

DATE

29 May

2024

**Planning Obligation by Deed of Agreement under
Section 106 of the Town and Country Planning Act 1990**
relating to the development of Land to the rear of Willowmere,
Garden House Lane, Rickinghall, Suffolk IP22 1EA

SUFFOLK COUNTY COUNCIL

And

HELEN ARNOLD & COLIN JOHN ARNOLD

Dated:

29

day of

May

2024

PARTIES

- (1) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ("the County Council")
- (2) **HELEN ARNOLD** of Willowmere, Garden House Lane, Rickinghall, Suffolk IP22 1EA ("the First Owner") and **COLIN JOHN ARNOLD** of Willowmere, Garden House Lane, Rickinghall, Suffolk IP22 1EA ("the Second Owner")

WHEREAS

1. Mid Suffolk District Council ("The District Council") is a local planning authority for the purposes of the 1990 Act for the area in which the Land is situated.
2. The County Council is a local planning authority for the purposes of the Act and the Highway and Education Authority for the area in which the Land is situated and by whom the obligations in this Deed are enforceable.
3. The Ownership and other interests in the Land are as set out in the First Schedule.
4. The District Council have refused to grant planning permission for the Development pursuant to the Application and the Owners have appealed against that refusal to the Planning Inspectorate.
5. The Owners agree that in the event of planning permission being granted for the Development on appeal they will be bound to perform the obligations contained in this Deed.
6. The County Council and the Owners acknowledge that the Development should not take place until certain restrictions regulating the use of the Land 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.

7. The parties are satisfied that the planning obligation sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).

NOW THIS DEED WITNESSES AS FOLLOWS:

DEFINITIONS

- “Act”** the Town and Country Planning Act 1990 (as amended).
- “All-in Tender Price Index”** Means the All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or any subsequent indices of the same.
- “Appeal”** Means the appeal submitted on the 25th March 2024 by the Owners to the Secretary of State for Levelling Up, Housing and Communities following the refusal of the Application by the District Council and allocated reference number APP/W3520/W/24/3341361
- “Application”** The application made by the Owners and validated by the District Council and given its reference DC/22/04615.
- “Commencement of Development”** the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations:

- demolition works;
- site clearance;
- ground investigations;
- site survey works;
- temporary access construction works;
- archaeological investigation; and
- erection of any fences and hoardings around the Property.

and "Commence" and "Commenced" shall be construed accordingly.

"Completion of the Development"

the date that the last Dwelling is first Occupied.

"Development"

the erection of 10 dwellings (following demolition of existing garage and stores associated with builders yard) as set out in the Application.

"Dwelling"

a dwelling (including a house flat or bungalow or maisonette) to be constructed pursuant to the Planning Permission and "Dwelling" and "Dwellings" shall be construed accordingly.

"Index Linked"

the increase in any sum referred to in Schedule 3 by an amount equivalent to the increase in the All-in Tender Price Index or the RPI (as the context dictates) from the date hereof until the date on which such sum is payable to be calculated in accordance with Clause 9 of this Deed;

"Land"

the land as shown edged red on the Plan and as described in more detail in the First Schedule.

"Late Payment Interest"

interest at 4 per cent above the base lending rate of the Bank of England from time to time;

“Legal Charges”	the County Council’s reasonable and proper legal costs and disbursements in the preparation of this Deed
“Occupation”	occupation of any Dwelling on the Land for the purposes permitted by the Planning Permission and Occupation would be deemed to have taken place when the District Council have evidence of the Occupation of any Dwelling on the Land 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” and “Occupied shall be construed accordingly.
“Plan”	the plan attached to this Deed.
“Planning Permission”	full planning permission subject to conditions as may be granted on Appeal by the Planning Inspectorate.
“Practical Completion”	issue of a certificate of practical completion by the Owner’s architect or project manager or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect or project manager.
“RPI”	means the “All Items” figure of the Index of Retail prices published by the Office for National Statistics from time to time or any such alternative index or comparable measure of price inflation as the District Council reasonably requires.
“Secondary School Transport Contribution”	Means the sum of £14,050 (fourteen thousand and fifty pounds) index linked by RPI towards the provision of secondary school transportation.
“TCPA 1990”	Town and Country Planning Act 1990.
“VAT”	Value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.
“Working Days”	any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

