

BABERGH DISTRICT COUNCIL	(1)
SUFFOLK COUNTY COUNCIL	(2)
NEVILLE CHARLES COBBOLD	(3)
DENBURY HOMES LIMITED	(4)
HSBC UK BANK PLC	(5)

SECTION 106 AGREEMENT

Relating to the development of land to the East of Hadleigh Road,
Elmsett, Suffolk
(Full Planning Application Reference DC/22/01754)
Council Reference BM31.649



Providence House
141-145 Princes Street
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THIS DEED is made the 28th day of October

2022

BETWEEN

- (1) **BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the District Council") and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the County Council") and
- (3) **NEVILLE CHARLES COBBOLD** of Yew Tree Farm, The Street, Aldham, Ipswich, Suffolk IP7 6NH ("the Skylark Land Owner") and
- (4) **DENBURY HOMES LIMITED** (Company Registration Number 02162164) whose registered office is Westley Bottom, Westley, Bury St Edmunds, Suffolk IP33 3WD ("the Owner") and
- (5) **HSBC UK BANK PLC** (Company Registration Number 09928412) of Securities Processing Centre PO Box 6304, Coventry CV3 9JY ("the Mortgagee")

Together "the Parties"

INTRODUCTION

1. 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.
2. The County Council is the local highway authority (except for trunk roads) the local education authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations in this Deed are enforceable.
3. The Owner is the freehold owner of the Site as detailed in the First Schedule.
4. The Skylark Land Owner is the freehold owner of the Skylark Mitigation Land which is detailed in the First Schedule.
5. The Owner submitted the Application to the District Council for the Development and the District Council has resolved to grant the Planning Permission for the Development pursuant to the Application subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed.
6. The District Council enters into this Deed to the intent 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.

7. The District Council and the County Council consider and the Owner and Skylark Land Owner acknowledge that the Development should not proceed unless certain restrictions regulating the use of the Site are imposed in the manner hereinafter 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.
8. 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:

2. 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 rent or buy housing generally available on the open market in accordance with Annexe 2 of the National Planning Policy Framework 2021
“Affordable Housing Contribution”	the sum properly calculated in accordance with the District Council's Affordable Housing policies in place at the time 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 the Third Schedule
“Affordable Housing Mix”	shall comprise of fifteen (15) Affordable Housing Units to be made available in the following mix (type and size): Affordable Rent 1 x 2 bed 4 person bungalow (70.5 sqm) 6 x 2 bed 4 person house (79.8 sqm) 3 x 3 bed 5 person house (93.7 sqm)

1 x 3 bed 5 person house (95.6 sqm)

Shared Ownership

2 x 2 bed 4 person house (79.8 sqm)

1 x 3 bed 5 person house (93.7 sqm)

1 x 3 bed 5 person house (95.6 sqm)

As set out on the Affordable Housing Plan unless otherwise approved in writing by the District Council.

“Affordable Housing Nomination Agreement” an agreement substantially in the form set out in the Eighth Schedule (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

“Affordable Housing Plan” shall mean the Layout Plan (reference ELM1-002-B) annexed to this Deed

“Affordable Housing Scheme” a written scheme approved by the District Council as part of the Application for the written approval of the District Council identifying the location number of bedrooms, mix and tenure of each Affordable Housing Unit (unless otherwise agreed in writing with the District Council)

“Affordable Housing Units” Fifteen (15) of the Dwellings to be provided on the Site pursuant to the Planning Permission to be Occupied as Affordable Housing in accordance with the Affordable Housing Scheme and for the avoidance of doubt and unless otherwise agreed in writing with the District Council will have a split of eleven (11) Affordable Rent and shall be Occupied by persons allocated in accordance with a Choice Based Letting Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to the deed of

	nomination rights as varied from time to time and four (4) Shared Ownership and shall be Occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and "Affordable Housing Unit" shall be construed accordingly
"Affordable Rented Housing Unit"	housing made available by a Registered Provider as low-cost rental accommodation (as defined by section 69 of the Housing and Regeneration Act 2008) with a rent charged at a level up to eighty per cent (80%) of the equivalent Market Rent including any service charges applicable
"Application"	the full planning application for Planning Permission to develop the Site in accordance with the application plans and other materials deposited with the District Council and validated on 2 April 2022 and given the District Council's reference number DC/22/01754
"BCIS Index"	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 (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 Owner and the Developer
"BCIS Indexed"	the increase in any sum referred to in the Third and Fifth Schedule by an amount equivalent to the increase in the BCIS Index (save where described as RPI Indexed) from the date hereof until the date on which such sum is payable to be calculated in accordance with Clause 13 of this Deed
"Bus Stop Contribution"	means the sum of £6000 (Six Thousand Pounds) (BCIS Indexed) towards the installation of kerbs to improve access to bus stops near to the Development for those with limited mobility together with other associated improvements to such bus stops

"Chargee"	any mortgagee or chargee of the Registered Provider or any receiver or manager (including an administrative receiver) appointed by the mortgagee or chargee or any other person appointed by such mortgagee or chargee under its security documentation to enable such mortgagee or chargee to realise its security or any administrator (however appointed) including a housing administrator
"Chargee's Duty"	the tasks and duties set out in paragraph 2.8 of the Third Schedule
"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 or 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 District Council is a party
"Commencement of Development"	<p>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 by or on behalf of the Owner on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of:</p> <ul style="list-style-type: none"> • 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 enclosures

	<ul style="list-style-type: none"> • Temporary display of site notices and advertisements
	and “Commence” “Commencement” and “Commence Development” shall be construed accordingly
“Completion of Development”	the date the last Dwelling is first Occupied
“Development”	residential development of 44 new Dwellings to (including 35% affordable housing and bungalows) landscaping and public open space on the Site as set out in the Application
“Dwelling”	a dwelling (including a house flat or bungalow and including both Market Housing Units and Affordable Housing units) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly
“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
“Habitats Sites Mitigation Contribution”	means the sum of Five Thousand Three Hundred and Sixty Three Pounds and Sixteen Pence (£5363.16) to be calculated using the Habitats Sites Mitigation Contribution Calculation to be paid by the Owner 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 One Hundred and Twenty One Pounds and Eighty Nine Pence (£121.89) per Dwelling to calculate the Habitats Sites Mitigation Contribution
“Homes England”	means Homes England or such other organisation as may from time to time be the Regulator of Social Housing within the meaning of Section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force

charged with regulating Registered Providers

“Late Payment Interest” interest at four (4) per cent above the base lending rate of the Bank of England

“LEAP” means the area shown delineated by a dotted line on the Layout Plan ELM1-002-B annexed to this Deed to be provided as a locally equipped area of play in accordance with the LEAP Scheme

“LEAP Scheme” means an approved scheme showing the layout and design of the LEAP

“LEAP Transfer” a transfer of the LEAP to be approved in writing by the District Council and which inter alia shall contain the following provisions:

- The Owner shall transfer the fee simple estate free from encumbrances that would interfere or impact on the use of the Public Open Space by the public save for those set out in the title
- All easements and rights necessary in relation to access for the benefit of the LEAP
- Any exceptions and reservations in relation to the drainage and services support and access of light and air for the benefit of the Development
- Restrictive covenants by the Management Company not to:
 - (i) Use or permit the LEAP to be used for any purpose other than for a locally equipped area of play for use by the public in accordance with the LEAP Scheme
 - (ii) Not to use or permit the LEAP 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

"Management Company"	a company set up for the purposes of managing and maintaining the Public Open Space in perpetuity (as agreed in writing by the District Council) in accordance with the Public Open Space Specification and Public Open Space Plan and which definition may include a resident's association established for this purpose or a private limited company
"Market Housing Units"	those Dwellings which are general market housing for sale or rent on the open market which are not Affordable Housing Units
"Market Rent"	means market rent as defined in the latest edition of the Red Book and certified by a member of the Royal Institution of Chartered Surveyors
"Market Value"	means the market value as defined by the Red Book or any replacement volume
"Nominated Body"	<p>means one of the following:</p> <ul style="list-style-type: none">(i) the Parish Council(ii) the Management Company(iii) the Owner(iv) such other body as the District Council may agree <p>and can be more than one Nominated Body if the Parties agree and "Nominated Bodies" shall be construed accordingly</p>
"Notice of Actual Commencement"	notice given in writing of the actual commencement date of the Development
"Notice of Expected Commencement"	notice given in writing of the expected date of Commencement
"Occupation"	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 "Occupied and "Occupy" shall be construed accordingly

"Open Market Value"	means the Market Value of the Affordable Housing Units but on the assumption that the Affordable Housing Units can be sold on the open market without restriction on price, tenure, ownership or occupation free from the implications contained in this Deed and assuming that the Affordable Housing Unit is newly completed decorated and equipped and ready in all respects for first residential occupation and which shall be evidenced by the provision of valuations from three suitably qualified valuers who are independent and not employed by the Owner
"Parish Council"	means Elmsett Parish Council
"Planning Permission"	the permission subject to conditions as may be granted by the District Council pursuant to the Application and such planning permission to be substantially in the form of the draft as set out in the Second Schedule
"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
"Protected Tenant"	any tenant who has: <ul style="list-style-type: none">(i) exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or(ii) exercised the right to acquire pursuant to any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit or

- (iii) any person who has staircased the equity in their Shared Ownership Dwelling to 100% and

any successor in title to (i) to (iii) above

"Public Open Space" means an area of informal public open space to be provided within the Site in accordance with the Public Open Space Plan and Public Open Space Specification as agreed with the District Council

"Public Open Space Maintenance Contribution" means a sum to be calculated by the District Council and agreed by the Owner once Public Open Space Specification and Public Open Space Scheme have been agreed by the District Council and to be paid to the District Council in the event the Parish Council is the Nominated Body for the ongoing maintenance and management of the Public Open Space

"Public Open Space Plan" means the plan attached to this Deed and marked Layout Plan reference ELM1-002-B

"Public Open Space Scheme" a scheme for the provision of on-site Public Open Space for use by members of the public comprising details of the layout location and design of the Public Open Space including details of any proposed equipment landscaping drainage features access arrangements fencing and its on-going maintenance

"Public Open Space Specification" means a specification detailing final design and layout method of construction and materials and equipment to be installed timetable for any works and comprehensive maintenance regime as approved in writing by the District Council

"Public Open Space Transfer" a transfer of the Public Open Space to be approved in writing by the District Council and which inter alia shall contain the following provisions:

- The Owner shall transfer the fee simple estate free from encumbrances that would interfere or impact on the use of



Street Scene A4 (N.T.S.)

