

W283

DATED 5th JULY 2018

BALDEV SINGH KANG and DIMPLE HIMMAT KANG

and

WELLMEADOWPLUS LIMITED

and

SUREGOLD LIMITED

and

DOVER DISTRICT COUNCIL

and

THE KENT COUNTY COUNCIL

PLANNING OBLIGATION BY UNILATERAL UNDERTAKING
Pursuant to Section 106 of the Town and Country
Planning Act 1990 (as amended)

relating to the development of
Land at A2 Whitfield Dover Kent

We hereby certify this to be a
true copy of the original

DATED 5th JULY 2018

..... Holmes & Hills
Holmes & Hills Solicitors
Bocking End, Braintree, Essex

THIS DEED is made the 5th day of JULY 2018

AND GIVEN BY:

- (1) [REDACTED] ("First Owners") of [REDACTED]
[REDACTED]
- (2) WELLMEADOWPLUS LIMITED ("Second Owners") (company registration number 07422240) whose registered office is 8 Gilbert Road, Belvedere, Kent DA17 5DA
- (3) SUREGOLD LIMITED ("the Developer") (company registration number 06354044) whose registered office is care of Pulse Commercial, Unit 5 Baden Place, London SE1 1YW

TO:

- (4) DOVER DISTRICT COUNCIL ("the District Council") whose address is White Cliffs Business Park, Dover, Kent, CT16 3PJ
- (5) THE KENT COUNTY COUNCIL ("the County Council") whose address is County Hall, Maidstone, Kent ME14 1XQ

RECITALS

- A The First Owners are the freehold owners and registered proprietors with title absolute of that part of the Land registered at the Land Registry under title numbers TT13911.
- B The Second Owners are the freehold owners and registered proprietors with title absolute of that part of the Land registered at the Land Registry under title numbers TT11251.
- C The District Council is the Local Planning Authority for the purposes of the Act for the area in which the Land is situated.
- D The County Council is the County Planning Authority and Local Education Authority and is responsible for the provision of primary and secondary education in the area in which the Land is situated.
- E A planning application under reference number DOV/16/01328 has been submitted to the District Council for planning permission for the Development and the District Council has refused the application.

- F The Appeal has been lodged with the Secretary of State against the District Council's refusal to grant planning permission for the Development pursuant to section 78 of the Act
- G The Appeal will be considered by an Inspector appointed by the Secretary of State and in the event that the said Inspector proposes to uphold the Appeal and grant the Planning Permission and confirms that the various financial contributions contained in this Deed meet the Statutory Tests the Owners agree that the said Planning Permission should be granted subject to the planning obligations set out herein.
- H This Deed is entered into for the purposes of providing planning obligations binding the estate and interest of the Owners in the Site under Section 106 of the 1990 Act in the event that planning permission is issued

NOW THIS DEED WITNESSETH as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following words and phrases shall have the following meanings:

"the Act"	means the Town and Country Planning Act 1990 as amended
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"the 2008 Act"	means the Housing and Regeneration Act 2008
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"Affordable Housing"	means housing provided to a Person in Housing Need whose needs are not met by the market with eligibility determined with regard to local incomes and local house prices and includes Affordable Rented Housing and/or Intermediate Affordable Housing;
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"Affordable Housing Scheme"

means a scheme approved by the District Council that provides that:
(a) not less than thirty percent (30%) of the dwellings comprised within the Development will be for Affordable Housing; (b) identifies the type of Affordable Housing that the dwellings shall be used for (for example 70% Affordable Rented Housing and 30% Intermediate Affordable Housing); and (c) identifies the location of the dwellings to be used for Affordable Housing;

"Affordable Rented Housing"

means rented housing let by local authorities or Approved Bodies to Persons in Housing Need where rent controls require a rent of no more than 80% of the local market rent (including service charges, where applicable) and the expressions "Affordable Rented Housing Dwelling" and "Affordable Rented Housing Dwellings" shall be construed accordingly;

"Appeal"

means the appeal lodged with the Secretary of State pursuant to Section 78 of the 1990 Act under reference number APP/X2220/W/17/3191402 against the refusal of the District Council to grant planning

permission for the Development

"Applicable Dwelling"

means a Residential Unit erected as part of the Development which is not Affordable Housing

