schedule 2 after they shall have parted with their entire interest in the Skylark Mitigation Land (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest in the Skylark Mitigation Land;
- 8.13 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;
- 8.14 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;
- 8.15 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority;
- 8.16 The Owner covenants from the date that this Deed takes effect to allow the District Council and 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;
- 8.17 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;
- 8.18 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 District Council or County Council;

8.19 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions functions powers, duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in their exercise of their functions as a local authority;

8.20 The Owner covenants and warrants to the District 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 District Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council (as appropriate) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. SECTION 73

10.1 If the Planning Permission is subject to an application under Section 73 of the Act for the removal or amendment of any condition attached to the Planning Permission or if a condition is varied or released following an appeal under Section 78 of the Act then the obligations or provisions in this Deed shall be deemed to bind the varied planning permission resulting from such application unless the District Council in determining the application for the new planning permission indicate that consequential amendments are required to this Deed to reflect the impacts of the section 73 application, when a separate deed under section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission (acting in its absolute discretion).

11. CHANGE IN OWNERSHIP

11.1 The Owner and the Skylark Landowner agree with the District Council and County Council to give immediate individual written notice of any change in ownership of any of their interests in the Site (save for disposals of individual Dwellings) and Skylark Mitigation Land occurring before all the obligations under this Deed have been discharged such notice quoting the District Council's reference ~~DC/19/01049~~ ^{DC/19/01401} and giving details of the transferee's full name and registered office (if a company or usual *ELL*

address if not) together with the area of the Site or the Skylark Mitigation Land or unit of occupation purchased by reference to a plan and the title number or numbers thereof.

10. RIGHTS OF ENTRY

10.1 At all times on not less than forty eight (48) hours written notice except in case of emergency with or without notice the Owner shall allow any employee or agent of the District Council or County Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT:

10.1.1 such employee or agent on arrival at the Site shall if requested by any person present who appears to be the Owner the manager or person in charge thereof produce evidence of identity (but entry may be made if there is or appears to be no such person on the Site);

10.1.2 such entry shall be effected between 08:00 and 18:00 on any Working Day;

10.1.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary;

10.1.4 such employee or agent may take photographs measurements and levels;

10.1.5 such employee or agent may not remain on the Site for any longer than is reasonably necessary for carrying out a proper inspection;

10.1.6 such employee or agent and any other accompanying persons shall comply with the Owner or the Owner's representatives, reasonable directions and all the Owner's compliance precautions, procedures and measures in place for the Site at such time in the interests of health and safety;

10.1.7 such employee or agent shall not be entitled to access any Dwellings that have been sold;

10.1.8 such employee or agent shall be accompanied at all times by the Owner's manager or person in charge at the Site or such other employee or agent of the Owner in the interests of health and safety except in the event that no such person is available (in accordance with clause 10.1.1).

11. DISPUTE PROVISIONS

11.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question

regarding its existence validity or termination) shall be referred to an independent single Expert ("the Expert");

- 11.2 The Expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant under clause 15.1;
- 11.3 The Parties to the dispute shall jointly appoint the Expert not later than twenty (20) Working Days' after service of a request in writing by any Party to the dispute to do so;
- 11.4 If the Parties to the dispute are unable to agree within twenty (20) Working Days' as to the appointment of such Expert then the Expert shall be appointed on the application of either of the Parties to the dispute as follows:
 - 11.4.1 difference or question relates to the rights and liabilities of either Party to the dispute or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society; or
 - 11.4.2 difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers; or
 - 11.4.3 difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Parties but in default of agreement appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or
 - 11.4.4 if such difference of question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute.
- 11.5 In the event of a reference to an Expert the Parties to the dispute agree to:
 - 11.5.1 prosecute any such reference expeditiously; and
 - 11.5.2 do all things or take all steps reasonably necessary in order to enable the Expert to make a final determination as soon as reasonably practicable and in any event within one (1) month of his appointment Provided That if the Expert fails to do so either Party to the dispute may apply to the President for the time being of the Institution of Law Society, Civil

Engineers, Royal Institute of Chartered Surveyors or Royal Town Planning Institute (as appropriate) for a substitute to be appointed in which case the same procedure shall be repeated;

- 11.6 The Expert shall invite written representations from each of the Parties;
- 11.7 The Expert will have the power to consolidate proceedings or hold concurrent proceedings;
- 11.8 The findings of the Expert shall be in writing signed by the Expert;
- 11.9 The findings of the Expert shall be final and binding both on the Parties to the dispute except in the case of manifest, material error;
- 11.10 The Expert shall act as an expert and not as an arbitrator;
- 11.11 The costs of the Expert shall be payable by the Parties in such proportion as may be determined by the Expert and failing such determination to be borne in equal shares by the Parties;
- 11.12 Unless this Deed has already been terminated each of the Parties to the dispute shall in every case continue to comply with its obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this clause 15 but without prejudice to the rights and obligations of the Parties to the dispute in relation to the termination of the Deed;
- 11.13 Nothing in the provisions of this clause 10 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Deed.

12. INDEXATION

Any sum referred to in Schedule 2 or Schedule 4 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 Not less than 1.

13. 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.

14. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

15. NOTICES

15.1 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 14.2;

15.2 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	Rachel Wintour of 2 Malvern Road, London, E8 3LT
The Developer	Hopkins Homes Limited, Melton Park House, Melton Park, Woodbridge, Suffolk, IP12 1TJ
The Skylark Landowner	Graham Denny and Christine Joy Denny both of Brewery Farm, Earl Stonham and James Robert Thomas Denny of Three

	Gables, Stowmarket Road, Stonham Aspal, Stowmarket IP14 6AA
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16. SATISFACTION OF ANY OF THE PROVISIONS OF THIS AGREEMENT

16.1 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the District Council or County Council as the case may be for a certificate to that effect and upon the District Council or County Council (acting reasonably) being satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied the District Council or County Council shall forthwith issue a certificate to such effect.

17. APPROVALS

17.1 Where any details, programmes, plans, strategies, reports, matters or materials are approved by the District Council or the County Council under the terms of this Deed further or amended details programmes plans strategies reports matters or materials may be submitted from time to time and if approved by the District Council and or the County Council (as appropriate) (acting reasonably) shall replace those previously approved.