1. Interpretation

- 1.1. Where in this Deed reference is made to any clause, sub clause, schedule, paragraph, sub paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause, sub clause, schedule, paragraph, sub paragraph or recital in this Deed.
- 1.2. Headings are for reference only and shall not affect the interpretation of this Deed.
- 1.3. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.4. Words of the masculine gender include the feminine and neuter genders.
- 1.5. Words denoting actual persons include companies, corporations and firms and all such words shall be constructed as interchangeable in that manner. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. References to any party to this Deed shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the District Council and the County Council the successors to their respective statutory functions.
- 1.7. A reference to "writing" or "written" excludes fax and email.
- 1.8. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.9. An obligation on a party not to do something includes an obligation not to allow that thing to be done by another person.
- 1.10. Any reference to an Act of Parliament or Statutory Instrument shall include any modification, extension or re-enactment of that Act or Instrument 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 Instrument or deriving validity from it.

- 1.11. References to a "Plan" or "Drawing" in this Deed shall be reference to the plans attached to this Deed bearing the relevant plan number of any amended plans as shall be agreed in writing between the Owners and the County Council.
- 1.12. Where this Deed requires a plan, scheme, strategy or other document to be submitted to the County Council for approval or agreement then upon written approval being given by the County Council (as appropriate) it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan, scheme, strategy or other document.
- 1.13. None of the covenants contained in this Deed on the part of the Owners (save those obligations restricting occupation of the Dwellings in the Second Schedule) shall be enforceable against:
- 1.13.1. Those persons who purchase (including purchasers by way of a long lease) any Dwelling for occupation by themselves or their tenants or members of their household; or
- 1.13.2. Any statutory undertaker who acquires any part of the Land or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.

2. Legal Basis

- 2.1 This agreement is a Deed and constitutes a planning obligation 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.
- 2.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the County Council (as appropriate) as local planning authorities against the Owners and the Owner's successors in title.

3. Consent(s) to Enter Deed

The Owners covenant and warrant to the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the

Land whose consent is necessary to make this Deed binding on the Land and all estates and interests therein.

4. Third Parties

No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 and any such rights that arise pursuant to the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

5. Conditionality

5.1 This Deed shall take effect on the date that it is completed but performance of the planning obligations contained in this Deed at Clause 6 (save for Clause 6.3 and 6.4) and the Second Schedule are conditional upon the grant of the Planning Permission and the Commencement of Development.

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

5.1.1.1. 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;

5.1.1.2. 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

5.1.1.3. 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.

5.3 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:

5.3.1 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.

5.3.2 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.

6 The Owner's Covenants

6.1 The Owner hereby covenants with the County Council as set out in the Second Schedule so as to bind the Land and each and every part thereof.

6.2 The Owner covenants to pay the County Council's monitoring fee of £476 for each separate trigger point in this Deed on or before the completion of this Deed.

6.3 The Owner covenants to pay the County Council's Legal Charges.

7 Local Land Charge

This Deed is a local land charge and upon completion shall be registered by the County Council as such.

8 Interest

If any payment due from the Owner under this Deed is paid late, Late Payment Interest will be payable from the date payment is due to the date of payment.

9 Indexation

9.1 Any sum referred to in Schedule 3 (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the All-in Tender Price Index or RPI (as the context dictates and unless the context reads otherwise) 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:

9.1.1 A is the sum payable under this Deed;

9.1.2 B is the original sum calculated as the sum payable;

9.1.3 C is the All-in Tender Price Index or RPI for the month 2 months before the date on which the sum is payable;

9.1.4 D is the All-in Tender Price Index or RPI for the month 2 months before the date of this Deed; and

9.1.5 C/D is greater than 1

10 VAT

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

11 Changes of Ownership

The Owners agree with the County Council to give them independently written notice of any transfer in ownership of its freehold interest in the Land (save for disposals of individual Dwellings or to any statutory undertaker) occurring before all the obligations under this Deed have been discharged such notice to be served within twenty (20) Working Days' of such transfer quoting the reference given to the Application by the District Council to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land purchased by reference to a plan and a copy of the registered title and plan thereto.