"Approved Body/Bodies"

means any housing association registered with the Homes and Communities Agency and approved by the District Council or any body organisation or company which is a registered charity with the Charity Commissions for England and Wales and approved by the Homes and Communities Agency or any other body organisation or company approved by the District Council and which has objects demonstrably similar to or compatible with or promoting those of a housing association;

"Commencement of the Development"

means commencement of the Development on the Land by the carrying out of a material operation pursuant to the Planning Application within the meaning of section 56(4) of the Act save that for the purposes of this Deed and for no other purpose operations consisting of

- (a) site clearance
- (b) demolition work
- (c) archaeological investigations
- (d) investigations for the purpose of assessing ground conditions
- (e) remedial work in respect of any contamination or other adverse ground conditions
- (f) diversion and laying of services
- (g) erection of temporary means of enclosure
- (h) the temporary display of site notices or advertisements

shall not amount to commencement and all references to commencement shall be construed accordingly

“Community Space”

means all public open space within the Land comprising the Local Equipped Area of Play and other landscaped/incidental areas in precise locations and to specifications to be agreed with the District Council in the Community Space Scheme

“Community Space Scheme”

means the scheme for the provision of the Community Space determined under the provisions of paragraph 1 to Schedule 3.

"Completion"

means completion of the construction and fitting out of a building such that it is suitable and available to be used for its intended purpose in accordance with the Planning Permission;

"the County Council's Costs"

means the sum of £400.00 (four hundred pounds) being the agreed contribution to the County Council's proper and reasonable costs in the preparation and registration of this Deed

"the Development"

The development of the Land by the erection of 28 dwellings (30% Affordable Housing) and creation of vehicular access (to include demolition of 14 Archers Court Road) – Land rear of Archers Court Road, Whitfield

and for the use in the manner as set out in the Planning Application

"the District Council's Costs"

means the sum of £410.00 (four hundred and ten pounds) being the agreed contribution to the District Council's proper and reasonable costs in the preparation and registration of this Deed

"Housing Needs Register"	means the register maintained by the District Council or its nominee for Persons in Housing Need;
"Indexation"	means the increase of any sum in accordance with the formula set out in clause 8
"the Inflation Index"	<p>means</p> <p>(i) in respect of the Special Protection Area contribution the Consumer Price Index published by the Office for National Statistics or any successor organisation or such other index as the District Council may reasonably nominate in the event that the Consumer Price Index shall no longer be published or its name or methodology be materially altered</p> <p>(ii) in respect of the contributions towards primary education secondary education and libraries the General Building Cost Index (as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered</p>

Surveyors)

"Interest"

Interest at 4 per cent above the base rate of the National Westminster Bank Plc from time to time

"Intermediate Affordable Housing"

means housing at prices and rents above those of Affordable Rented Housing but below market price or rents and which meet the needs of Persons in Housing Need and can include:-

- a) intermediate rented homes which are provided at rent levels above those of Affordable Rented Housing but below private rent levels;
- b) shared equity homes where more than one party has an interest in the property for example by way of an equity loan arrangement or a shared ownership lease and there may be a charge on the loan and restrictions on price access and resale;
- c) shared ownership homes whereby the purchaser buys an initial share in the equity of the property from the housing provider who retains the remainder and may charge a rent with the purchaser being able to purchase additional

shares of the equity ("staircasing") and the expressions "Intermediate Affordable Housing Dwelling" and "Intermediate Affordable Housing Dwellings" shall be construed accordingly

"the Land"

means land at A2 Whitfield Dover Kent registered at the Land Registry under title number TT11251 and 14 Archers Court Road Whitfield Dover Kent registered at the Land Registry under title number TT13911 against which this Deed may be enforced as shown more particularly delineated edged red on the Plan

"Local Equipped Area of Play"

means an unsupervised play area equipped for children of early school age to specifications to be agreed with the District Council in the Community Space Scheme

"Management Company"

means a company to be established by the Owners for the purpose of maintaining and managing the Community Space and premises and chattels and rights which have been transferred to it

"Occupy"

means the earlier of:

- i) the date that a Residential Unit is entered in the Valuation List; or
- ii) the date that a sale contract for a Residential Unit has been completed.