18. COMMUNITY INFRASTRUCTURE LEVY

18.1 The Parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 (as amended) the obligations imposed in this Deed are:

18.1.1 necessary to make the Development permitted pursuant to the Application acceptable in planning terms;

18.1.2 directly related to the Development permitted pursuant to the Application; and

18.1.3 fairly and reasonably related in scale and kind to the Development permitted pursuant to the Application.

19. LAND OUTSIDE THE OWNER'S CONTROL

Nothing in this Deed shall require the performance of any obligation whatsoever in, over or under land outside the ownership or control of any Party to this Deed.

20. FUTURE MORTGAGEES

The obligations in this Deed shall not be enforceable against any mortgagee or chargee of the whole or any part of the Site from time to time or any person deriving

title from such mortgagee or chargee unless and until any such party takes possession of the Site (or any part of it to which such obligation relates) in which case it shall be liable as if it were a successor in title to the Owner in relation to the Site (or the relevant part of it) Provided That neither any mortgagee nor chargee nor person deriving title from such mortgagee or chargee shall be liable for any breach of the obligations contained in this Deed unless committed at a time when that person is in possession of the Site (or any part of the Site to which such obligation relates).

21. 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.

22. 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.

23. COUNTERPARTS

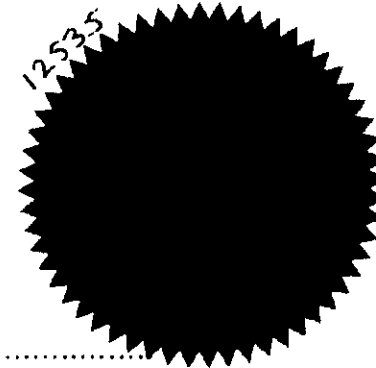
This Deed may be executed in a number of separate identical counter-parts which on completion shall be construed together as one Deed.

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:)



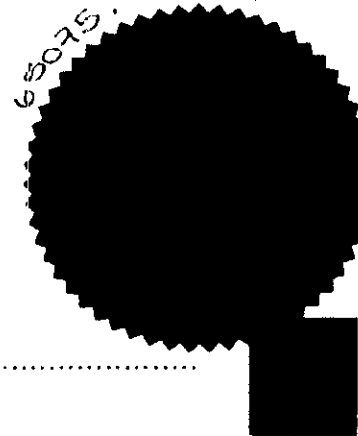
Authorised Signatory.....



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



Authorised Signatory..



Executed as a Deed by
GRAHAM DENNY



in the presence of:

ELEANOR HAYES

Witness Signature:

Eleanor Hayes

Witness Name:

CLARKE AND SIMPSON

Witness Address:

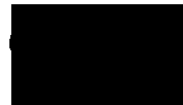
WELL CLOSE SQUARE FRANKLINTON

SUFFOLK IP13 9DU

Witness Occupation:

CHARTERED SURVEYOR

Executed as Deed by
CHRISTINE JOY DENNY



In the presence of:

ELEANOR HAYES

Witness Signature:

Eleanor Hayes

Witness Name:

Witness Address:

Witness Occupation:

Executed as Deed by
JAMES ROBERT THOMAS DENNY



In the presence of: ELEANOR HARRIS

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

Executed as a Deed by
RACHEL WINTOUR



in the presence of:



Witness Signature:

Witness Name:

Witness Address:

IOAN DOBBA
4 BAKERS CRESCENT
IPSWICH IP1 6HU
COURIER

Witness Occupation:

EXECUTED AS A DEED
by as attorney for
**HOPKINS HOMES
LIMITED** in the presence
of:



[Handwritten signature]

Attorney's signature:

Designated Member of
Birketts LLP, as attorney
for Hopkins Homes
Limited

Witness signature:

Witness name: JESSAMY BLISS PEARCE

Witness address: BIRKETTS LUP PROVIDENCE HOUSE
141-145 PRINCES STREET, IPSWICH, IP1 1QJ

Witness Occupation: LEGAL SECRETARY

SCHEDULE 1

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

The Freehold land shown edged with red on the Plan and being land on the south side of Fitzgerald Road, Bramford, Ipswich registered at the Land Registry under title number SK252413.

The Freehold land shown edged red on the Skylark Plan being land at Stonham Aspal, Stowmarket registered at the Land Registry under title number SK390131 and a leasehold interest of the same land created on 18 March 1968 and assigned and varied by deed of assignment on 11 October 1968.

SCHEDULE 2

THE OWNER COVENANTS WITH THE DISTRICT COUNCIL

Part 1

1. The Owner shall give the Council Notice of Expected Commencement not less than seven (7) days before the date that the Owner expects Commencement of the Development to occur and (ii) within twenty-one (21) days of Commencement of Development Notice of Actual Commencement in order to confirm Commencement has occurred.
2. The Owner shall give the Council no less than two (2) months' written notice of the anticipated date for the first Occupation of the first Dwelling to be Occupied.
3. The Owner shall within five (5) Working Days' give written notice to the District Council of the following:
 - 3.1 The date of provision of the Skylark Mitigation Land and implementation of the Skylark Mitigation Scheme;
 - 3.2 The date of Occupation of the first Dwelling;
 - 3.3 The date of Occupation of 40% of the Market Housing Units;
 - 3.4 The date of Occupation of 50% of the Market Housing Units;
 - 3.5 The date of Occupation of 70% of the Market Housing Units;
 - 3.6 The date of Occupation of 80% of the Market Housing Units;
 - 3.7 The date of Occupation of the final Dwelling;
 - 3.8 Completion of the Development.

Part 2

Affordable Housing

1. The Owner covenants not to Commence Development until the Affordable Housing Scheme has been submitted to and approved by the District Council in writing PROVIDED THAT an amended, revised or substituted Affordable Housing Scheme

may be approved by the District Council following the Commencement of the Development and once approved by the District Council such scheme will form part of this Deed as if the same had been fully set out herein.