12 Approvals

Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the County Council (as appropriate) 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 County Council (as appropriate) by the Professional Lead 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.

13 Right of Entry

13.1 At all times on not less than twenty four (24) hours' written notice (except in case of emergency) the Owners and Developer shall allow any employee or agent of the County Council entry to the Land for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT:

13.1.1 such employee or agent on arrival at the Land shall if requested by any person present who appears to be the Owners or 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 Land);

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

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

13.1.4 such employee or agent may take photographs, measurements and levels;

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

13.1.6 such employee or agent and any accompanying persons shall comply with the Owner's or the Owner's representative's reasonable directions and precautions in the interests of health and safety;

13.2 For the avoidance of doubt the provisions of this Clause 13 shall be in addition to and does not prejudice the powers conferred on the County Council by Sections 196A, 196B and 196C of the Act.

14 No Waiver

No waiver (whether expressed or implied) by the County Council or the Owners 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 County Council or

the Owners from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

15 Indemnity

The Owners hereby indemnifies the County Council for any expenses or liability arising to the County Council for any breach by the Owners of any obligation contained herein save the extent that any act or omission of the County Council their respective employees or agents has caused or contributed to such expenses or liability.

16 Confirmation of Discharge

On the written request of the Owners at any time after all of the obligations have been performed or otherwise discharged (and subject to the payment of the County Council's reasonable costs or charges) the County Council are satisfied that the relevant agreement obligation and covenant have been met and will then issue a written confirmation of such discharge and performance.

17 Release

No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed occurring after it has parted with its entire interest in the Land or part of the Land to which the breach relates save for an interest arising only from the grant or reservation of an easement or similar right or the benefit of any restrictive covenant in the Land notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it PROVIDED that the disposal shall not itself be contrary to the provisions of this Deed.

18 Determination

The obligations in this Deed shall cease to have effect insofar as they have not already been complied with if the Planning Permission:

- (a) expires;
- (b) is modified or revoked otherwise than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

19 Severance

Insofar as any clause or other provision of this Deed is 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.

20 Future Permissions

20.1 Subject to the remainder of this Clause 20 nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

20.2 In the event that any new planning applications are made in respect of the Development pursuant to Section 73 of the Act then with effect from the date that the new planning permission is granted pursuant to Section 73 of the Act:

20.2.1 the planning obligations in this Deed shall in addition to binding the Land in respect of the Planning Permission shall also bind the Land in respect of any planning permission granted pursuant to Section 73 of the Act; and

20.2.2 the definitions of "Application", "Development" and "Planning Permission" shall be assumed to include references to any applications under Section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this Clause 19 shall fetter the discretion of the District Council or the County Council (as appropriate) in determining any applications under Section 73 of the Act and the appropriate nature and/or quantum of planning obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the Act (whether by way of a new Deed or supplemental Deed pursuant to Section 106 of the Act or a modification pursuant to Section 106A of the Act).

21 No Fetter of Discretion

21.1 Nothing (contained or implied) in this deed shall fetter or restrict the County Council's statutory rights, powers, discretions and responsibilities in the exercise of their function as local authorities.

21.2 Nothing in this Deed constitutes a planning permission or any other approval, consent or permission required from the County Council in the exercise of any other statutory function or an obligation to grant the same.

22 DISPUTE RESOLUTION PROVISIONS

22.1 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")

22.2 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 21.1.

22.3 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.

22.4 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:

22.4.1 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

22.4.2 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

22.4.3 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

22.4.4 if such difference or 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.

22.5 In the event of a reference to an Expert the parties to the dispute agree to:

22.5.1 prosecute any such reference expeditiously; and

22.5.2 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, The Royal Institution 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.