"the Owners"

means the "First Owners" and "Second Owners" collectively

"Persons In Housing Need"

means a person or persons registered on the District Council's Housing Needs Register or a person or persons on similar registers held by an Approved Body;

"the Plan"

means the plan annexed to this Deed

"the Planning Application"

means the outline application for planning permission to carry out the Development on the Land and given the District Council's reference number DOV/16/01328

"the Planning Permission"

means the planning permission which may be granted by the District Council pursuant to the Planning Application or by the Secretary of State pursuant to the

Appeal

"Qualifying Dwelling"

means any house or flat excluding 1 bed units of less than 56sqm GIA

"Reserved Matters Application"

means a reserved matters application pursuant to the Planning Permission

"Residential Unit"

means:

- i) a dwelling within the meaning of Use Class C3, or
- ii) a discrete unit of accommodation within Use Class C2 of the Town and Country Planning (Use Classes Order) 1987/764 (as amended), comprising part of the Development

and 'Residential Units' shall be construed accordingly

"Statutory Tests"

means the tests set out in Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010

"Trigger Date"

means each date upon which an event occurs that triggers a payment of any sum by the Owners or the Developer and/or the coming into effect of any other obligation under this Deed

"Valuation List"

means a list produced in accordance with the provisions of the Local Government Finance Act 1992 (as amended) for the purposes of determining the amount of council tax payable in respect of a Residential Unit.

2. CONSTRUCTION OF THIS DEED

- 2.1 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council and the County Council the successors to their respective statutory responsibility for the relevant function.
- 2.2 In the absence of any contrary provision any reference to a statute shall include any statutory extension modification or re-enactment for the time being in force and shall include all statutory instruments directions orders regulations plans permissions or byelaws for the time being made issued or given under the statute or deriving validity from it.
- 2.3 Words importing the masculine gender shall include the feminine and neuter gender and vice versa.
- 2.4 Words importing persons include companies corporations and firms and vice versa.
- 2.5 Unless the context otherwise requires words importing the singular shall include the plural and vice versa.
- 2.6 Headings are for ease of reference only and shall not be construed as part of this Deed.

- 2.7 Reference to any recital clause schedule or paragraph (or any part of them) shall (unless the context otherwise requires) be reference to a recital clause schedule or paragraph (or any part of them) in this Deed.
- 2.8 Wherever there is more than one person named as a party or where more than one party undertakes an obligation all their obligations shall be enforceable against all of them jointly and/or against each individually unless there is an express provision otherwise.
- 2.9 Any covenant by a party to this Deed not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by any other person.

3 STATUTORY PROVISIONS

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers.
- 3.2 All the covenants restrictions and requirements contained herein create planning obligations pursuant to Section 106 of the Act and are entered into by the Owners and the Developer to the intent that they shall bind the Owners and the Developer and their successors in title to each and every part of the Land and their assigns and shall be enforceable by the District Council and County Council (as applicable) against the Owners and the Developer.

4 CONDITIONALITY

This Deed is conditional on:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of clauses 5, 6, 8, and 11 and the Schedule which shall come into effect immediately upon the completion of this Deed.

5 THE OWNERS' AND THE DEVELOPER'S COVENANTS

- 5.1 The Owners and the Developer covenant with the District Council to observe the restrictions and perform the obligations set out in Schedule 1 and Schedule 2 and Schedule 3.

- 5.2 The Owners and the Developer covenant with the County Council to observe the restrictions and perform the obligations set out in Schedule 1 and Schedule 2 and Schedule 3.
- 5.3 The Owners and the Developer jointly and severally covenant with the District Council and separately with the County Council:
- 5.3.1 to give notice in writing to both the District Council and the County Council of the date of the Commencement of the Development not less than 14 days before such date ("the Commencement Notice").
- 5.3.2 Within 14 days after any Trigger Date to notify in writing the District Council and the County Council of the date and the event that occurred on the Trigger Date.
- 5.3.3 To retain such records and information and within 14 days of a written request by the District Council to provide the District Council with such records and information as the District Council request to enable the District Council to satisfy itself that the Developer/Owners are complying with all their obligations under this Deed and the conditions to be attached to the Planning Permission.
- 5.3.4 To pay the District Council's Costs on the completion of this Deed.
- 5.3.5 To pay the County Council's Costs on the completion of this Deed.