This table sets out the affordable housing scheme preferred by the District Council and which may be varied by written agreement with the District Council at the District Council's absolute discretion

Property Type	Number	Tenure	Size
1 Bed 2 person apartments	10%	Affordable rented	Minimum 50 sqm
1 bed 2 person house	5%	Affordable rented	Minimum 50 sqm
2 bed 4 person flat over car port	5%	Affordable rented	Minimum 70 sqm
2 bed 4 person bungalow	7.5%	Affordable rented	Minimum 70 sqm
2 bed 4 person house	27.5%	Affordable rented	Minimum 79 sqm
3 bed 5 person houses	17.5%	Affordable rented	Minimum 93 sqm
2 bed 4 person houses	15%	Shared ownership	Minimum 79 sqm
3 bed 5 person houses	12.5%	Shared ownership	Minimum 93 sqm
TOTAL	100%		

2. The Owner shall endeavour to agree with the District Council on the identity of the Registered Provider to which the Affordable Housing Units are to be transferred such agreement not to be unreasonably withheld or delayed. The Owner may Commence the Development whilst that process is ongoing but if no agreement has been reached at the expiration of the period of four (4) months following the Commencement of the Development the District Council shall be entitled to nominate a Registered Provider or other appropriate body for the purpose

- 2.1 Subject to paragraph 5- 6 inclusive below the Owner shall not:
 - 2.1.1 Occupy or permit the Occupation of more than 50% of the Market Housing Units within a Phase until 50% of the Affordable Housing Units for that Phase have been constructed and made ready for residential Occupation and have been transferred to the approved Registered Provider and written notification of such has been received by the District Council;
 - 2.1.2 Occupy or permit the Occupation of more than 80% of the Market Housing Units within a Phase until 100% of the Affordable Housing Units for that Phase have been constructed and made ready for residential Occupation and have been transferred to the approved Registered Provider and written notification of such has been received by the District Council.
3. To construct the Affordable Housing Units in accordance with the Planning Permission and to a standard of construction that meets the Housing Standards Technical Guidance March 2015 and Nationally Described Space Standards.
4. Any transfer to a Registered Provider of the land on which the Affordable Housing Units will be constructed shall be:
 - 4.1 With vacant possession;
 - 4.2 Free from any encumbrance other than those existing as set out in the title at the time of the disposition (save for any financial charge or the transfer of statutory apparatus by the Owner to any statutory undertaker);
 - 4.3 Subject to grant by the Owner 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;
 - 4.4 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;
 - 4.5 Subject to a requirement to enter into the Affordable Housing Nomination Agreement with the District Council.
5. 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 District Council is a party or chosen pursuant to the Affordable Housing Nominations Agreement made pursuant to Schedule 2 which confers nomination rights on the District Council unless otherwise agreed by the District Council in writing.

6. From the date of Practical Completion the Affordable Housing Units shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
- a) any Protected Person or any mortgagee or chargee of the Protected Person 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
 - d) any successor in title of a) - c) above

7. The Affordable Housing provisions in this Deed shall not be binding on Chargee of a Registered Provider PROVIDED THAT:

7.1 The Chargee of a Registered Provider shall first give prior written notice to the District Council of its intention to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the District 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

7.2 if such disposal has not completed within the three month period, and the District Council has not responded indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way to safeguard it/them as Affordable Housing Unit(s) then the Chargee of a Registered Provider shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely

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

7.3 If a Registered Provider is unable to make an acceptable offer to purchase the Affordable Housing Units within three (3) months from the date of Practical Completion of the Affordable Housing Units within a Phase despite the Owner's reasonable endeavours to do so the Owner shall:

- 7.3.1 Notify the District Council three (3) months' prior to the Practical Completion of the Affordable Housing Units within that Phase;
 - 7.3.2 set out the reasons (together with supporting evidence) in writing why a transfer to a Registered Provider has not been entered into pursuant to paragraph 3 of this part of this Schedule;
 - 7.3.3 submit any other information reasonably requested by the District Council to satisfy why the Owner has not been able to enter into a transfer with the Registered Provider pursuant to paragraph 2 of this part of this Schedule; and
 - 7.3.4 offer the Affordable Housing Units within that Phase to the District Council to be purchased by the District Council as Affordable Housing;
- 7.4 if the District Council make an acceptable offer for Reasonable Consideration to the Owner (within three(3) months' of written invitation) for the Affordable Housing Units within that Phase then the Owner shall not Occupy or permit Occupation of more than eighty per cent (80%) of the Market Housing Units within that Phase until the Owner has provided the District Council with a freehold transfer document unconditionally released for completion;
- 7.5 if the District Council does not make an acceptable offer for Reasonable Consideration to the Owner (within three (3) months' of written invitation) to purchase all or part of the Affordable Housing Units within a Phase or the District Council indicates that it does not want to purchase the Affordable Housing Units within a Phase the District Council shall serve on the Owner written confirmation that the Owner shall be permitted to sell the Affordable Housing Units within a Phase on the open market and instead shall pay:
- 7.5.1 50% of the Affordable Housing Contribution payable in relation to such Phase to the District Council as calculated in accordance with Schedule 7 prior to Occupation of more than 50% of the Market Housing Units within such Phase; and
 - 7.5.2 The final 50% of the Affordable Housing Contribution payable in relation to such Phase to the District Council as calculated in accordance with Schedule 6 prior to Occupation of more than 80% of the Market Housing Units within such Phase in lieu of the provision of Affordable Housing within such Phase;
8. In the circumstances prescribed by paragraph 7.5.1 above the Owner shall not Occupy more than 50% of the Market Housing Units within a Phase until 50% of the Affordable Housing Contribution for such Phase has been paid to the Council;

- 8.1 in the circumstances prescribed by paragraph 7.5.2 above the Owner shall not Occupy more than 80% of the Market Housing Units within a Phase until 100% of the Affordable Housing Contribution for such Phase has been paid to the Council. Upon receipt of the written confirmation from the District Council referred to in paragraph 7.5 the provisions of this paragraph 1- 8 of part 2 of this Schedule 2 shall no longer be applicable in respect of those Dwellings that were proposed to be the Affordable Housing Units within a Phase and the Owner shall be free to dispose of the said Dwellings as Market Housing Units.