22.6 The Expert shall invite written representations from each of the parties.

22.7 The Expert will have the power to consolidate proceedings or hold concurrent proceedings.

22.8 The findings of the Expert shall be in writing signed by the Expert.

22.9 The findings of the Expert shall be final and binding on each of the parties to the dispute except in the case of manifest, material error.

22.10 The Expert shall act as an expert and not as an arbitrator.

22.11 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.

22.12 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 21 but without prejudice to the rights and obligations of the Parties to the dispute in relation to the termination of the Deed.

22.13 Nothing in the provisions of this clause 21 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Deed.

23 Notices

23.1 Any notices or other written communication in connection with 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 shown at the beginning of this Deed.

23.2 Any notice sent to the County Council needs to be addressed to the Executive Director for Growth Highways and Infrastructure.

24 Governing Law

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

IN WITNESS WHEREOF THE OWNER HERETO HAS EXECUTED THIS INSTRUMENT AS A DEED ON THE DAY AND YEAR FIRST BEFORE WRITTEN

SIGNED as a Deed by

HELEN ARNOLD

In the presence of:

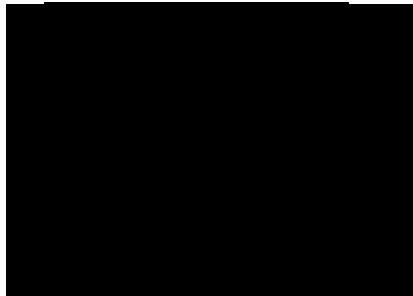
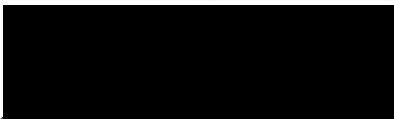
John Stephen Moore

Full name of witness:

Witness Signature:

Occupation:

Address:



Bricklayer

SIGNED as a Deed by

COLIN JOHN ARNOLD

In the presence of:

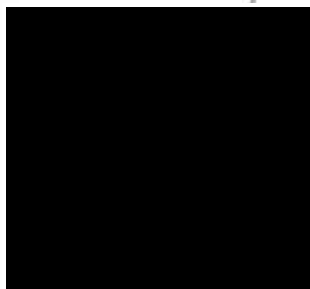
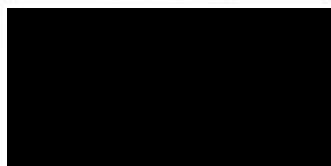
John Stephen Moore

Full name of witness:

Witness Signature:

Occupation:

Address:



Bricklayer

**THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL**

Was affixed in the presence of:

.....
Authorised Officer

**FIRST SCHEDULE
OWNERSHIP DETAILS**

FREEHOLD INTERESTS

The Second Owner is the registered proprietor with absolute title of part of the Land shown edged red for identification purposes only on the Plan and which is registered at Land Registry under title number SK41894.

The First Owner is an occupier of part of the Land shown edged red for identification purposes only on the Plan and has a beneficial interest in this part of the Land and which is registered at Land Registry under title number SK41894.

The Owners are the registered proprietor with absolute title of part of the Land shown edged blue for identification purposes only on the Plan and which is registered at Land Registry under title number SK50957.