6 DECLARATIONS

6.1 Liability for Breach

- 6.2 No person shall be liable for a breach of any of the planning obligations or other provisions of this Deed after they have irrevocably parted with all their interest in the Land or in the part of the Land in respect of which such breach occurs pursuant to a disposal at open market value to an unconnected third party but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.3 Revocation Modification or Expiry of the Permission

This Deed shall determine and cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed revoked or modified by the District Council pursuant to the Act without the written

consent of the Developer/Owners or if the Planning Permission expires or is otherwise withdrawn prior to the Commencement of Development.

6.4 Notices

Any notice consent or approval to be given under this Deed shall be in writing and shall be deemed to be served if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the relevant party as described in this Deed or such other address as shall have been notified in writing to the party giving the notice consent or approval and in the case of a notice to be served on the District Council it should be addressed to the Development Control Manager quoting reference DOV/16/01328 and in the case of the County Council it should be addressed to the Office of the General Counsel quoting reference CHU/KEN001:091636.

6.5 Severance

If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected or impaired.

6.6 Registration as a Local Land Charge

This Deed is a Local Land Charge and to be registered as such by the District Council.

6.7 Variation

No variation or modification of this Deed shall be valid unless made by Deed and executed by all the parties or their respective successors.

6.8 Contracts (Rights of Third Parties) Act 1999

This Deed does not nor is intended to confer any rights or benefit on a third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

7 WAIVER

No waiver (whether express or implied) by the District Council or the County Council or the Owner of any breach or default by another party in performing or observing any of the covenants and terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council the County Council or the Owner from enforcing any of the said terms

or conditions which they are entitled to enforce or from acting upon any subsequent breach or default in respect thereto by that party.

8 INDEXATION

Any sum which become payable under this Deed other than the District Council's Costs and the County Council's Costs shall be increased by an amount equivalent to the increase in the Inflation Index from the date hereof until the date on which such sum is payable.

9 OVERDUE PAYMENT

In the event of any delay in making payment required under this Deed Interest shall be payable on the amount payable from the date that the relevant payment falls due to the date of actual payment.

10 CHANGE IN OWNERSHIP

The Owner undertakes to give the District Council and the County Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a scale plan.

11 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales.

IN WITNESS whereof this Unilateral Undertaking has been duly executed as a Deed by the Owners and the Developer the day and year first before written

SCHEDULE 1

FINANCIAL CONTRIBUTIONS

The Owners and the Developer for themselves and their successors in title jointly and severally covenant with the District Council and the County Council as follows:

1. To pay the sums of
 - 1.1 SEVENTEEN POUNDS AND SEVENTY-FOUR PENCE (£17.74) per Applicable Dwelling containing one bedroom;
 - 1.2 THIRTY-FIVE POUNDS AND FORTY-SEVEN PENCE (£35.47) per Applicable Dwelling containing two bedrooms;
 - 1.3 FIFTY-THREE POUNDS AND TWENTY-ONE PENCE (£53.21) per Applicable Dwelling containing three bedrooms; and
 - 1.4 SEVENTY POUNDS AND NINETY-FOUR PENCE (£70.94) per Applicable Dwelling containing four bedrooms

to the District Council towards the Thanet Coast and Sandwich Bay Special Protection Area mitigation strategy prior to the Commencement of Development

2. To pay the sums of
 - 2.1 THREE THOUSAND THREE HUNDRED AND TWENTY-FOUR POUNDS (£3,324.00) per Qualifying Dwelling which is a house; and
 - 2.2 EIGHT HUNDRED AND THIRTY-ONE POUNDS (831.00) per Qualifying Dwelling which is a flat

to the County Council in its capacity as local education authority towards the provision of additional primary educational facilities at Phase 1 Green Park Primary School prior to the Commencement of Development

3. To pay the sums of
 - 3.1 FOUR THOUSAND ONE HUNDRED AND FIFTEEN POUNDS (4,115.00) per Qualifying Dwelling which is a house; and
 - 3.2 ONE THOUSAND AND TWENTY-NINE POUNDS (£1,029) per Qualifying Dwelling which is a flat

to the County Council in its capacity as local education authority towards the provision of additional secondary educational facilities through Phase 1 of the Dover