Part 3
Open Space

1. The Owner covenants not to Occupy or permit the Occupation of the Development unless and until the Open Space Areas Plan and Open Space Specification have been approved by the District Council in writing such approval not to be unreasonably withheld or delayed.
- 1.1 The Owner hereby covenants with the District Council not to permit the Occupation of any more than the number of Dwellings specified in the Open Space Specification until the Open Space has been provided in accordance with the approved Open Space Areas Plan and the Open Space Specification;
- 1.2 The Owner covenants to lay out the Open Space in accordance with the approved Open Space Specification and in accordance with the Open Space Areas Plan. Following the laying out and landscaping of the Open Space in accordance with the Open Space Specification and the Open Space Areas Plan the Owner further covenants with the District Council at their own costs to properly maintain and manage the Open Space in accordance with the Open Space Specification, the Open Space Areas Plan and the Planning Permission until the date of the Open Space Transfer has been completed;
- 1.3 The Owner covenants to serve written notice on the District Council requesting confirmation of the Nominated Body prior to the first Occupation of the Site and the Council shall confirm the Nominated Body within 28 days of receipt of the Owner's written request;
- 1.4 The Open Space shall be transferred to the Nominated Body within twelve (12) months of Occupation of the last Dwelling in accordance with the Open Space Transfer;

- 1.5 The Open Space is to be transferred to the Nominated Body for the sum of one pound (£1) within twelve (12) months of Occupation of the last Dwelling in accordance with the Open Space Transfer

Part 4

HABITATS MITIGATION CONTRIBUTION

1. The Owner covenants to pay the Habitats Site Mitigation Contribution to the District Council prior to the Occupation of the first Dwelling.
2. The Owner covenants not to Occupy or permit the Occupation of the Development until the Habitats Site Mitigation Contribution has been paid in full to the District Council.

Part 5

SKYLARK MITIGATION

1. The Owner covenants to provide the Skylark Mitigation Scheme for the written approval of the District Council prior to the Commencement of Development or prior to the Preparatory Works should the Preparatory Works be undertaken during the Nesting Season (whichever is the earlier):
 - 1.1 The Owner covenants not to Commence Development or Preparatory Works during the Nesting Season (whichever is the earlier) unless and until the Skylark Mitigation Scheme has been approved by the District Council in writing (such approval not to be unreasonably withheld or delayed);
 - 1.2 The Skylark Landowner covenants to implement or procure the implementation of the approved Skylark Mitigation Scheme on the Skylark Mitigation Land (or part thereof) prior to Commencement of Development or the Preparatory Works should the Preparatory Works be undertaken during the Nesting Season (whichever is the earlier);
 - 1.3 FOR THE AVOIDANCE OF DOUBT the Owner covenants to stop all works on Site (whether they are works for the Commencement of Development or Preparatory Works) during any Nesting Season if the 6 (six) replacement skylark plots have not been provided in accordance with the approved Skylark Mitigation Scheme on the Skylark Mitigation Land (or part thereof);

- 1.4 The Skylark Landowner further covenants to deliver and manage or to procure the delivery, management and maintenance of the approved Skylark Mitigation Scheme on the Skylark Mitigation Land on an annual basis for a period of not less than ten (10) years beginning with the date of the implementation of the Skylark Mitigation Scheme ("the Skylark Mitigation Period");
- 1.5 The Skylark Landowner shall during the Skylark Mitigation Period allow the District Council reasonable access onto the Skylark Mitigation Land (such access to be limited to four visits per calendar year) solely for the purposes of monitoring the Skylark Mitigation Scheme subject to the District Council providing the Skylark Landowner with no less than 48 hours' notice in writing of their intention to enter onto the Skylark Mitigation Land and the District Council not causing any damage to the Skylark Mitigation Land.

SCHEDULE 3

DISTRICT COUNCIL'S COVENANTS

1. The District Council will issue the completed Planning Permission as soon as reasonably practicable following the completion of this Deed.
2. At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained within this Deed when satisfied (acting reasonably) that such obligations have been performed.
3. The District 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 District 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.

PART 1

AFFORDABLE HOUSING

1. If an Affordable Housing Contribution is paid to the District Council the District Council shall use the monies for the provision of Affordable Housing within the administrative area of the Mid Suffolk District Council.
2. The District Council shall if requested to do so in writing after the expiry of ten 10 years of the date that the Affordable Housing Contribution was paid repay such amount of the Affordable Housing Contribution which has not been committed or expended by the District Council in accordance with the provisions of this Deed to the party who made the payment such repayment to be made within twenty (20) Working Days' of such request.
3. If the Affordable Housing Contribution paid to the District Council pursuant to this Deed was spent or committed by the District Council it shall upon written request after the expiry of ten (10) years of the payment of that sum notify the party who made the payment that such monies have been spent or committed within a further period of twenty (20) Working Days' such notice to include full details of what the said monies were spent on or committed to.

SCHEDULE 4

THE OWNER COVENANTS WITH THE COUNTY COUNCIL

PART 1

1. The Owner shall pay the Sproughton Highways Mitigation Improvements Contribution to the County Council prior to Commencement of Development.
2. The Owner shall not Commence Development unless and until the Sproughton Highways Mitigation Contribution has been paid in full to the County Council.
3. The Owner shall pay the Passenger Transport Contribution to the County Council prior to Commencement of Development.
4. The Owner shall not Commence Development unless and until the Passenger Transport Contribution has been paid in full to the County Council.
5. The Owner shall pay 50% of the Early Years Contribution to the County Council prior to first Occupation of any Dwelling..
6. The Owner shall not first Occupy or permit the first Occupation of any Dwelling unless and until 50% of the Early Years Contribution has been paid to the County Council.
7. The Owner shall pay a further 50% of the Early Years Contribution to the County Council prior to first Occupation of the 58th Dwelling.8. The Owner shall not first Occupy or permit the first Occupation of more than 57 Dwellings unless and until the Early Years Contribution has been paid to the County Council in full
8. The Owner shall give the County Council the Notice of Expected Commencement not less than seven (7) days before the date that the Owner expects Commencement of the Development to occur and (ii) within twenty-one (21) days of Commencement of Development Notice of Actual Commencement in order to confirm Commencement has occurred.
9. The Owner shall give the County Council no less than two (2) months' written notice of the anticipated date for the first Occupation of the first Dwelling to be Occupied.
10. The Owner shall give the County Council written notice of:
 - a) The date of Occupation of the first Dwelling
 - b) The date of first Occupation of the 57th Dwelling
 - c) The date of Occupation of the final Dwelling
 - d) Completion of Development