Open Market

House type	Description	Sq Ft	No
705	1 bed bungalow (1 storey)	1005	2
754	2 bed house (2 storey)	754	1
862	2 bed house (2 storey)	862	1
1032	2 bed house (2 storey)	1032	2
1208	2 bed bungalow (1 storey)	1208	1
1317	2 bed house (2 storey)	1317	1
1250	2 bed house (2 storey)	1250	1
1764	3 bed house (2 storey)	1764	1
2048	3 bed house (2 storey)	2048	1
2159	3 bed house (2 storey)	2159	1
2774	5 bed house (2 storey)	2774	1

TOTAL 26 PLOTS

Affordable Rent

House type	Description	Sq Ft	No
759	2 bed house low (1 storey)	759	1
859	2 bed house (2 storey)	859	3
1009	3 bed house (2 storey)	1009	1
1029	3 bed house (2 storey)	1029	1

TOTAL 6 PLOTS

Shared Ownership

House type	Description	Sq Ft	No
859	2 bed house (2 storey)	859	1
1009	3 bed house (2 storey)	1009	1
1029	3 bed house (2 storey)	1029	1

TOTAL 4 PLOTS

KEY (storey heights)



Planning Layout
Scale 1:500



Notes:
Do not scale from this drawing to avoid distortion.
Copyright for all designs and drawings shall remain with Denbury Homes Ltd. in accordance with the Copyright Act.
Rev. Date. Description
1. 05/05/22 Location of L2491 road
2. 05/05/22 Added house 1009 to the Approved party layout plan to match site
3. 05/05/22 Road widened plan to match 1:1 scale to be submitted



DENBURY
HOMES

PLANNING

Project:
Heddergh Road
Elmsall

Drawing:
Planning Layout

Sheet Numbers:
44

Project no:
ELM
Dwg no:
00

Scale:
1:500
Rev:
B

Drawn by:
LS
Project no:
08-22

the Public Open Space by the public save for those set out in the title;

- All easements and rights necessary in relation to access for the benefit of the Public Open Space;
- Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development

- Restrictive covenants by the Nominated Body not to:

(i) Use or permit the Public 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 Public Open Space

(ii) Not to use or permit the Public 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

- Payment of the Public Open Space Commuted Sum in the event the Nominated Body is the Parish Council and the Public Open Space is transferred to the Parish Council

“Red Book“

means the RICS Valuation – Global Standards 2017 (The Red Book) or such other document amending consolidating or replacing it

“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 registers kept by Homes England under

Chapter 3 of that Act

"RPI Index"	the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Parties
"RPI Indexed"	the increase in any sum referred to in the Third and Fifth Schedule as RPI Indexed by an amount equivalent to the increase in the RPI Index from the date hereof until the date on which such sum is payable to be calculated in accordance with Clause 13 of this Deed
"RTA Purchaser"	means a former tenant of an Affordable Housing Unit who purchases the Affordable Housing Unit under the right to buy under Part V of the Housing Act 1985 or pursuant to the right to acquire under the Housing and Regeneration Act 2008 or any similar or substitute statutory rights in force from time to time
"Secondary School Transport Contribution"	means the sum of Forty Eight Thousand and Two Hundred Pounds (£48,200) (RPI Indexed) for the purposes of funding school transport provision for a minimum of ten years for secondary age pupils residing on the Development
"Shared Ownership Dwelling"	dwelling 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 Homes England's capital funding guide and "Shared Ownership Dwellings" to be construed accordingly
"Shared Ownership Lease"	a lease or sub-lease of Shared Ownership Dwellings granted at a premium whereby not less than ten percent (10%) and not more than up to seventy five percent (75%) on first

purchase of the equitable interest 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 one hundred per cent (100%) of the legal and equitable interest in the Shared Ownership 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

“Site“ the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Site Location Plan

“Site Location Plan“ the plan marked “Site Location Plan“ attached to this Deed

“Skylark“ is a UK Priority Species pursuant to Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 in addition to being a red listed species of conservation concern

“Skylarks Mitigation Land“ the area of land shown edged red on the Skylark Plots Location Plan attached to this Deed

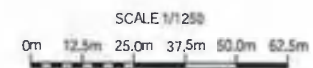
“Skylarks Mitigation Scheme“ means a scheme to be submitted and approved by the District Council for the delivery of mitigation for the potential impact of the Development upon local Skylark breeding territories to include (unless otherwise agreed in writing with the District Council):

- (i) 2 (two) Skylark plots to be provided as areas of undrilled



Site Location Plan

Scale 1:1250



Notes:
The site is shown in green to show its location.
The site is shown in green to show its location.
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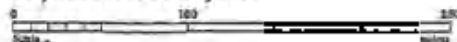


PLANNING

Project: Hadleigh Rise Elmwood	Project no: SLM1 Drawn by: J.S.
Drawing: Site Location Plan	Scale: 1:1250 @ A3 Rev: 1
Plot Number: 1	Drawn by: J.S. Date: 18/05/22



Skylark Plots Layout Plan 1:2500



Skylark Plots Location Plan 1:15000

Skylark Plot Specification:

In accordance with SP8, EPR (DEIRA 2005) & specialist consultation with Suffolk County Council Senior Ecologist Zna, Skylark plots will be created to the following specification:

1. 20 plots will be located within a 10ha arable field, in uncropped areas used for cereal crops for at least 10 years.
2. The field will be sown on a rotational basis with winter wheat, winter oats, spring barley & spring beans.
3. A minimum 50m buffer between the skylark plots & the edge of the field will be maintained, including a 5m buffer from any tree, ditch or other feature that may be on the land. This 50m buffer zone must be maintained with the sowing of any linear features such as headlands or windbreaks, which may afford cover or shelter for predators.
4. Plots will be located midway between farm lines.
5. Plots will measure no less than 3m x 3m (9m2) & no more than 12m in length & width (144m2) for each plot to be 3m x 3m. This will be achieved during crop sowing by temporarily turning off the seed drill as currently practiced with the existing skylark plots.
6. Plots will be provided in annual rotation to prevent succession & thereby maintain their importance as a foraging resource for foraging skylarks.
7. Plots will be created at a density of 2-6 per hectare.
8. Once created, plots will not be mechanically weeded between April & harvest.

Project: Proposed Residential Development, Land to the south of Gerrards Road, Wadleigh Road, Great, Suffolk	Project No: 1712
For: Preparation L10	Version: 2.1
Project: Skylark Plot Location Plan 2 Specification	Date: 10/08/2015
embrace SPECIALIST	Date: February 2015
Author: A. H. H. H. H.	Check: A. H. H. H. H.

arable farmland within the areas shown coloured green for identification purposes only on the Skylark Plots Location Plan appended hereto unless it is subsequently agreed with the District Council (acting reasonably) that the Skylarks plots may be provided elsewhere

- (ii) each Skylark plot shall be at least three (3) metres wide and have an area of between sixteen (16) and twenty-four (24) metres squared and to be provided in accordance with the RSPB Guidance Leaflet "Farming for Wildlife Skylark Plots"
- (iii) the purpose and conservation objectives of the proposed measures
- (iv) the methodology for measures to be delivered
- (v) the timetable of when the mitigation works will be carried out and maintained
- (vi) 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

"Skylark Plots Location Plan" the plan attached to this Deed showing the Skylarks Mitigation Land

"Working Days" Monday to Friday (inclusive) except Good Friday Christmas Day and public or bank holidays from time to time in England

3. CONSTRUCTION OF THIS DEED

- 3.1 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
- 3.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 3.3 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 as interchangeable in that manner
- 3.4 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 against each individually insofar as such obligation relates to land within such party's ownership unless there is an express provision otherwise
- 3.5 Any reference to an act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it
- 3.6 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
- 3.7 Where this Deed requires a plan or strategy or other document to be submitted to the District Council or County Council for approval or agreement then upon approval of the same 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 or strategy or other document
- 3.8 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 between the Owner, the Developer, the District Council and the County Council
- 3.9 None of the covenants contained in this Deed on the part of the Owner and/or the Skylark Land Owner (as the context dictates) shall be enforceable against:

- 3.9.1 those persons who purchase (including purchasers by way of long lease) any Dwelling for occupation by themselves or their lessees tenants or individuals of the Dwellings (save that the restrictions relating to Occupation set out herein in respect of the Affordable Housing Units set out in paragraphs 2.5 of the Third Schedule shall be enforceable against the owners and occupiers of such units); or
- 3.9.2 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.
- 3.10 The headings are for reference only and shall not affect construction
- 3.11 Any covenant by the Owner and/or the Skylark Land Owner (as the context dictates) 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.