Christ Church Secondary School Expansion prior to the Commencement of Development

4. To pay the sum of ONE THOUSAND THREE HUNDRED AND FORTY FOUR POUNDS FORTY FOUR PENCE (£1,344.44) to the County Council towards additional shelving and display units in Dover Library prior to the Commencement of Development

SCHEDULE 2

AFFORDABLE HOUSING

1. The Owners and the Developer for themselves and their successors in title jointly and severally covenant with the District Council as follows:
 - 1.1 Not to Commence the Development unless and until the Affordable Housing Scheme has been submitted to the District Council and approved in writing by the District Council
 - 1.2 Not to Occupy more than sixty-two percent (62%), or 12 in number, of the Applicable Dwellings unless and until all of the dwellings comprised within the Affordable Housing Scheme have been constructed to Completion and transferred to an Approved Body.

SCHEDULE 3

COMMUNITY SPACE SCHEME AND MANAGMENT COMPANY

The Owners and the Developer for themselves and their successors in title jointly and severally covenant with the District Council as follows:

1 Community Space Scheme

1.1 Within the submission of any Reserved Matters Application on the Development to include for approval; by the District Council the Community Space Scheme, to include:

- 1.1.1 A plan showing the proposed location of and a proposed specification for the Local Equipped Area of Play and the Community Space
- 1.1.2 A scheme for the future management of the Community Space in perpetuity
- 1.1.3 A plan confirming all Community Space areas proposed to fall within the demise to the Management Company

1.2 Subject to the approval by the District Council of the Community Space Scheme proposed by the Owners under the provisions of paragraph 1.1 of this Schedule 3, the Owners shall:

- 1.2.1 Provide the Community Space in accordance with the Community Space Scheme
- 1.2.2 Not permit the Occupation of any Applicable Dwelling without completing the Local Equipped Area of Play
- 1.2.3 Enter into a contract for the transfer of the Community Space to the Management Company for a consideration of one pound (£1) and notice of the entering into a contract shall be given to the District Council by the Owners within seven days of entering a contract and a copy of the contract shall be sent with such notice to the District Council
- 1.2.4 The Owners shall, at their own expense, continue to maintain and insure the Community Space including any play equipment, keeping all trees and vegetation at all times cultivated and in good heart, fed and watered and shall replace any damaged or dying grass, turf, trees, shrubs and other plants until all the Community Space is transferred to the Management Company

2 The Management Company

2.1 The Owners shall

- 2.1.1 Prior to the first anniversary of the Commencement of Development establish a Management Company as a limited company
- 2.1.2 Make provision to include in the transfer of each Applicable Dwelling and each Affordable Housing unit a covenant to pay an annual charge as determined by the Management Company for the maintenance of
 - 2.1.2.1 The Community Space; and
 - 2.1.2.2 Any other parts of the Land to be used in common by the residents of the Development and to be the responsibility of the Management Company
- 2.2 Not dispose of any Applicable Dwelling or Affordable Housing unit without imposing a covenant on the purchaser of said property to pay an annual charge as determined by the Management Company towards the costs incurred in maintaining the parcels of land referred to in paragraph 2.1.2 above or parts thereof
- 2.3 Upon sale of the first Applicable Dwelling to forthwith provide the District Council with copies of the Articles and Memorandum of Association of the Management Company and a copy of the transfer relating to the Applicable Dwelling including the covenants referred to in paragraphs 2.1.2 and 2.2 of this Schedule 3.