SCHEDULE 5

THE COUNTY COUNCIL COVENANTS WITH THE OWNER

1. At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained within this Deed when satisfied (acting reasonably) that such obligations have been performed.
2. The County Council shall on receipt of written request received within one year of the date ten years from the date of Completion of Development return to the party who made the payment within 20 Working Days the Early Years Contribution which has not been spent on the intended purpose as specified in this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable..
3. The County Council shall on receipt of written request received within one year of the date ten years from the date of receiving the Sproughton Highway Mitigation Improvements Contribution return to the party who made the payment within 20 Working Days the Sproughton Highway Mitigation Improvements Contribution which has not been spent on the intended purpose as specified in this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable.
4. The County Council shall on receipt of written request received within one year of the date ten years from the date of receiving the Passenger Transport Contribution return to the party who made the payment within 20 Working Days the Passenger Transport Contribution which has not been spent on the intended purpose as specified in this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable..

- 1.5 'Chargee's Duties' means the tasks and duties set out in Clause 10.4 of this deed;
- 1.6 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings system;
- 1.7 'Homes England' means the non-departmental public body responsible for creating thriving communities and affordable homes in England ~~and which is the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008~~ or such other body that may ~~replace it in either function;~~ *FROM TIME TO TIME TAKE ON THOSE FUNCTIONS* *BLP*
- 1.8 'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Housing Unit;
- 1.9 '*Local Connection Criteria*' means had his only or principal home in the District of Mid Suffolk for a continuous period of not less than 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 1.9.2 to 1.9.4 inclusive:
- 1.9.1 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 2 years in the District of Mid Suffolk and wishes to be near that relative or
- 1.9.2 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 2 years
- 1.9.3 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 District Council of his or her former residency in the District of Mid Suffolk for either (i) six months out of the preceding twelve months or (ii) three years out of the preceding five years and in either case such period of former residency shall end with the Availability Date
- 1.10 'Nomination List' means the Gateway to Homechoice Short List produced in accordance with the Gateway to Homechoice SLA;
- 1.11 'Nominee' means a person named on the Gateway to Homechoice Short List who satisfies the Local Connection Criteria and is verified by the District Council as best

meeting the criteria for the category of Affordable Housing Unit in respect of which the Registered Provider is to select a person from the Nomination List and offer a Tenancy Agreement;

- 1.12 'Practical Completion' means issue of a certificate of practical completion by the Registered Provider's surveyor or in the event that the Affordable Housing Units are constructed by a party other than the Registered Provider the issue of a certificate of practical completion by that other party's surveyor
- 1.13 'Land' means the development on land to the South of Fitzgerald Road, Bramford, Suffolk registered at the land registry under title number SK252413
- 1.14 '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;
- 1.15 'Registered Provider' 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;
- 1.16 'the 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 Registered Provider and Others (1) and the District Council and Others (2);
- 1.16 'Shared Ownership Dwelling' means an Affordable Dwelling to be let on a Shared Ownership Lease in accordance with the terms as set out in the Homes England capital funding guide or any other such guidance as shall replace it;
- 1.17 'Shared Ownership Lease' means a lease or sub-lease of an Affordable Dwelling granted at a premium whereby not less than twenty-five percent (~~25%~~¹⁰) and up to seventy percent (70%) of the Open Market Value on first purchase of the legal and equitable interest in the Affordable Dwelling is paid by the tenant upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% of the legal and equitable interest in the Affordable Dwelling at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease or such other figure permitted by Homes England from time to time. In the event of any shared ownership lessee staircasing up to 100% ownership; the Registered Provider must retain any capital receipt between 80% and 100% equity for re-investment in affordable housing within Mid Suffolk District.

1.18 'Tenancy Agreement' means an assured tenancy agreement in a form prepared by the Registered Provider and containing terms which accord with the form of tenancy agreement being used by the Registered Provider from time to time for its general lettings;

1.19 'Vacancy Notice' means a written notice (in a form to be agreed between the Registered Provider and given by the Registered Provider to the District Council within five (5) weeks from the date of this Deed) the function of such notice being the notification to the District Council by the Registered Provider of the expected date on which the construction and fitting out of the Affordable Housing Units will be complete;

1.20 'Void' means an Affordable Housing Unit which is vacant otherwise than as a result of the tenant having:

- (i) moved to other accommodation either by transfer or decant provided by the Registered Provider;
- (ii) moved to other accommodation under a reciprocal arrangement provided by another Registered Provider;
- (iii) vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere;

1.21 'Void Notice' means a written notice given by the Registered Provider to the District Council (in a form to be agreed between the Registered Provider and the District Council within five (5) weeks from the date of this Deed) the function of such a notice being the notification to the District Council of a Void.

2. **ENABLING PROVISIONS**

This Deed is made pursuant to the Local Government Act 1972 Section 111 and all other enabling powers.

3. **PROCEDURE**

The parties agree that the Service Level Agreement 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.

3.1 **Initial Lets**

The Registered Provider hereby grants the Council Nomination rights for 100% of the Initial Lets and thereafter 100% for Voids in relation to the Affordable Rent dwellings. In relation to the Initial Lets of the Affordable Housing Units the following provisions shall apply:

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

3.1.2 The Registered Provider shall serve a Vacancy Notice upon the District Council in respect of an Affordable Housing Unit not earlier than ten (10) weeks prior to an Affordable Housing Unit becoming available for occupation;

3.2 **Voids**

Should any Affordable Housing Unit become a Void after the Initial Let or the Registered Provider has reasonable cause to believe it will become a Void then and in each case the Gateway to Homechoice SLA procedure shall apply.

4. **SUPPLEMENTAL PROVISIONS RELATING TO ALLOCATING INITIAL LETS AND VOIDS**

4.1 Where there are two or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in clause 1.9.1 to 1.9.3 of this Nominations Agreement and subject to clause 4.2 of this Nominations Agreement preference must be given to the applicant/s who have the highest housing need according to Mid Suffolk District Council's current allocations policy;

4.2 If any of the Affordable Housing Units are designed or adapted for people with disabilities then any such dwelling may be first offered to a person or persons with disabilities who require such accommodation even where such person(s) have a lesser Local Connection under clauses 1.9.1 to 1.9.3 of this Nominations Agreement than someone who does not have disabilities.