4. LEGAL BASIS

- 4.1 This Deed is 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
- 4.2 The covenants restrictions and requirements imposed upon the Owner and Skylark Land Owner (as the context dictates) under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council and the County Council as appropriate as local planning authorities against the Owner and Skylark Land Owner (as the context dictates) or their successors in title
- 4.3 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
- 4.4 This Deed is a local land charge and upon completion shall be registered by the District Council as such

5. CONDITIONALITY

- 5.1 This Deed is conditional upon:
 - 5.1.1 the grant of the Planning Permission; and
 - 5.1.2 the Commencement of Development

- 5.2 Save for the provisions of Clauses 4, 10.3, 10.4, 10.5, 10.6, 10.7, 10.9, 10.11, 10.15, 12, 16, 17, 18, 20, 21 and 22 and any other relevant provisions which shall come into effect immediately upon completion of this Deed
- 5.3 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:
- 5.3.1 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 and/ or Developer shall not undertake any further works to implement the Planning Permission following the issue of such proceedings;
- 5.3.2 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 and/or Developer this Deed will cease to have any further effect; and
- 5.3.3 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
- 5.4 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:
- 5.4.1 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 judgement 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 appeals) is or are finally determined.
- 5.4.2 proceedings under Section 288 of the 1990 Act are concluded:
- (a) when the court has given judgement 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. **OWNER'S COVENANTS**

- 6.1 The Owner and covenants with the District Council as set out in the Third Schedule and with the County Council as set out in the Fifth Schedule

7. **SKYLARK LAND OWNER'S COVENANTS**

- 7.1 The Skylark Land Owner covenants with the District Council as set out in the Fourth Schedule

8. **DISTRICT COUNCIL'S COVENANTS**

- 8.1 The District Council covenants with the Owner as set out in the Sixth Schedule

9. **COUNTY COUNCIL'S COVENANTS**

- 9.1 The County Council covenants with the Owner as set out in the Seventh Schedule

10. **MISCELLANEOUS**

- 10.1 The Owner and the Skylark Land Owner (as the context dictates) shall act in good faith and shall co-operate with the District Council and County Council to facilitate the discharge and performance of all obligations contained herein and the Owner and the Skylark Land Owner (as the context dictates) shall comply with any reasonable requests either of the District Council and/or County Council and their duly authorised officers or agents to have access to any part or all of the Site or Skylark Mitigation Land (as the case may be) or any requests to provide documentation within the Owner's and Skylark Land Owner's (as the context dictates) possession (at the Owner's and Skylark Land Owner's (as the context dictates) expense) for the purposes of monitoring compliance with the obligations contained herein
- 10.2 The Owner and the Skylark Land Owner agree declare and covenant with the District Council that they shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this agreement and further shall indemnify the District Council for any expenses or liability arising to the District Council in respect of breach by the Owner or the Skylark Land Owner (as the context dictates) or any obligation contained herein save to the extent that any act or omission of the District Council its employees or agents has caused or contributed to such expenses or liability
- 10.3 The Owner covenants to pay to the District Council on completion of this Deed the proper and reasonable legal costs of the District Council incurred in the negotiation preparation and execution and completion of this Deed
- 10.4 The Owner covenants to pay to the County Council on completion of this Deed the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed

- 10.5 The Owner covenants to pay the County Council on completion of this Deed its monitoring fee to the value of £824 (Eight hundred and twenty-four pounds)
- 10.6 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 10.7 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owner and/or Skylark Land Owner (as the context dictates) from the District Council or County Council under the terms of this Deed such approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed
- 10.8 Following the performance and satisfaction of all the obligations contained in this Deed the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 10.9 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
- 10.10 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 expires by effluxion of time for the Commencement of the Development or is modified (without the consent of the Owner) and the District Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed PROVIDED THAT if the District Council agrees following an application under section 73 of the Act to vary or to be released from any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless the District Council in determining the application for the new planning permission indicate that consequential amendments are required to this Agreement to reflect the impact 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
- 10.11 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 Skylarks Mitigation Land (as the case may be)(or part where such breach occurs) 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 Site or Skylarks Mitigation Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 10.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed

- 10.13 The Owner and Skylark Land Owner agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived
- 10.14 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 or Skylark Land Owner (as the case may be) and at no cost to the District Council or the County Council
- 10.15 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 local authorities
- 10.16 The Owner covenants and warrants to the District Council and the County Council that they have full power to enter into this Deed and save for the Mortgagee there is no other person having a charge over or any other interest over that part of the Site registered with the Land Registry under title number SK327821

11. WAIVER

- 11.1 No waiver (whether expressed or implied) by the District Council, the County Council the Owner or the Skylark Land Owner (as the case may be) 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, County Council the Owner or the Skylark Land Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

12. CHANGE IN OWNERSHIP

- 12.1 The Owner and/or the Skylark Land Owner agree with the District Council and the County Council to give each of them independently written notice of any transfer in ownership of its freehold interest in the Site or the Skylarks Mitigation Land (as the case may be) occurring before all the positive obligations under this Deed have been discharged such notice to be served within twenty (20) Working Days of such transfer and 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 Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to transfers of individual Dwellings within the Development or the transfer or grant of leases of electricity sub-stations or gas governors or the like

13. RIGHT OF ENTRY

- 13.1 At all times on not less than twenty-four (24) hours written notice except in case of emergency with or without notice the Owner and/or the Skylark Land Owner (as the context dictates) shall allow any employee or agent of the District Council or the

County Council entry to the Site and/or Skylarks Mitigation 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 Site shall if requested by any person present who appears to be the Owner or the Skylarks Land Owner or 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)
- 13.1.2 such entry shall be effected between 08.00 and 17.00 on any 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 Site for longer than is reasonably necessary for carrying out a proper inspection
- 13.1.6 such employee or agent and any other accompanying persons shall comply with the Owner's or the Skylark Land Owner's or the Owner's or Skylark Land Owner's representative's reasonable directions and precautions in the interests of safety

14. **INDEXATION**

- 14.1 Any sum referred to in the Third Schedule and the Fifth Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS Index or RPI Index (as the context dictates) 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:
 - 14.2 A is the sum payable under this Deed;
 - 14.3 B is the original sum calculated as the sum payable;
 - 14.4 C is the BCIS Index or RPI Index (as the context dictates) for the month two (2) months before the date on which the sum is payable;
 - 14.5 D is the BCIS Index or RPI Index (as the context dictates) for the month two (2) months before the date of this Deed; and
 - 14.6 C/D is greater than 1

15. **VAT**

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

16. **INTEREST**

- 16.1 If any payment due under this Deed is paid late Late Payment Interest will be payable from the date payment is due to the date of actual payment

17. **NOTICES**

- 17.1 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 17.2
- 17.2 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 Babergh District Council, Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX
The County Council	The Executive Director of Growth, Highways and Infrastructure Endeavour House 5, 8 Russell Road, Ipswich Suffolk IP1 2BX
The Skylarks Land Owner	Yew Tree Farm The Street Aldham Ipswich Suffolk IP7 6NH
The Owner	Westley Bottom Westley Bury St Edmunds Suffolk IP33 3WD
The Mortgagee	HSBC UK Bank PLC Securities Processing Centre PO Box 6304 Coventry CV3 9JY

18. **DISPUTE RESOLUTION**

- 18.1 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 arbitration before a single Expert ("the Expert")

- 18.2 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
- 18.3 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:
- 18.3.1 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
- 18.3.2 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
- 18.3.3 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
- 18.3.4 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.
- 18.4 In the event of a reference to arbitration the Parties to the dispute agree to:
- 18.4.1 prosecute any such reference expeditiously; and
- 18.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable
- 18.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award
- 18.6 The award shall be in writing signed by the Expert and shall be finalised within ten (10) Working Days' of the hearing
- 18.7 The award shall be final and binding both on the Parties to the dispute and on any persons claiming through or under them and judgment upon the award may be entered in any court having judicial acceptance of the award and an order of enforcement as the case may be

18.8 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 18 but without prejudice to the rights and obligations of the Parties to the dispute in relation to the termination of the Deed

18.9 The provisions of this clause 18 shall not affect the ability of the District Council and/or County Council to apply for and be granted any of the following: declaratory relief injunction specific performance payment of any sum damages any other means of enforcing this Deed and consequential and interim orders and relief

19. SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED

19.1 Where in the opinion of the Owner and/or the Skylarks Land Owner (as the case may be) any of the provisions of this Deed have been satisfied the Owner and/or the Skylarks Land Owner shall be entitled to apply to the District Council or the County Council for a certificate to that effect and upon the District Council or the County Council being satisfied that the relevant obligation and covenant as the case may be has been satisfied the District Council or County Council shall as soon as reasonably practicable issue a certificate to such effect

20. APPROVALS

20.1 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 or County Council shall replace those previously approved

21. COMMUNITY INFRASTRUCTURE LEVY

21.1 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:

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

21.1.2 directly relate to the Development permitted pursuant to the Application; and

20.1.3 fairly and reasonably relate in scale and kind to the Development permitted pursuant to the Application.

22. JURISDICTION

22.1 This Deed is governed by and interpreted in accordance with English Law and shall be determined in the Courts of England

23. **MORTGAGEE’S CONSENT**

23.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent that the Site shall be bound by the obligations contained in this Deed and the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner but the Mortgagee shall have no liability once it ceases to have any legal or other interest in the Site

24. **DELIVERY**

24.1 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

25. **COUNTERPARTS**

This Deed may be executed in any number of separate identical counterparts which on completion shall be constructed together as one deed

26.

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written

THE COMMON SEAL of)
BABERGH DISTRICT COUNCIL)
was affixed in the presence of:-)



Authorised Officer



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

Authorised Officer

Executed as a DEED
By **NEVILLE CHARLES COBBOLD**
in the presence of

)
)
)

Signature

.....

W Name
I
T Address
N
E
S
S Occupation

Executed as a Deed by **DENBURY HOMES LIMITED** in the presence of:

Attorney's signature:
Designated Member of Birketts LLP, as attorney for Denbury Homes Limited

Witness Signature:
Witness Name:
Witness Address:

Witness Occupation:

Executed as a deed by
HSBC UK BANK PLC
acting by its attorney
signed in the presence of

)
)
)
)

.....
attorney

.....
name of attorney

W Signature
I Name
T Address
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FIRST SCHEDULE

OWNERSHIP DETAILS

The Owner is the registered proprietor with absolute title of the Site registered at the Land Registry under title number SK327821 and shown edged red on the Site Location Plan

The Skylarks Land Owner is the proprietor of the Skylarks Mitigation Land shown edged red on the Skylark Plots Location Plan of which part is registered at the Land Registry under title number SK181421 and also part of which is unregistered land as defined in the Deed of Gift dated 16th March 1998 made between Charles Arthur Cobbold and Neville Charles Cobbold

SECOND SCHEDULE
DRAFT PLANNING PERMISSION

Babergh District Council

Endeavour House, 8 Russell Road, Ipswich IP21 2BX

Website: www.babergh.gov.uk



DRAFT PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990

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

Correspondence Address:

Mr James Bailey
Stirling House
3 Abbeyfields
Bury St Edmunds
IP33 3AQ
Suffolk

Applicant:

Denbury Homes
Denbury Homes Ltd
Westley
Bury St Edmunds
IP33 3WD
Suffolk

Date Application Received: 01-Apr-22

Application Reference: DC/22/01754

Date Registered: 02-Apr-22

Proposal & Location of Development:

Full Planning Application - Erection of 44 No. residential dwellings (including 35% affordable housing and bungalows), landscaping and public open space.

Land East Of, Hadleigh Road, Elmsett, Suffolk

Section A – Plans & Documents:

This draft refers to drawing no./entitled ELM 001 received 01/04/2022 as the defined red line plan with the site shown edged red. Any other drawing showing land edged red whether as part of another document or as a separate plan/drawing has not been accepted or treated as the defined application site for the purposes of this draft decision.