SIGNED AS A DEED by [REDACTED]

[REDACTED] the presence of:

} [REDACTED]
(signature)

(signature of witness)

(name, address and description)

SIGNED AS A DEED by [REDACTED]
[REDACTED] in the presence of:

} [REDACTED]
(signature)

(signature of witness)

(name, address and description)

SIGNED as a Deed by the said
SUREGOLD LIMITED in the
presence of:

} [REDACTED]
Director

[REDACTED]
Director/Secretary

EXECUTED as a Deed by
WELLMEADOWPLUS LIMITED
acting by a director in the presence
of:




.....
Director

(signature of witness)



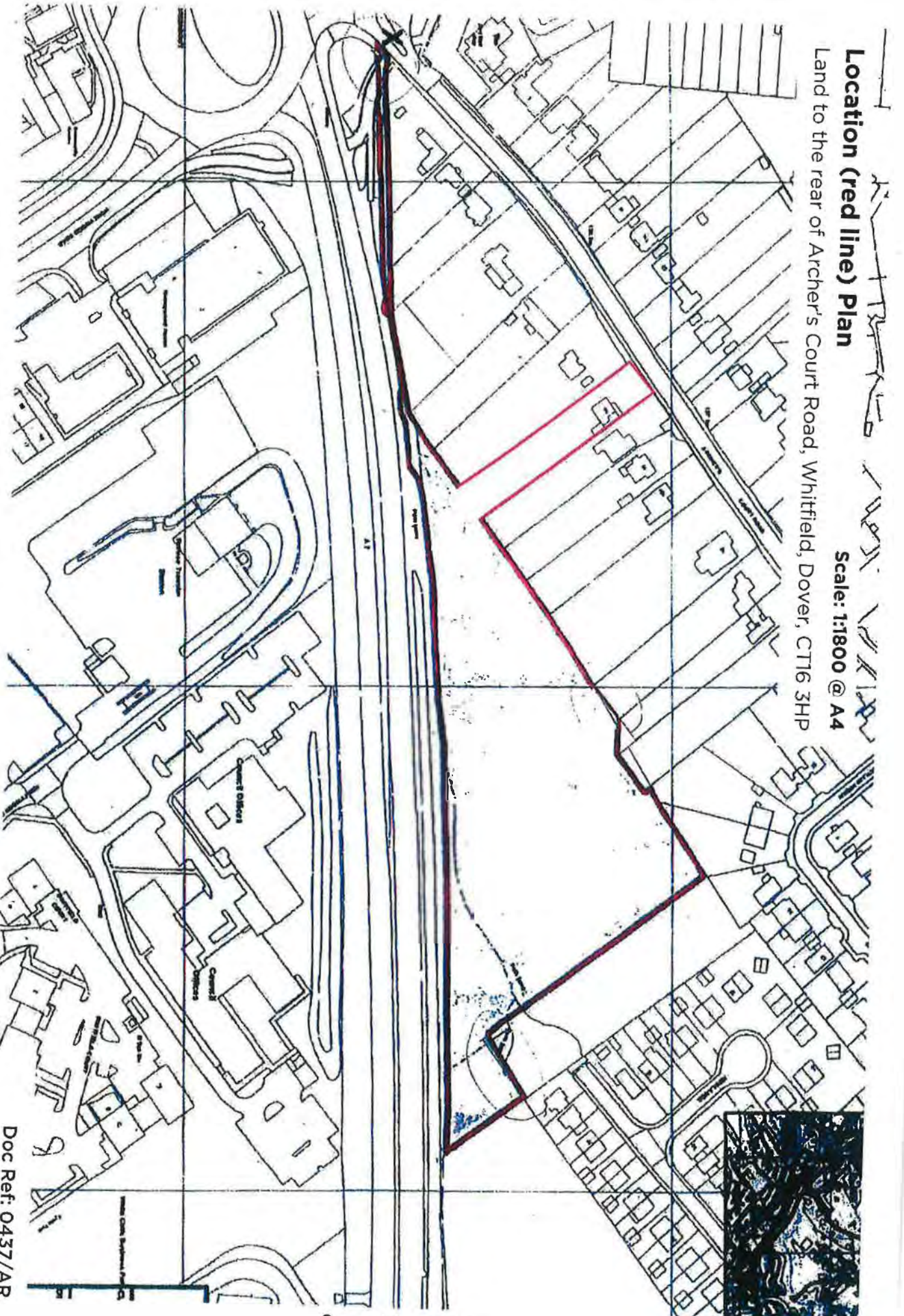
(name, address and description)



Location (red line) Plan

Land to the rear of Archer's Court Road, Whitfield, Dover, CT16 3HP

Scale: 1:1800 @ A4





Appeal Decision

Site visit made on 3 December 2018

by **[REDACTED] BA(Hons), MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10th June 2019

Appeal Ref: APP/X2220/W/17/3191402

Land to the rear of Archers Court Road, Whitfield, CT16 3HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Kang of Suregold Ltd against the decision of Dover District Council.
 - The application Ref DOV/16/01328, dated 15 November 2016, was refused by notice dated 10 November 2017.
 - The development proposed is erection of up to 28 dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 28 dwellings in accordance with the terms of the application, Ref DOV/16/01328, dated 15 November 2016, subject to the conditions set out in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Mr Kang of Suregold Ltd against Dover District Council. This application is the subject of a separate Decision.