5. **REGISTERED PROVIDER COVENANTS**

The Registered Provider covenants with the District Council to the intent that the Local Government (Miscellaneous Provisions) Act 1982 applies:

5.1 to ensure the Affordable Housing Units comprised within the Land are used as Affordable Housing Units;

5.2 to ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent or Shared Ownership Lease and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider;

5.3 the Affordable Housing Units in accordance with current Homes England requirements.

6. ALTERATION OF LISTS

The District Council and the Registered Provider agree that the nomination rights contained in this Deed may be varied from time to time by agreement in writing by the parties.

7. 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.

8. TRANSFER TO OTHER REGISTERED PROVIDER

The Registered Provider shall use reasonable endeavours to ensure that any Registered Provider to which the Land and Affordable Housing Units erected thereon are transferred otherwise than by direction of the Homes and Communities Agency under its statutory powers shall enter into a similar Deed mutatis mutandis with the District Council and Gateway to Homechoice simultaneously on completing the transfer of the Property

9. 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

10. AGREEMENTS AND DECLARATIONS

The parties agree:

- 10.1 Nothing in this Deed fetters or restricts the exercise by the District Council of any of its powers
- 10.2 The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33
- 10.3 From the date of Practical Completion the Affordable Housing Units shall be let in accordance with the terms of this deed save that the obligations and restrictions contained in this deed shall not be binding on:

- 10.3.1 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
- 10.3.2 any Chargee and any successor in title to the Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duties; or
- 10.3.3 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;

The Affordable Housing provisions shall not be binding on a Chargee PROVIDED THAT:

- (a) 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 months from the date of the written notice to complete a disposal for 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
- (b) if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely

PROVIDED THAT at all times the rights and obligations in this paragraph [] shall not require the Chargee of a Registered Provider to act contrary to its duties under the charge or mortgage and the District Council must give consideration to protect the interest of the Chargee of a Registered Provider in respect of monies outstanding under the charge or mortgage

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

**THE COMMON SEAL OF
MID SUFFOLK DISTRICT COUNCIL**

was affixed in the presence of:

)

)

)

Authorised Officer

**THE COMMON SEAL OF
REGISTERED PROVIDER'S NAME**

Signature of Authorised Officer

)

)

)

SCHEDULE 7

AFFORDABLE HOUSING CONTRIBUTION

Commuted Sums calculation summary April 2020.

Commuted sum payable = £47,950 per 1 bed flat

Total commuted sum for 4 dwellings = £191,800

Commuted sum payable = ££67,305 per 2 bed flat unit

Total commuted sum for 4 flats = £269,220

Commuted sum payable = £76,261 per 2 bed house

Total commuted sum for 20 dwellings = £1,525,220

Commuted sum payable = £89,362 per 3 bed 5-person house

Total commuted sum for 12 dwellings = £1,072,344

Total Commuted sum if averaged out across 40 rented and shared ownership dwellings =
£76,464.60 per dwelling but would require the correct calculated amount per property type.

This is a total of £3,058,584.