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

Arboricultural Assessment - Received 01/07/2022

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PLANNING LAYOUT WITH LEAP DIMENSIONS 005 LEAP DIMENSIONS - Received
03/08/2022

ELM1-004 Materials - Received 01/04/2022

Landscape and Visual Impact Assessment 7818/ASP3/LSI Rev B-Received 08/08/2022

Proposed Landscaping Plan ELM1-003A - Received 10/05/2022

Block Plan - Proposed ELM1-002 B - Received 19/08/2022

7818.LSP.ASP3.B Materplan - Received 15/08/2022

ST-3154-502 INDICATIVE S - Received 04/05/2022

Defined Red Line Plan ELM 001 - Received 01/04/2022

ELM1-402 Boundary Details - Received 01/04/2022

Plans - Proposed 14 02 22 Plans 1- 12 - Received 01/04/2022

ELM1-301 Garages - Received 01/04/2022

ELM1-302 Garages 2 - Received 01/04/2022

ELM1-303 Garages 3 - Received 01/04/2022

ELM1-401 Pumping Station - Received 01/04/2022

House Types 101-126 - Received 01/04/2022

Section B:

Draft Conditions and Reasons:

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

The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004

2. APPROVED PLANS & DOCUMENTS

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

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

3. PART 1 - ACTION REQUIRED PRIOR TO THE COMMENCEMENT OF DEVELOPMENT
- ARCHAEOLOGICAL EVALUATION

No development shall take place until a scheme of archaeological evaluation of the site has been submitted to and approved in writing by the Local Planning Authority (including any demolition needing to be carried out as necessary in order to carry out the

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evaluation). The evaluation shall be carried out in its entirety as may be agreed to the satisfaction of the Local Planning Authority,

Reason - To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development. This condition is required to be agreed prior to the commencement of any development to ensure matters of archaeological importance are preserved and secured early to ensure avoidance of damage or loss due to the development and/or its construction. If agreement was sought at any later stage as there is an unacceptable risk of loss and damage to archaeological and historic assets.

4. PART 2-ACTION REQUIRED PRIOR TO THE COMMENCEMENT OF DEVELOPMENT - ARCHAEOLOGICAL WRITTEN INVESTIGATION

No development shall take place until a written report on the results of the archaeology evaluation of the site has been submitted to the Local Planning Authority and that confirmation by the Local Planning Authority has been provided that no further investigation work is required in writing.

Should the Local Planning Authority require further investigation and works, no development shall take place on site until the implementation of a full programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.

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

- a. The programme and methodology of site investigation and recording.
- b. The programme for post investigation assessment.
- c. Details of the provision to be made for analysis of the site investigation and recording.
- d. Details of the provision to be made for publication and dissemination of the analysis and records of the site investigation.
- e. Details of the provision to be made for archive deposition of the analysis and records of the site investigation; and
- f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

The written scheme of investigation shall be carried out in its entirety prior to any other development taking place, or in such other phased arrangement including a phasing plan as may be previously approved in writing by the Local Planning Authority.

Reason - To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development. This condition is required to be agreed prior to the commencement of any development to ensure features of archaeological importance are identified, preserved and secured to avoid damage or loss resulting from the development and/or its construction. If agreement was sought at any later stage, there is an unacceptable risk of loss and damage to archaeological and historic assets.

5. PART 3-ACTION REQUIRED PRIOR TO THE FIRST OCCUPATION OF DEVELOPMENT - ARCHAEOLOGICAL WORKS

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No building shall be occupied until the archaeology evaluation, and if required the Written Scheme of Investigation, have been completed, submitted to and approved, in writing, by the Local Planning Authority. Furthermore, no building shall be occupied until analysis, publication and dissemination of results and archive deposition from the archaeology investigations as agreed under the Written Scheme of Investigation has taken place, unless an alternative agreed timetable or phasing for the provision of results is agreed in writing by the Local Planning Authority.

Reason - To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development.

6. ACTION REQUIRED PRIOR TO COMMENCEMENT OF DEVELOPMENT: TREE AND HEDGEROW PROTECTION

No development shall be commenced until existing trees and hedgerows on the site, shown to be retained, have been protected by measures as set out in the Tree Survey, Arboricultural Impact Assessment, Preliminary Arboricultural Method Statement & Tree Protection Plan (prepared by Hayden's Arboricultural Consultants - Project No. 9175-Revision A), received 1st July 2022.

The protective measures shall be retained throughout the duration of building and engineering works in the vicinity of the trees and hedgerows to be protected. Any tree(s) or hedgerow(s) that die or become severely damaged as a result of any failure to comply with these requirements shall be replaced with species of an appropriate type and size, during the first planting season, or in accordance with such other arrangement as may be approved, in writing, with the Local Planning Authority up to first use or first occupation of the development, following the death of, or severe damage to the tree(s) and/or hedgerow(s).

Reason - For the avoidance of damage to existing trees and hedgerows shown to be retained, in the interests of visual amenity and the character and appearance of the area. This condition is required to be carried out prior to the commencement of any other development to ensure trees and hedgerows are protected early to ensure avoidance of damage or lost due to the development and/or its construction. If agreement was sought at any later stage there is an unacceptable risk of lost and damage to trees and hedgerows.

7. ACTION REQUIRED PRIOR TO COMMENCEMENT OF DEVELOPMENT - ARBORICULTURAL METHOD STATEMENT

No development shall be commenced until a detailed Arboricultural Method Statement, including auditable monitoring schedule and tree protection plan, has been submitted to and approved in writing by, the local planning authority. The development shall then be carried out in full accordance with the approved method statement, monitoring schedule and protection plan.

Reason - In the interests of visual amenity, the character and appearance of the area, and biodiversity.

8. ACTION REQUIRED PRIOR TO SLAB LEVEL: LANDSCAPING SCHEME

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No development above slab level shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a detailed scheme of hard, soft and boundary treatment landscaping works for the site, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained.

Reason - In the interests of visual amenity and the character and appearance of the area.

9. ON GOING REQUIREMENT OF DEVELOPMENT: TIMESCALE FOR LANDSCAPING

All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use or first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and species.

Reason - To ensure that the approved landscaping scheme has sufficient time to establish, in the interests of visual amenity and the character and appearance of the area.

10. ACTION REQUIRED PRIOR TO COMMENCEMENT OF DEVELOPMENT: LANDSCAPE MANAGEMENT PLAN (LMP)

No development shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a landscape management plan and associated work schedule for a minimum of 5 years. Both new and existing planting will be required to be included in the plan, along with surface treatments, SuDS features and all other landscape assets (i.e., street furniture). The content of the LMP should include the following:

1) Drawings showing:

- The extent of the LMP; i.e. only showing the areas to which the LMP applies, areas of private ownership should be excluded.

2) Written Specification detailing:

- All operation and procedures for soft landscape areas; inspection, watering, pruning, cutting, mowing, clearance and removal of arisings and litter, removal of temporary items (fencing, guards and stakes) and replacement of failed planting.
- All operations and procedures for hard landscape areas; inspection, sweeping, clearing of accumulated vegetative material and litter, maintaining edges, and painted or finished surfaces.
- Furniture (Bins, Benches and Signage) and Play Equipment.
- All operations and procedures for surface water drainage system; inspection of linear drains and swales, removal of unwanted vegetative material and litter.

3) Maintenance task table which explains the maintenance duties across the site in both chronological and systematic order.

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

11. ACTION REQUIRED PRIOR TO COMMENCEMENT - CONSTRUCTION MANAGEMENT PLAN

No development shall commence until a construction management plan has been submitted to and approved in writing by the Local Planning Authority. The construction management plan shall include details of:

Operating hours (to include hours for delivery) as specified below;
Details of the scheduled timing/phasing of the development for the overall construction period;
Means of access, traffic routes, vehicle parking and manoeuvring areas (site operatives and visitors);
Protection measures for footpaths surrounding the site;
Loading and unloading of plant and materials;
Wheel washing facilities;
Lighting;
Location and nature of compounds, 'portalos' and storage areas (including maximum storage heights) and factors to prevent wind-whipping of loose materials;
Waste storage and removal;
Temporary buildings and boundary treatments;
Dust management measures;
Method of any demolition to take place, including the recycling and disposal of materials arising from demolition;
Noise and vibration management (to include arrangements for monitoring, and specific method statements for piling) and;
Litter and waste management during the construction phases of the development.

Thereafter, the approved construction plan shall be fully implemented and adhered to during the construction phases of the development hereby approved, unless otherwise agreed in writing by the Local Planning Authority.

Reason - In the interest of the amenity of neighbouring residents, biodiversity and highway safety and convenience.

Note: the Construction Management Plan shall cover both demolition and construction phases of the above development. The applicant should have regard to BS 5228:2009 Code of Practice of Noise and Vibration Control on Construction and Open Sites in the CMP.

12. ACTION REQUIRED DURING SITE CLEARANCE, DEMOLITION AND CONSTRUCTION - PROHIBITION OF BURNING

There shall be no burning on the site during the site clearance, demolition and construction phases of the development hereby approved.

Reason - In the interest of: the health and amenity of neighbouring and nearby occupants; environmental quality; highway safety; and ecology.

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

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

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

14. ACTION REQUIRED IN ACCORDANCE WITH A SPECIFIC TIMETABLE: DETAILS OF EXTERNAL ILLUMINATION

Prior to the erection/installation of any streetlighting, or other means of external lighting on the site, details to include position, height, aiming points, lighting levels and a polar luminance diagram shall be submitted to and approved, in writing, by the Local Planning Authority. The lighting shall be carried out and retained as may be approved. There shall be no other means of external lighting installed and/or operated on/at the site.

Reason - In the interests of amenity to reduce the impact of night time illumination on the character of the area and in the interests of biodiversity.

15. ACTION REQUIRED IN ACCORDANCE WITH SPECIFIED TIMEFRAME - SUSTAINABILITY PROVISIONS

No development shall commence above slab level until a scheme for the provision and implementation of water, energy and resource efficiency measures (including provision of renewable energy and consideration for the provision of solar panels) for the lifetime of the development, shall be submitted to and approved, in writing, by the Local Planning Authority.