SECOND SCHEDULE

THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL

PART1

NOTICES

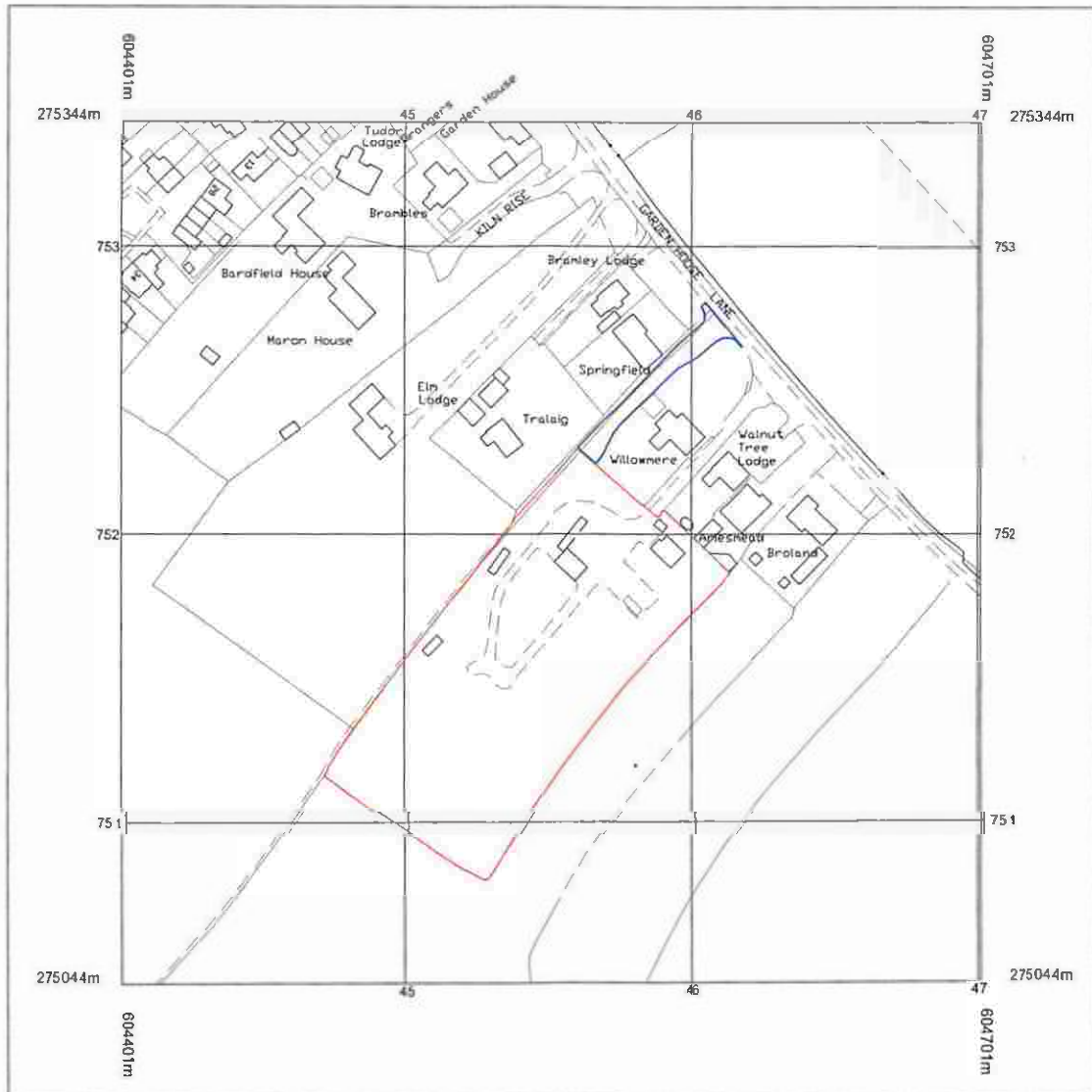
1. The Owner covenants to inform the County Council by way of written notice within seven (7) days the following:
 - a. Commencement of Development
 - b. First Occupation of the first (1st) Dwelling
 - c. Completion of the Development

PART2

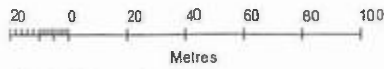
SECONDARY SCHOOL TRANSPORT CONTRIBUTION

1. The Owner covenants with the County Council as follows:
 - a. To pay the Secondary School Transport Contribution to the County Council prior to Occupation of the first (1st) Dwelling; and
 - b. Not to Occupy or permit Occupation of the first Dwelling unless and until the Secondary School Transport Contribution has been paid in full to the County Council.

Stanfords VectorMap



— SK41884
— SK50957



1:2500 @A4



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ISSUE REGISTER		
DATE	ISSUE	DESCRIPTION
19.08.2022	-	PLANNING

P303_LP_0.01
 LAND TO THE REAR OF WILLOWMERE, IP22 1EA
 1:2500@A4