Procedural Matters

3. Outline planning permission is sought but with access to be considered at this stage. I have determined the appeal on this basis.
4. Following the Council's decision on the application that led to this appeal, a new version of the National Planning Policy Framework (the 2018 Framework) has been published. The main parties had the opportunity to make comments on the bearing of this on the appeal. Whilst there are further revisions contained in the new version published in February 2019 (the revised Framework), no changes have been made to the content which would impact this appeal. Consequently, I consider that no prejudice would occur to any parties as a result of me taking the revised Framework into account in my assessment of the appeal's merits.

Main Issue

5. The main issue is the effect of the development on the provision of public open space.

Reasons

6. The site is allocated as open space under policy DM25 of the Dover District Local Development Framework Core Strategy (Adopted February 2010) (the Core Strategy), and I observed that there is access from at least two locations leading to informal walking paths which appear to be well used, running through woodland.
7. Policy DM25 of the Core Strategy sets a number of exceptions where the loss of open space would be acceptable. Of most relevance is (iii): *'where there is such a deficiency [an identified quantitative or qualitative deficiency in public open space in terms of outdoor sports sites, children's play space or informal open space] the site is capable of contributing to making it good, a replacement area with at least the same qualities and equivalent community benefit, including ease of access, can be made available'*. The site is currently used as informal open space, however the evidence before me suggests that the area is deficient in outdoor sports sites and children's play space.
8. The proposed development would result in a reduction in the quantity of informal open space. However, the development proposes the provision of a Locally Equipped Area of Play (LEAP) and would secure the ongoing maintenance and insurance of the LEAP and the other publicly accessible open space within the proposed development. This would reduce the deficiency of children's play space in the area. The site would be accessed via the existing footpath entrances, but also via a new vehicle/pedestrian path leading to Archers Court Road improving the ease of access. Therefore there would be a quantitative and qualitative improvement in the provision of children's play space. Furthermore, the plans indicate that part of the existing footpath could be maintained within a landscaped setting preserving part of the existing informal open space's community benefit.
9. Whilst there would be a loss in the quantity of open space, the development would provide a replacement area which would retain some of the existing footpaths, would provide a community benefit in terms of the provision and maintenance of a LEAP, and would create a new more formal entrance to the site to improve ease of access for all. This is proposed to be secured via the Unilateral Undertaking (UU) submitted with this appeal.
10. Although the Council makes the comment that the deficiency has not been 'identified', the alternative scenario is that there is no deficiency and exception (i) to policy DM25 would apply which would mean loss of open space could occur.
11. For the reasons above I conclude that the development would not have a harmful effect on the provision of public open space and as such, in this respect, would not be contrary to the aims of Policy DM25 of the Core Strategy or to the general aims of the advice in paragraphs 92 and 97 of the Framework.

Other Matters

12. The evidence submitted suggests that residential development is likely to have a significant effect on the interest features of nearby Sandwich Bay, which falls within the Thanet Bay Special Protection Area (SPA), due to the potential disturbance of birds, due to increased recreational activity in this location. The

site is stated to be designated for its protected species, which includes birds. Given the harm identified above, the proposal would adversely affect the integrity of the site. As the competent authority, I am required to undertake an appropriate assessment which has involved consultation with Natural England.