The scheme shall include as a minimum, to achieve:

- Agreement of provisions to ensure the development is zero carbon ready
- Agreement of scheme for waste reduction
- Consideration for the provision of solar panels as part of the development

Reason: in the interest of ensuring the development is responsive to reduction in carbon emissions and contribution towards reducing global warming, as per the requirements of development plan policies CS13 and CS15.

16. ACTION REQUIRED IN ACCORDANCE WITH APPROVED DETAILS - STRATEGY FOR DISPOSAL OF SURFACE WATER

The strategy for the disposal of surface water and the Flood Risk Assessment (FRA) (dated February 2022, ref: ref ST-3154/FRA-2202 rev 1) shall be implemented as approved in writing by the local planning authority (LPA). The strategy shall thereafter be managed and maintained in accordance with the approved strategy.

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

17. ACTION REQUIRED IN ACCORDANCE WITH SPECIFIED TIMESCALE - SURFACE WATER VERIFICATION REPORT

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Within 28 days of practical completion of the last dwelling or unit, a surface water drainage verification report shall be submitted to the Local Planning Authority, detailing, and verifying that the surface water drainage system has been inspected and has been built and functions in accordance with the approved designs and drawings. The report shall include details of all SuDS components and piped networks in an agreed form, for inclusion on the Lead Local Flood Authority's Flood Risk Asset Register.

Reason: To ensure that the surface water drainage system has been built in accordance with the approved drawings and is fit to be put into operation and to ensure that the Sustainable Drainage System has been implemented as permitted and that all flood risk assets and their owners are recorded onto the LLFA's statutory flood risk asset register as required under s21 of the Flood and Water Management Act 2010 to enable the proper management of flood risk with the county of Suffolk <https://www.suffolk.gov.uk/roads-and-transport/flooding-and-drainage/flood-risk-asset-register/>

18. ACTION REQUIRED PRIOR TO COMMENCEMENT - CONSTRUCTION SURFACE WATER MANAGEMENT PLAN

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

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

19. ACTION REQUIRED PRIOR TO FIRST USE/OCCUPATION - FOUL WATER DRAINAGE

No part of the development shall be first occupied or brought into use until the agreed method of foul water drainage has been fully installed and is functionally available for use. The foul water drainage scheme shall thereafter be maintained as approved.

Reason: to minimise detriment to nearby residential amenity.

20. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

All mitigation measures and/or works shall be carried out in accordance with the details contained in the Updated Ecological Appraisal (Carter Sustainability Ltd, March 2022) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

Reason: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species), as updated by the Environmental Act 2021.

21. ACTION REQUIRED IN ACCORDANCE WITH SPECIFIED TIMEFRAME - LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN

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No development shall be commenced above slab level until a Landscape and Ecological Management Plan (LEMP) has been submitted to, and approved in writing by, the local planning authority.

The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species), as updated by the Environmental Act 2021.

22. ACTION REQUIRED IN ACCORDANCE WITH SPECIFIED TIMEFRAME - BIODIVERSITY ENHANCEMENT STRATEGY

No development shall be commenced above slab level until a Biodiversity Enhancement Strategy for Protected and Priority species has been submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations, orientations and heights of the proposed enhancement measures by appropriate maps and plans (where applicable);
- d) persons responsible for implementing the enhancement measures;
- e) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

Reason: To enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species), as updated by the Environmental Act 2021.

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23. ACTION REQUIRED PRIOR TO FIRST USE/OCCUPATION - WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

No dwelling shall be occupied, until a lighting design scheme for biodiversity has been submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for Bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

Reason: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species), as updated by the Environmental Act 2021.

24. ACTION REQUIRED PRIOR TO FIRST OCCUPATION: PROVISION OF ACCESS

The new vehicular access shall be laid out and completed in all respects in accordance with drawings listed under Section A; and made functionally available for use prior to first occupation of any building. The access shall be retained thereafter in its specified form.

Reason - To ensure that the access is designed and constructed to an appropriate specification and made available for use at an appropriate time in the interests of highway safety.

25. ACTION REQUIRED PRIOR TO FIRST USE OF ACCESS: HIGHWAYS - PROVISION OF VISIBILITY SPLAYS

Before the access is first used visibility splays shall be provided as shown on approved drawings under Section A and thereafter retained and maintained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

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

26. ACTION REQUIRED PRIOR TO FIRST USE/OCCUPATION: HIGHWAYS- IMPROVEMENTS TO IPSWICH ROAD AND FLOWTON ROAD

The use shall not commence, and no dwelling shall be occupied, until details of the series of passing bays, as indicatively shown on submitted drawing no. ST-3154 800 A, on Ipswich Road and Flowton Road, have been submitted to and approved in writing by the local planning authority. The passing bays shall then be fully provided as approved, and shall be made available for public use, prior to first occupation of the development hereby approved.

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Reason: In the interest of highway safety, to enable vehicles to pass reducing delay and additional reversing manoeuvres within the public highway.

27. ACTION REQUIRED PRIOR TO FIRST USE/OCCUPATION: HIGHWAYS-IMPROVEMENTS TO HADLEIGH ROAD

No part of the development hereby permitted shall be occupied until Hadleigh Road, along the site frontage, has been improved as indicatively shown on the submitted drawing no. ST-3154 700 and in accordance with details which shall first have been submitted to and approved by the Local Planning Authority.

The improvements shall include: road widening; road resurfacing; kerbing; highway and land drainage; a new frontage footway; a new pedestrian footbridge over the ditch, to the north-west corner of the site; and safety fencing as required.

Reason: To ensure that Hadleigh Road is sufficiently wide to allow vehicles to pass each other safely, to allow safe functioning of the new site access; to provide new footway and footbridge for the safe passage of pedestrians.

28. ACTION REQUIRED IN ACCORDANCE WITH SPECIFIED TIMESCALE: HIGHWAYS-ACCESS PIPING AND BRIDGING

Prior to commencement of construction of the approved access, details of the proposed means of piping and bridging of the existing drainage ditch to the site frontage shall be submitted to and approved, in writing by, the local planning authority. The approved means of piping and bridging shall then be carried out exactly as approved and shall be retained thereafter.

Reason: To facilitate a safe access by ensuring uninterrupted flow of water and reducing the risk of flooding of the highway.

29. ACTION REQUIRED PRIOR TO COMMENCEMENT OF DEVELOPMENT - PRE COMMENCEMENT CONDITION: PROVISION OF ROADS AND FOOTPATHS.

Before the development is commenced, details of the estate roads and footpaths, including layout, levels, gradients, surfacing and means of surface water drainage and a timetable for said works, shall be submitted to and approved in writing by the Local Planning Authority. The details agreed to satisfy this condition shall be implemented and completed in their entirety in accordance with the timetable agreed.

Reason: To ensure that roads/footways are constructed to an acceptable standard. This condition is required to be agreed prior to the commencement of any development to ensure highway safety is secured early for both development, its construction and addresses areas of work before any other parts of the development can take place. If agreement was sought at any later stage there is an unacceptable risk to highway and public safety and risk of cost to the developer if the details are not found acceptable.

30. ACTION REQUIRED PRIOR TO FIRST OCCUPATION OF DEVELOPMENT: REFUSE BINS AND COLLECTION AREAS

Prior to the first occupation of the development details of the areas to be provided for storage of Refuse/Recycling bins and any associated collection areas shall be submitted

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to and approved, in writing, by the Local Planning Authority. The approved areas shall be provided in their entirety before the development is first occupied and shall be retained thereafter for no other purpose.

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

31. ACTION REQUIRED PRIOR TO USE/OCCUPATION - HIGHWAYS: PROVISION OF PARKING.

The building/s shall not be occupied until the areas within the site shown on Drawings listed under Section A for the purposes of loading, unloading, manoeuvring and parking (including garage spaces as applicable) of vehicles has been provided and made functionally available. Thereafter those areas shall be retained and remain free of obstruction except for the purpose of manoeuvring and parking of vehicles.

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

32. ACTION REQUIRED PRIOR TO FIRST USE/OCCUPATION: HIGHWAYS - CYCLE STORAGE AND EV CHARGING

No dwelling shall be occupied until, details of the areas and infrastructure to be provided for: the secure, covered and lit cycle storage; and electric vehicle charging points, have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented for each dwelling prior to its first occupation and retained as such thereafter.

Reason: To promote sustainable travel by ensuring the provision at an appropriate time and long term maintenance of adequate on-site areas and infrastructure for the storage of cycles and EV charging in accordance with Suffolk Guidance for Parking 2019.

33. ACTION REQUIRED IN ACCORDANCE WITH A SPECIFIC TIMETABLE: AGREEMENT OF MATERIALS

No development/works shall be commenced above slab level until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be agreed shall be those used in the development and fully applied prior to the first use/occupation.

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

34. ACTION REQUIRED PRIOR TO COMMENCEMENT -RCV SUITABILITY

The development shall not be commenced until details have been provided to, and approved in writing by, the local planning authority to demonstrate: that the development is suitable for a 32 tonne Refuse Collection Vehicle (RCV) to access and manoeuvre around the site; and that the proposed road surface is suitable for such an RCV to drive on.

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Reason - To ensure the development is suitable to enable an RCV to access and manoeuvre around the site, in the interest of efficiency, highway safety and convenience and the amenities for existing and future residents.

35. ACTION REQUIRED PRIOR TO FIRST USE/OCCUPATION -WASTE STRATEGY

No dwelling shall be occupied until a waste strategy, showing refuse and recycle bin collection points, has been submitted to, and approved in writing by the local planning authority. The approved strategy shall then be fully implemented prior to first use/occupation and shall be retained as such, at all times.

Reason - In the interest of efficiency, highway safety and convenience and the amenities of existing and future residents.

Note: Plots: 1-3, 20-28, and 44-41 should have bin collection points at the end of private driveways, unless RCV access is shown to be possible, in accordance with the requirements of condition 35 (above), and in agreement with the local authority.

36. ACTION REQUIRED PRIOR TO FIRST USE/OCCUPATION - DEFIBRILLATOR

The use shall not commence, and no dwelling shall be occupied, until details of a defibrillator, and the proposed location thereof within the site, or such other scheme as may be decided by discharge of condition, have been submitted to and approved in writing by the local planning authority.

The approved defibrillator shall then be provided in the approved location, and shall be made available and ready for public use, prior to first use/occupation of the development.