SCHEDULE 8

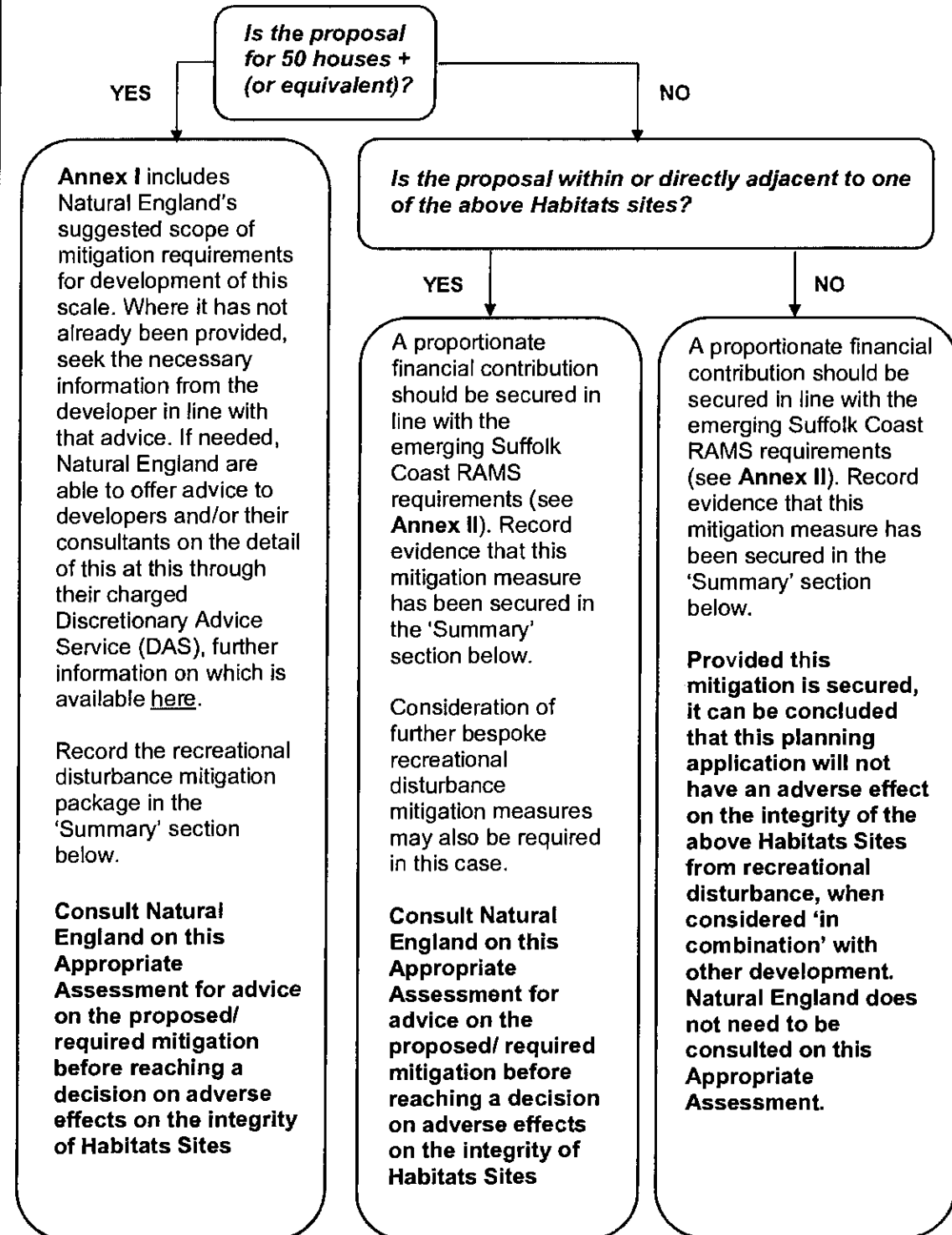
**MID SUFFOLK DISTRICT COUNCIL HABITATS REGULATION ASSESSMENT (HRA)
RECORD**

**Mid Suffolk District Council
Habitats Regulation Assessment (HRA) Record**

Application details	
Local Planning Authority:	Mid Suffolk District Council
Case officer	Jo Hobbs
Application reference:	DC/19/01401
Application description:	Outline Planning Application (some matters reserved)- Residential development of up to 115 dwellings and access, including open space and landscaping.
Application address:	Land To The South Of Fitzgerald Road Bramford Suffolk
Type of Application:	Outline Application
HRA Stage 1: screening assessment	
Test 1 – the significance test: Based on the development type and proximity to Habitats Sites (Natura 2000 sites), a judgement should be made as to whether the development constitutes a 'likely significant effect' (LSE) to a Habitats Site in terms of increased recreational disturbance	
<div style="border: 1px solid black; border-radius: 10px; padding: 10px; margin-bottom: 10px;"> <p style="text-align: center;"><i>Is the development within the 13km Zones of Influence (ZoI) for the emerging Suffolk Coast RAMS with respect to the below sites?</i></p> <ul style="list-style-type: none"> Deben Estuary SPA and Ramsar site Stour and Orwell Estuaries SPA and Ramsar site (Stour on the Suffolk side only) </div> <div style="display: flex; justify-content: space-around;"> <div style="width: 45%;"> <p style="text-align: center;">YES</p> <div style="border: 1px solid black; border-radius: 10px; padding: 10px; margin-bottom: 10px;"> <p style="text-align: center;"><i>Does the planning application fall within the following development types?</i></p> <ul style="list-style-type: none"> New dwellings of 1+ units (excludes replacement dwellings and extensions) Houses in Multiple Occupancy (HMOs) Student Accommodation Residential care homes and residential institutions (excludes nursing homes) Residential caravan sites (excludes holiday caravans and campsites) Gypsies, travellers and travelling show people plots </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p style="text-align: center;">YES</p> <div style="border: 1px solid black; border-radius: 10px; padding: 10px; margin-bottom: 10px;"> <p>Conclude LSE. This proposal is within scope of the emerging Suffolk Coast RAMS as it falls within the 'zone of influence' for likely impacts and is a relevant residential development type as listed above. It is anticipated that such development in this area is 'likely to have a significant effect' upon the interest features of the aforementioned designated site(s) through increased recreational pressure, when considered either alone or in combination. Therefore:</p> <ul style="list-style-type: none"> Proceed to HRA Stage 2: Appropriate Assessment to assess recreational disturbance impacts on the above designated sites! Check <u>IRZs</u> to see whether recreational disturbance is an issue for non-coastal Habitats Sites (N2k sites) or Sites of Special Scientific Interest (SSSIs). If so, this will also need assessing outside of this HRA form. </div> </div> <div style="width: 45%;"> <p style="text-align: center;">NO</p> <div style="border: 1px solid black; border-radius: 10px; padding: 10px; margin-bottom: 10px;"> <p>The proposal is outside the scope of the emerging Suffolk Coast RAMS. However, applications involving tourist accommodation (including holiday caravans and campsites), for example, could still potentially have recreational disturbance impacts (and other impacts) on designated sites, including those listed above. In cases such as these, consult Natural England for bespoke advice before concluding no LSE.</p> </div> </div> </div> </div> <div style="width: 45%;"> <p style="text-align: center;">NO</p> <div style="border: 1px solid black; border-radius: 10px; padding: 10px; margin-bottom: 10px;"> <p>Conclude no LSE to the above designated sites in terms of recreational disturbance:</p> <ul style="list-style-type: none"> An Appropriate Assessment (AA) is not required where recreational disturbance to these sites is the only issue or recreational disturbance to these sites can be scoped out of any HRA covering other issues. Check NE <u>IRZs</u> to see whether recreational disturbance is an issue for non-coastal Habitats Sites or Sites of Special Scientific Interest (SSSIs). If so, this will also need assessing outside of this HRA form. </div> </div> </div>	
<p><i>In line with the recent Court judgement (CJEU People Over Wind v Coillte Teoranta C-323/17), mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a development is likely to result in significant effects on a Natura 2000 site. Therefore, all proposals which are within the scope of the emerging Suffolk Coast RAMS must proceed to HRA Stage 2 (Appropriate Assessment).</i></p>	

HRA Stage 2: Appropriate Assessment

Test 2 – the integrity test: The applicant must provide sufficient evidence to allow the Appropriate Assessment to be made, which is the stage at which avoidance and/or mitigation measures can be considered



Summary of the Appropriate Assessment : To be carried out by the Competent Authority (the local planning authority) in liaison with Natural England (where necessary)

Brief description of the Habitats Sites within scope

Stour and Orwell Estuaries Special Protection Area

The Stour and Orwell Estuaries have been designated as an SPA under article 4.1 of the EU Birds Directive (79/409/EEC) as it is used regularly by 1% or more of bird species listed in Annex 1. In summer, the SPA supports important numbers of breeding avocet, *Recurvirostra avosetta*, whilst in winter they hold major concentrations of waterbirds, especially geese, ducks and waders. Additional Annex 1 species recorded include Hen Harrier *Circus cyaneus*. The site also qualifies under article 4.2 of the Directive as water assemblages of over 20,000 birds use it regularly in any season.