Reason - In the interest of the health and safety of existing and future occupants.

SUMMARY OF POLICIES WHICH ARE RELEVANT TO THIS DRAFT DECISION:

NPPF - National Planning Policy Framework

CS01 - Applying the presumption in Favour of Sustainable Development in Babergh

CS02 - Settlement Pattern Policy

CS03 - Strategy for Growth and Development

CS11- Core and Hinterland Villages

CS13 - Renewable / Low Carbon Energy

CS14- Green Infrastructure

CS15- Implementing Sustainable Development

CS18- Mix and Types of Dwellings

CS19- Affordable Homes

CS21 - Infrastructure Provision

CN01 - Design Standards

CN04 - Design & Crime Prevention

CR07 - Landscaping Schemes

HS28 - Infilling/Groups of dwellings

HS31 - Public Open Space (1.5 ha and above)

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TP15 - Parking Standards - New Development
EN22 - Light Pollution - Outdoor Lighting
Elmsett Neighbourhood Plan

DRAFT NOTES:

1. **Statement of positive and proactive working in line with the National Planning Policy Framework (NPPF)**

When determining planning applications The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires Local Planning Authorities to explain how, in dealing with the application they have worked with the applicant to resolve any problems or issues arising. In this case negotiation occurred and amendments and further information was secured which enabled the application to be supported and ultimately approved.

2. **Highways Note**

It is an OFFENCE to carry out works within the public highway, which includes a Public Right of Way, without the permission of the Highway Authority. Any conditions which involve work within the limits of the public highway do not give the applicant permission to carry them out. Unless otherwise agreed in writing all works within the public highway shall be carried out by the County Council or its agents at the applicant's expense. The County Council's Central Area Manager should be contacted on Telephone 01473 341414. Further information go to: www.suffolk.gov.uk/environment-and-transport/highways/dropped-kerbs-vehicular-accesses/

3. **Highways Note - S278**

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

4. **Land Contamination Note**

The Council's environmental protection team has assessed the site and proposal and can find no reason to suggest that there is a potential risk from land contamination. The applicant is however advised to contact the Council's environmental protection team on 0300 123 4000 should any unexpected ground conditions be encountered during construction of the development hereby approved.

The developer is hereby made aware that the responsibility for the safe development and secure occupancy of the site rests with them.

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5. **Lead Local Flood Authority Note**

- o Any works to a watercourse may require consent under section 23 of the Land Drainage Act 1991
- o Any discharge to a watercourse or groundwater needs to comply with the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- o Any discharge of surface water to a watercourse that drains into an Internal Drainage Board catchment may be is subject to payment of a surface water developer contribution
- o Any works to lay new surface water drainage pipes underneath the public highway will need a section 50 license under the New Roads and Street Works Act 1991
- o Any works to a main river may require an environmental permit.

6. **Protected Species Note**

The developer is hereby reminded of their obligations under the Wildlife and Countryside Act (1981) (as amended) and the Conservation of Habitats and Species Regulations (2017) (as amended) in the carrying out of the development hereby approved.

7. **Swift Boxes**

The LPA recommend that Swift Boxes are included as part of the Biodiversity Enhancements, required by condition 23 of this permission.

8. **Section 106 Agreement Note**

A legal agreement completed by the Applicant and Babergh District Council under the provisions Section 106 of the Town and Country Planning Act, 1990 is linked to this permission.

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

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

This draft relates to document reference: DC/22/01754

Signed: -

Dated: .

THIRD SCHEDULE

OWNER'S COVENANTS WITH THE DISTRICT COUNCIL

1. NOTICES – COMMENCEMENT

The Owner covenant with the District Council as follows:

- 1.1 To give the District Council and County Council Notice of Expected Commencement not less than five (5) Working Days before the date that the Owner and/ or Developer expects Commencement of the Development to occur and (ii) within fifteen (15) Working Days of Commencement of Development Notice of Actual Commencement in order to confirm Commencement of Development has occurred
- 1.2 To give the District Council no less than two (2) months' written notice of the anticipated date for the first Occupation of the first Dwelling
- 1.3 Within five (5) Working Days to give written notice to the District Council and the County Council following:
 - 1.3.1 the date of Occupation of the first Dwelling
 - 1.3.2 Completion of the Development

2. AFFORDABLE HOUSING PROVISION

The Owner covenant with the District Council as follows:

- 2.1 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
- 2.2 Prior to the first Occupation of the 8th Market Housing Unit the Owner shall agree with the District Council on the identity of the Registered Provider or other body to which the Affordable Housing Units are to be transferred such agreement not to be unreasonably withheld or delayed but if no agreement has been reached at the expiration of the period of four (4) months following the first Occupation of the first Market Housing Unit the District Council shall be entitled to nominate a Registered Provider or other appropriate body for the purpose

- 2.3 To construct the Affordable Housing Units in accordance with the Planning Permission the Affordable Housing Scheme and the Affordable Housing Plan to a standard of construction which meets with HE's approval and to the current nationally described space standards
- 2.4 Subject to paragraphs 2.9 to 2.11 inclusive below to not
- 2.4.1 Occupy or permit Occupation of more than seventeen (17) of the Market Housing Units unless and until all of the Affordable Housing Units are at Practical Completion and are ready for Occupation and contracts have been exchanged for the Affordable Rented Units or Shared Ownership Dwellings to be transferred to the Registered Provider
- 2.5 Any transfer to a Registered Provider of any part of the Site on which the Affordable Housing Units will be constructed shall be:
- 2.5.1 with vacant possession
- 2.5.2 free from any encumbrance other than existing at the time of the disposition (save for any financial charge or the transfer of statutory apparatus by the Owner to any statutory undertaker)
- 2.5.3 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
- 2.5.4 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
- 2.5.5 subject to a requirement for the transferee to enter into the Affordable Housing Nomination Agreement with the District Council
- 2.6 The Affordable Housing Units shall be Occupied for no other purpose than as Affordable Housing save where provided otherwise in paragraphs 2.7 and 2.8 below
- 2.7 The District Council and the Owner agree that the obligations and restrictions contained in this Third Schedule shall not bind:
- 2.7.1 any RTA Purchaser;
- 2.7.2 any Affordable Housing Unit where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, a voluntary grant scheme under section 21 of the Housing Act 1996 or any amendment or replacement thereof;

- 2.7.3 a leaseholder of a Shared Ownership Dwelling who is entitled to exercise their right under a Shared Ownership Lease to acquire 100% of the equity of their property; or
- 2.7.4 any mortgagee or chargee deriving title from any parties referred to in paragraphs 2.7.2, 2.7.2 and 2.7.3; or
- 2.7.5 any person or body deriving title through or from any of the parties mentioned in this paragraph 2.7

2.8 The Affordable Housing provisions in this Agreement shall not be binding on a mortgagee or Chargee (or any receiver (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 (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or Chargee or Receiver PROVIDED THAT:

- 2.8.1 such mortgagee or Chargee or Receiver 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 of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 2.8.2 if such disposal has not completed within the three month period the mortgagee chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Third Schedule which provisions shall determine absolutely

PROVIDED THAT at all times the rights and obligations in this paragraph 2.8 shall not require the Chargee of a Registered Provider to act contrary to its duties and rights under the charge or mortgage and that 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

2.9 In the event that the Registered Provider (within two (2) months of written invitation) is unable to make an acceptable offer to purchase the Affordable Housing Units or no longer wants to purchase the Affordable Housing Units to enable the Owner to transfer

the Affordable Housing Units to the Registered Provider pursuant to paragraph 2.5 of this part of this Schedule the Owner shall:

- 2.9.1 notify the District Council three (3) months prior to the Practical Completion of the Affordable Housing Units;
 - 2.9.2 set out the reasons (together with any supporting evidence) in writing why a transfer to the Registered Provider has not been entered into pursuant to paragraph 2.5 of this Schedule
 - 2.9.3 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 2.5 of this Schedule
 - 2.9.4 offer the Affordable Housing Units to the District Council to be purchased by the District Council as Affordable Housing
- 2.10 In the event the District Council make an acceptable offer to the Owner (within two (2) months of written invitation) for the Affordable Housing Units then the Owner shall not Occupy or permit Occupation of more than eighty per cent (80%) of the Market Housing Units until the Owner has provided the District Council with a freehold transfer document unconditionally released for completion
- 2.11 In the event the District Council does not make an acceptable offer to the Owner (within two (2) months of written invitation) to purchase all of the Affordable Housing Units or the District Council indicates that they do not want to purchase the Affordable Housing Units the Owner will be able to sell all of the Market Housing Units before paying the Affordable Housing Contribution to the District Council and the provisions of this paragraph 2 of this Schedule shall no longer be applicable in respect of the Affordable Housing Units and the Owner shall be free to dispose of the said fifteen (15) Dwellings as Market Housing Units
- 2.12 Any capital receipt received by the Registered Provider in excess of eighty per cent (80%) as a result of the tenant of a Shared Ownership Dwelling exercising their right to staircase to one hundred (100%) shall be retained by the Registered Provider for re-investment in Affordable Housing and within the district of Babergh and shall be spent within two (2) years of receipt notwithstanding any Homes England requirements.

3. PUBLIC OPEN SPACE

The Owner covenant with the District Council as follows:

- 3.1 Not to Commence Development until the Public Open Space Specification Public Open Space Plan and preferred Nominated Body has been submitted to the District Council in writing for approval

- 3.2 Not to Commence Development until the Public Open Space Specification and Public Open Space Plan have been approved by the District Council in writing and such approval not to be unreasonably withheld or delayed
- 3.3 If the District Council fails within twenty (20) Working Days of submission of the Public Open Space Plan and Public Open Space Specification to notify the Owner of its approval of the Public Open Space Plan the Public Open Space Specification and the preferred Nominated Body then the Owner and/or Developer shall be entitled to assume deemed approval of the Public Open Space Plan and Public Open Space Specification
- 3.4 Not to permit the Occupation of twenty five (25) Market Housing Units until the Public Open Space has been provided and laid out in accordance with the approved Public Open Space Plan and the approved Public Open Space Specification
- 3.5 Following the District Council's written confirmation that the Public Open Space has been laid out in accordance with the Public Open Space Plan and Public Open Space Specification to maintain and manage the Public Open Space for a period of twelve (12) months strictly in accordance with the Public Open Space Specification and the Public Open Space Plan and until the date of the Public Open Space Transfer has been completed
- 3.6 Following the District Council's written confirmation that they are content with the maintenance of the Public Open Space to transfer the freehold or part thereof of the Public Open Space as agreed in writing by the District Council to the appropriate Nominated Body (in accordance with the provisions of paragraph 3.7 below) or if the Parties (acting reasonably) agree to transfer to more than one Nominated Body and in the event that the Nominated Body is not a Management Company then the obligation will still apply
- 3.7 To continue to maintain the Public Open Space until the Public Open Space or part thereof is transferred and such freehold transfer to include such items as necessary and outlined in the Public Open Space Transfer and shall for the avoidance of doubt include a covenant that the Public Open Space shall thereafter be retained in perpetuity and maintained in accordance with the Public Open Space Plan the Public Open Space Specification and the Planning Permission for the benefit of the public
- 3.8 In the event the Nominated Body is the Parish Council to pay the Public Open Space Maintenance Contribution to the District Council prior to Occupation of the first Dwelling
- 3.9 To use all reasonable endeavours to transfer the Public Open Space to the Nominated Body (subject to paragraph 3.7 above) within twelve (12) months of the Occupation of the final Dwelling in accordance with the Public Open Space Transfer for the sum of One Pound (£1.00)

4. LEAP

The Owner covenants with the District Council as follows:

- 4.1 Prior to Commencement of Development to submit the LEAP Scheme to the District Council for approval such approval not to be unreasonably withheld or delayed
- 4.2 Not to Commence Development unless and until the LEAP Scheme has been approved in writing by the District Council
- 4.3 If the District Council fails within twenty (20) Working Days of submission of the LEAP Scheme to notify the Owner of its approval of the LEAP Scheme then the Owner shall be entitled to assume deemed approval of the LEAP Scheme
- 4.4 To lay out the LEAP in accordance with the approved LEAP Scheme prior to the Occupation of the twenty fifth (25th) Market Housing Unit
- 4.5 Not to permit Occupation of more than twenty four (24) Market Housing Units until the LEAP has been provided in accordance with the LEAP Scheme
- 4.6 To use all reasonable endeavours to transfer the LEAP to the Nominated Body within twelve (12) months of the Occupation of the final Dwelling on the Site such transfer to include such items as are set out in the LEAP Transfer and shall for the avoidance of doubt include a covenant that the LEAP shall thereafter be retained and maintained in accordance with the LEAP Scheme for the benefit of the public in perpetuity

5. Habitats Sites Mitigation Contribution

- 5.1 Prior to Commencement of Development to pay the Habitats Sites Mitigation Contribution to the District Council

6 Skylark Mitigation

- 6.1 Prior to the Commencement of Development to work with the Skylark Land Owner and to submit to the District Council the Skylark Mitigation Scheme for written approval such approval not to be unreasonably withheld or delayed
- 6.2 If the District Council fails within twenty (20) Working Days of submission of the Skylark Mitigation Scheme to notify the Owner of its approval of the Skylark Mitigation Scheme then the Owner shall be entitled to assume deemed approval of the Skylark Mitigation Scheme
- 6.3 Prior to the Commencement of Development to ensure the Skylark Land Owner implements the Skylark Mitigation Scheme as approved by the District Council and for the avoidance of doubt there shall be no Commencement of Development unless and until the replacement plots on the Skylark Mitigation Land approved by the District Council within the Skylark Mitigation Scheme have been created and the District Council have been notified in writing

FOURTH SCHEDULE

SKYLARK LAND OWNER'S COVENANTS WITH DISTRICT COUNCIL

1. SKYLARK MITIGATION

The Skylark Land Owner covenants with the District Council as follows:

- 1.1 Prior to the Commencement of Development to work with the Owner to enable the Owner to submit to the District Council the Skylark Mitigation Scheme for written approval such approval not to be unreasonably withheld or delayed
- 1.2 Prior to the Commencement of Development to implement the Skylark Mitigation Scheme as approved by the District Council and shall notify the Owner when the replacement plots on the Skylark Mitigation Land have been created
- 1.3 To deliver and manage the Skylark Mitigation Scheme to the satisfaction of the District Council for a period of not less than ten (10) years beginning with the date of implementation of the Skylark Mitigation Scheme
- 1.4 To notify the District Council and the Owner in writing by no later than two (2) weeks following the completion of drilling in each farming year that the measures identified in the Skylark Mitigation Scheme have been undertaken and completed ready for next years nesting season and in the event there is to be no drilling or there is a need to move the Skylark plots to another parcel of land in the ownership of the Skylark Land Owner or sow a crop which is not spring sown cereal in that year to notify the District Council in writing by no later than 31 October in that year PROVIDED THAT in the event the Skylark Land Owner shall not have completed all such work by one (1) month after the completion of the drilling in any year the Owner or the [District Council] shall upon giving the Skylark Land Owner five (5) Working Day's notice have the right to carry out any necessary work in keeping with the Skylark Mitigation Scheme and to recharge those costs to the Skylark Land Owner which shall be a debt due to the Owner or the District Council as the case may be

FIFTH SCHEDULE

OWNER COVENANTS WITH THE COUNTY COUNCIL

1. Secondary School Transport Contribution

- 1.1. Prior to Occupation of the first Dwelling the Owner covenants to pay to the County Council Twenty Four Thousand One Hundred Pounds (£24,100) (RPI Indexed) of the Secondary School Transport Contribution (being fifty per cent (50%) of the Secondary School Transport Contribution) SAVE where the Developer opts to make this payment prior to Occupation of the First Dwelling
- 1.2. The Owner covenants not to Occupy or to permit Occupation of any of the Dwellings unless and until fifty per cent (50%) of the Secondary School Transport Contribution (RPI Indexed) has been paid to the County Council
- 1.3. Prior to Occupation of the twenty third (23rd) Dwelling the Owner covenants to pay to the County Council the remaining Twenty Four Thousand One Hundred Pounds (£24,100) (RPI Indexed) of the Secondary School Transport Contribution (being the remaining fifty per cent (50%) of the Secondary School Transport Contribution) SAVE where the Developer opts to make this payment prior to Occupation of the twenty-third (23rd) Dwelling
- 1.4. The Owner covenants not to Occupy or to permit Occupation of any more than Twenty Two (22) Dwellings unless and until the remaining fifty per cent (50%) of the Secondary School Transport Contribution (RPI Indexed) has been paid to the County Council

2. Bus Stop Contribution

- 2.1. Prior to Occupation of the first Dwelling the Owner covenants to pay to the County Council the Bus Stop Contribution (BCIS Indexed) SAVE where the Developer opts to make this payment prior to Occupation of the First Dwelling
- 2.2. The Owner and Developer covenant not to Occupy or to permit Occupation of any of the Dwellings unless and until the Bus Stop Contribution (BCIS Indexed) has been paid to the County Council

3. Notices – Commencement

The Owner covenants with the County Council as follows:

- 3.1. To give the County Council Notice of Expected Commencement not less than five (5) Working Days before the date that the Owner and/ or Developer expects Commencement of the Development to occur and (ii) within fifteen (15) Working Days of Commencement of Development Notice of Actual Commencement in order to confirm Commencement of Development has occurred

- 3.2. To give the County Council no less than two (2) months' written notice of the anticipated date for the first Occupation of the first Dwelling
- 3.3. Within five (5) Working Days to give written notice to the County Council following:
- 3.3.1. the date of Occupation of the first Dwelling
 - 3.3.2. the date of Occupation of the 22nd Dwelling
 - 3.3.3. Completion of the Development

SIXTH SCHEDULE

DISTRICT COUNCIL'S COVENANTS

1. GENERAL

- 1.1 At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed

2. AFFORDABLE HOUSING

The District Council covenants as follows:

- 2.1 That in the event an Affordable Housing Contribution is paid to the District Council to use the Affordable Housing Contribution for the provision of Affordable Housing within the administrative area of the District Council and for no other purpose whatsoever
- 2.2 If requested to do so in writing after the expiry of ten (10) years of the date that the last instalment of the Affordable Housing Contribution was paid pay to any person such amount of the Affordable Housing Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the District Council in accordance with the provisions of this Deed together with any Late Payment Interest due thereon such payment to be made within twenty (20) Working Days of such request
- 2.3 If the Affordable Housing Contribution paid to the District Council pursuant to this Deed has been spent or committed the District Council shall upon written request by the Owner after the expiry of ten (10) years of payment of the Affordable Housing Contribution within a further period of one (1) month notify the Owner that such monies have been spent or committed such notice to include details of what the said monies were spent on or committed to

3. PUBLIC OPEN SPACE

The District Council covenants that:

- 3.1 In the event that the Public Open Space Maintenance Contribution is paid to the District Council pursuant to paragraph 3.8 of the Third Schedule the District Council shall transfer the Public Open Space Maintenance Contribution to the Parish Council to be expended for the maintenance of the Public Open Space

4. HABITATS SITES MITIGATION CONTRIBUTION

The District Council covenants to:

- 4.1 Use the Habitats Sites Mitigation Contribution solely for the purposes as defined in this Deed
- 4.2 If requested to do so in writing after the expiry of five (5) years from the date of receipt of payment pay to any person such amount of the Habitats Sites Mitigation Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the District Council in accordance with the provisions of this Deed such payment to be made within twenty (20) Working Days of such request
- 4.3 In the event the Habitats Sites Mitigation Contribution paid to the District Council pursuant to this Deed has been spent or committed the District Council shall upon written request by the Owner after the expiry of five (5) years of the Completion of Development within a further period of twenty (20) Working Days notify the Owner that said contribution has been spent

SEVENTH SCHEDULE

COUNTY COUNCIL COVENANTS

- 1. Secondary School Transport Contribution and Bus Stop Contribution**
- 1.1 The County Council covenants to use the Secondary School Transport Contribution for the purpose of funding school transport provision for secondary-age pupils residing on the Development.
- 1.2 The County Council covenants to use the Bus Stop Contribution for the purpose of the installation of kerbs to improve access to bus stops near to the Development for those with limited mobility together with other associated improvements to such bus stops.
- 1.3 If requested to do so in writing by the Owner after the expiry of ten (10) years from first Occupation of the final Dwelling and within a further period of 1 (one) year the County Council shall repay the party that paid that Contribution any part of the Secondary School Transport Contribution or Bus Stop Contribution that has not been spent or committed 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 for that period.
- 1.4 At the written request of the Owner after the expiry of ten (10) years from the first Occupation of the final Dwelling and within a further period of 1 (one) year the County Council shall notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to.