Stour and Orwell Estuaries Ramsar Site

The Stour and Orwell site is a wetland of international importance, comprising extensive mudflats, low cliffs, saltmarsh and small areas of vegetated shingle on the lower reaches. It provides wintering habitats for important assemblages of wetland birds and supports internationally and nationally important numbers of wintering wildfowl and waders, and holds several nationally scarce plants and British Red Data Book invertebrates.

Summary of recreational disturbance mitigation package

Test 1: Likely Significant Effect

The development is for up to 115 dwellings within the 13km Zone of Influence (Zoi) of the Stour and Orwell Estuaries SPA and Ramsar site and therefore mitigation, in line with the emerging Suffolk Coast RAMS, must be provided to minimise the impacts of increased recreational disturbance at the coastal European designated sites (Habitats sites). This is because it is considered likely that residents of new housing will regularly visit the relevant designated sites for recreation purposes.

It is considered by Mid Suffolk District Council to be "relevant development" in the context of the RAMS and so requires further consideration through the Appropriate Assessment stage to secure any mitigation measures necessary to avoid adverse effects on site integrity.

Test 2: the integrity test

Information to Support the Habitats Regulations Assessment has been provided by Southern Ecological Solutions Ltd (February 2019), which provided sufficient information to allow Mid Suffolk District Council to prepare the Appropriate Assessment. As a result, the following mitigation measures have been secured:

- Provision of SANGS and recreational opportunities for a 2.7km daily walking route for new residents (115 dwellings will generate 276 new residents (based on 2.4 people/dwelling) and 35 dogs (based on Kennel Club figures for 30% households owning a dog). These opportunities shall be promoted by way of leaflets and an interpretation board on site for the high quality greenspace to be provided as shown on the submitted and connections to the local public rights of way network. To secure the management and maintenance of these provisions, the developer will produce a long term management plan (as a condition of consent) and has committed to including signage within the open space to promote it for recreation and leaflets for new residents.

This mitigation aims to avoid impacts from the development alone.

- The proposal to erect 115 dwellings will trigger a proportionate financial contribution towards offsite visitor management measures for the Stour and Orwell Estuaries SPA and Ramsar site, in line with the Suffolk Coast RAMS Strategy (£121.89 per dwelling) for delivery prior to occupation.

This mitigation aims to avoid impacts from the development in combination with other plans and projects.

Local Planning Authority comments, signed and dated:

Mid Suffolk District Council have consulted Natural England on this HRA record and they are in agreement with our conclusions above.

Approving Ecologist: Hamish Jackson, Ecological Consultant

Approving Case Officer: Jo Hobbs, Acting Area Manager

Date: 03/01/2020

Annex I – Natural England’s recommendations for larger scale residential developments within the Suffolk Coast RAMS zone of influence (50 units +, or equivalent, as a guide)

Developments of this scale should include provision of well-designed open space/green infrastructure, proportionate to its scale. Such provisions can help minimise any predicted increase in recreational pressure to the Habitats Sites by containing the majority of recreation within and around the development site boundary away from European sites. We advise that the Suitable Accessible Natural Green Space (SANGS) guidance [here](#) can be helpful in designing this; it should be noted that this document is specific to the SANGS creation for the Thames Basin Heaths, although the broad principles are more widely applicable. As a minimum, we advise that such provisions should include:

- High-quality, informal, semi-natural areas
- Circular dog walking routes of 2.7 km¹ within the site and/or with links to surrounding public rights of way (PRoW)
- Dedicated ‘dogs-off-lead’ areas
- Signage/information leaflets to householders to promote these areas for recreation
- Dog waste bins
- A commitment to the long term maintenance and management of these provisions

Natural England would be happy to advise developers and/or their consultants on the detail of this at the pre-application stage through our charged Discretionary Advice Service (DAS), further information on which is available [here](#).

However, the unique draw of the above Habitats Sites means that, even when well-designed, ‘on-site’ provisions are unlikely to fully mitigate impacts when all residential development within reach of the coast is considered together ‘in combination’. We therefore advise that consideration of ‘off-site’ measures (i.e. in and around the relevant Habitats Sites) is also required as part of the mitigation package for predicted recreational disturbance impacts in these cases.

As such, in the interim period before the RAMS is adopted, a financial contribution should also be agreed with and collected from the developer, prior to commencement, on the basis that it can be used to fund strategic ‘off site’ measures (i.e. in and around the relevant Habitats Sites). These measures should be targeted towards increasing the relevant Habitats Sites resilience to recreational pressure and be in line with aspirations of the emerging RAMS. As an example in this interim period, this could include funding towards existing wardening schemes at the relevant Habitats Sites. A suitable delivery mechanism for the measures must be agreed to secure them and ensure they are implemented from the first occupation of dwellings.

Once the RAMS has been adopted, a financial contribution should be secured from these developments prior to commencement.

¹ Taken from *Jenkinson, S., (2013), Planning for dog ownership in new developments: reducing conflict – adding value. Access and greenspace design guidance for planners and developers*

Annex II – Natural England's recommendations for smaller scale residential developments within the Suffolk Coast RAMS zone of influence (0-49 units, or equivalent, as a guide) which are not within/directly adjacent to a European designated site

Whilst the provision of well-designed open space/green infrastructure on site or contributions towards strategic green infrastructure in your district is to be welcomed for developments of this scale, a proportionate financial contribution in line with/to the Suffolk Coast RAMS should be secured as a minimum to help fund strategic 'off site' measures.

As such, in the interim period before the RAMS is adopted, a financial contribution should be agreed with and collected from the developer, prior to commencement, on the basis that it can be used to fund strategic 'off site' measures (i.e. in and around the relevant Habitats Sites. These measures should be targeted towards increasing the relevant European site(s) resilience to recreational pressure and be in line with aspirations of the emerging Suffolk Coast RAMS. As an example in this interim period, this could include funding towards existing wardening schemes at the relevant Habitats Sites. A suitable delivery mechanism for the measures must be agreed to secure them and ensure they are implemented from the first occupation of dwellings.

Once the RAMS has been adopted, a financial contribution should be secured from these developments prior to commencement.