EIGHTH SCHEDULE

DRAFT NOMINATIONS AGREEMENT

DRAFT DEED OF NOMINATION RIGHTS

is made the _____ day of _____ 20____

BETWEEN:

- (1) **XXXXXXX** whose registered address is **XXXXXXXXXXXXXXXXXX**
(‘the RP’) and
- (2) **BABERGH DISTRICT COUNCIL** of Endeavour House, 1 Russell Road
Ipswich Suffolk, IP1 2BX (‘the Council’)

Relating to

Land East of Hadleigh Road, Elmsett
(Full Planning Application Reference Dc/22/01754)

Legal Reference BM31.649

DRAFT

THIS DEED OF NOMINATION RIGHTS

is made the

day of

202

BETWEEN:

- (1) **XXXXXXX** whose registered address is **XXXXXXXXXXXXXXXXXX**
(‘the RP’) and
- (2) **BABERGH DISTRICT COUNCIL** of Endeavour House, 1 Russell Road
Ipswich Suffolk, IP1 2BX (‘the Council’)

“the Parties”

1. Definitions

In this Deed:

- 1.1 ‘Affordable Housing’ has the meaning given to it in Annex 2 of the National Planning Policy Framework published in July 2021 (as may be amended from time to time or such other national policy that may from time to time replace or update this framework) or any successor policy thereto issued by HM Government
- 1.2 ‘Affordable Housing Unit’ means the fifteen (15) Dwellings (35% of the consented Dwellings) all of which shall be Affordable Housing to be provided on the Property of which eleven (11) Dwellings shall be Affordable Rent Dwellings (unless otherwise agreed by the Council as part of the Affordable Housing Scheme) which shall be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the Council is a party or otherwise nominated by the Council pursuant to this Deed as varied from time to time and four (4) Dwellings shall

be Shared Ownership Dwellings and shall be occupied by persons in accordance with the Government's Help to Buy Scheme (or other subsequent scheme) and Affordable Housing Units shall be construed accordingly.

- 1.3 'Affordable Housing Scheme' means the Affordable Housing Mix as defined within the Section 106 Agreement dated [XX] and made between [XX] [XX] [XX] [XX] and [XX]
- 1.4 'Affordable Rent' means rent charged at a level up to 80% of the equivalent Market Rent including any service charges applicable
- 1.5 'Affordable Rent Dwelling' means an Affordable Housing Unit made available by a Registered Provider as low-cost rent 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 (inclusive of any service charges applicable) for a dwelling of comparable size in the same location.
- 1.6 'Chargee' means any mortgagee or chargee of the RP who is in possession or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or charge to realise its security or any administrator (howsoever appointed) including a housing administrator.
- 1.7 'Chargee's Duties' means the tasks and duties set out in Clause 12.4 of this deed.
- 1.8 'Choice Based Lettings Scheme' means an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Lettings Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the Council is a party.

- 1.9 'Dwelling' means a dwelling (including a house flat or bungalow and including both Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly
- 1.10 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings Scheme (or any replacement or similar system in place at the time)
- 1.11 'Homes England' means Homes England or such other organisation as may from time to time be the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers
- 1.12 'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Rent Dwelling
- 1.13 'Initial Purchase' means the first purchase of such newly constructed and previously unoccupied Shared Ownership Dwelling
- 1.14 'Local Connection Criteria' means an individual who immediately before taking up occupation of an Affordable Housing Unit
- 1.14.1 had his only or principal home in the district of Babergh for a continuous period of not less than two (2) years and in the event that there are no or insufficient individuals qualifying under this sub-paragraph then the choice of person shall default to (but with no preference in ranking order) to those individuals fulfilling the criteria set out in the following sub-paragraphs 1.14.2 to 1.14.4 inclusive.
- 1.14.2 has or a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for a continuous period of not less than two (2) years in the district of Babergh and wishes to be near that relative or

1.14.3 is employed in the district of Babergh on the date of the consideration of the individual's entitlement for an Affordable Housing Unit and has been continuously so employed for two (2) years

1.14.4 who during the period commencing from the date on which an Affordable Housing Unit to which such individual is eligible pursuant to this sub-paragraph becomes available (for the purposes of this sub-paragraph called the "Availability Date") can provide satisfactory written evidence to the Council of his or her former residency in the district of Babergh for either (i) six (6) months out of the preceding twelve (12) months or (ii) three (3) years out of the preceding five years and in either case such period of former residency shall end with the Availability Date

1.15 'Mutual Exchange' means the procedure by which a tenant may exchange their house with another council or housing association tenant

1.16 'Nomination List' means the Gateway to Homechoice Short List produced in accordance with the Gateway to Homechoice SLA

1.17 'Nominee' means a person named on the Gateway to Homechoice Short List who satisfies the Local Connection Criteria and is verified by the RP as best meeting the criteria for the category of Affordable Rent Dwelling in respect of which the RP is to select a person from the Nomination List and offer a Tenancy Agreement

1.18 'Practical Completion' means issue of a certificate of practical completion by the RP's surveyor or in the event that the Affordable Housing Units are constructed by a party other than the RP the issue of a certificate of practical completion by that other party's surveyor

1.19 'Property' means the land and dwellings at land East of Hadleigh Road, Elmsett, Suffolk shown edged red on the plan annexed

1.20 'Protected Tenant' means any tenant who has:

- (i) exercised the right to acquire pursuant to the Housing and Regeneration Act

2008 or

- (ii) exercised the right to acquire pursuant to any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit or
- (iii) any person who has staircased the equity in their Shared Ownership Dwelling to 100% and
- (iv) any successor in title to (i) to (iii) above

1.21 '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 and for the avoidance of doubt this could include the Council and Registered Providers shall be construed accordingly.

1.22 'RTA Purchaser' means a former tenant of an Affordable Housing Unit who purchases the Affordable Housing Unit under the right to buy under Part V of the Housing Act 1985 or pursuant to the right to acquire under the Housing and Regeneration Act 2008 or any similar or substitute statutory rights in force from time to time

1.23 'Shared Ownership Dwelling' means an Affordable Housing Unit to be let on a Shared Ownership Lease in accordance with the terms as set out in the Capital Funding Guide the Capital Funding Guide published by Homes England and any other publication that supercedes it and "Shared Ownership Dwellings" shall be construed accordingly

1.24 'Shared Ownership Lease' means a lease in a form approved by Homes England or where there is no such form in a form approved by the Council such lease to provide for the following:

- (a) not more than 75% and not less than 10% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider;
- (b) power to the purchaser to increase their ownership up to 100% if they so wish;
- (c) an initial rent not exceeding 2.75% of the value of the equity retained by the 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.

1.25 '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 (1) and the Council (2)

1.26 'Staircasing' means the acquisition after the date of the Initial Purchase of additional tranches of equity in the Shared Ownership Dwelling as set out in the Shared Ownership Lease for that Affordable Housing Unit and as detailed in the Capital Funding Guide published by Homes England and any other publication that supercedes it.

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

- 1.28 'Vacancy Notice' means a written notice (in a form to be agreed between the RP and given by the RP to the Council within five (5) weeks from the date of this Deed) the function of such notice being the notification to the Council by the RP of the expected date on which the construction and fitting out of the Affordable Rented Dwellings will be complete
- 1.29 'Void' means an Affordable Rent Dwelling which is vacant otherwise than as a result of the tenant having:
- 1.29.1 moved to other accommodation either by transfer or decant provided by the RP
 - 1.29.2 moved to other accommodation under a reciprocal arrangement provided by another Registered Provider
 - 1.29.3 vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere
- 1.30 'Void Notice' means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five (5) weeks from the date of this Deed) the function of such a notice being the notification to the Council of a void in respect of an Affordable Rent Dwelling

2 Enabling Provisions

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

3 Procedure

The Parties agree that the 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

4 Initial Lets/Initial Purchase

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

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

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

5. Voids

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

6. Supplemental provisions relating to allocating Initial Lets and Voids

6.1 Where there are two (2) or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in clause 1.14 of this Deed and thereafter subject to clause 6.2 of this Deed, preference must be given to the applicant/s who have the highest housing need according to the Council's current allocations policy

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

7. RP covenants

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

7.1 To ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units

7.2 To ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent or as low-cost home ownership and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider

7.3 To construct the Affordable Housing Units in accordance with Homes England requirements and the Affordable Housing Scheme

8. Alteration of lists

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

9. Notices

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

10. Transfer to other Registered Provider

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

11 Disputes

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

12 Agreements and declarations

The Parties agree:

- 12.1 Nothing in this Deed fetters or restricts the exercise by the Council of any of its powers
- 12.2 The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33
- 12.3 From the date of Practical Completion the Affordable Housing Units shall be let or sold in accordance with the terms of this Deed save that the obligations and restrictions contained in this Deed shall not be binding on:
 - 12.3.1 any RTA Purchaser;
 - 12.3.2 any Affordable Housing Unit where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, a voluntary grant scheme under section 21 of the Housing Act 1996 or any amendment or replacement thereof;
 - 12.3.3 a leaseholder of a Shared Ownership Dwelling who is entitled to exercise their right under a Shared Ownership Lease to acquire 100% of the equity of their property; or
 - 12.3.4 any mortgagee or chargee deriving title from any parties referred to in paragraphs 12.3.1, 12.3.2 and 12.3.3 above; or
 - 12.3.5 any person or body deriving title through or from any of the parties mentioned in this paragraph 12.3
- 12.4 The Chargee shall prior to seeking to dispose of the Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge give not less than two (2) months' prior notice to the Council of its intention to dispose and:
 - 12.4.1 in the event that the Council responds within one (1) month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours

to secure such transfer at a price and upon such terms as are reasonably acceptable to the Chargee

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

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

13. Mutual Exchanges

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

14. Shared Ownership Dwellings - Capital Receipts from Staircasing

Capital receipts received by the RP for shares sold between 81% and 100% must be recycled and reinvested in new Affordable Housing within the District of Babergh within two (2) years notwithstanding any Homes England requirements.

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

Signatories:

Babergh District Council
Registered Provider