13. The Thanet Coast SPA Mitigation Strategy (the MS) was produced in 2011 and recommends that these pressures can be appropriately mitigated through wardening and other measures including signage, leaflets and the introduction and enforcement of regulations such as dog control areas. The MS was agreed with Natural England and as such I am content to rely on the mitigation measures proposed within it. I understand that this document may be subject to revision to determine whether or not mitigation is required, as part of a Local Plan review. However I am not provided with substantive detail in relation to these potential changes, and therefore my decision is based on the evidence before me now.
14. I am presented with a UU which, in the event that planning permission were to be granted, would secure payments of £17.74 per one bedroom dwelling £35.47 per two bedroom dwelling, £53.21 per three bedroom dwelling and £70.94 per four bedroom dwelling to secure this mitigation. These figures are broadly in line with the MS, which also sets out a justified methodology for calculating these amounts. I am also satisfied that the proposed mitigation does not constitute infrastructure for the purpose of the CIL regulations. Therefore I am satisfied that the UU provides adequate mitigation for the effect on the SPA.
15. The planning obligation includes a requirement to pay £3,324.00 per house and £831.00 per flat to secure the provision of additional primary education facilities and £4,115.00 per house and £1,029.00 per flat towards secondary educational facilities, these amounts have been proposed by Kent County Council in line with their review of school build costs and these amounts have not been disputed by the appellant. I am presented with evidence to show that the development would result in a shortage of school places nearby, and that the payments would be towards expansion of a local primary and secondary school. Based on the information before me, I am satisfied that this would be required to provide adequate mitigation for the impact on local schools.
16. It also includes mitigation in the form of £1,344.44 towards Library shelving and display units. This sum is directly related to the development and is calculated on the basis of the expenditure required to provide for the residents of the proposed homes.
17. It would also require that 30% of the residential units are affordable. This would ensure that the proposed development would meet the requirements of the development plan and provide an appropriate level of affordable housing.
18. The UU would secure the provision of public open space including a LEAP and the ongoing maintenance and insurance of this Community Space. As explained in the main issue above, such provision of this nature and scale is required to make the development acceptable in planning terms.
19. Issues including the principle of the development, character and appearance, effect on living conditions of existing occupiers, highways, the quality of living conditions for future occupiers, biodiversity, drainage and flood risk, and that the site should be reserved for future works to the A2 have been drawn to my

attention. These matters are largely identified and considered within the Council officer's report and the Council did not feel that these were reasons to refuse the application. I have not been provided with substantive evidence which would lead me to a different conclusion and in these respects I agree with the Council.

20. An appeal at a nearby site, 12 Archers Court Road¹, has also been brought to my attention. While the full details of this case are not before me, from the evidence submitted I see that this relates to a single new dwelling in an existing residential garden. The scale and setting for this development is significantly different to that before me as part of this appeal, and therefore I afford the particular circumstances of this appeal limited weight.
21. I am also aware that an appeal decision for the appeal site was issued in 2016². In this case the Inspector found that based on the evidence before him, the proposed development would fail to protect local biodiversity. The appeal before me now is supported by a phase 1 Ecological Survey which concludes the proposed development would protect habitats and species of conservation concern and I understand these findings have been supported by the Council's Ecologist. Therefore, based on the evidence before me in respect of this appeal I am satisfied that I have sufficient evidence to conclude that, subject to the recommendations in the phase 1 survey, there would be an acceptable effect on biodiversity.

Conditions and Conclusion

22. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance and have made such amendments as necessary to comply with those documents.
23. I have attached conditions relating to the submission of reserved matters and the time limits associated with this. I have also included a condition specifying the relevant plans as this provides certainty.
24. A condition requiring details of the existing trees and hedgerows to be submitted with the reserved matters relating to layout is attached in the interests of character and appearance and ecology, and a further condition requires detailed protection measures for these trees in the interests of visual amenity and biodiversity.
25. In the interests of both visual amenity and the living conditions of adjoining occupiers details of site levels require approval. This information shall be required prior to commencement as it relates to survey information of the existing site. A scheme for the enhancement of biodiversity is required to ensure acceptable ecological impacts. A construction management plan is required in the interests of both highway safety and residential amenity. As this covers the full length of the construction period, this information is required prior to commencement. The proposed carriageways, footways, turning circles, access and visibility splays, parking and cycle parking should be provided before occupation in the interests of highway safety, residential amenity and to promote more sustainable means of travel. Details of refuse storage are required in order to ensure appropriate refuse provision, and a condition

¹ APP/X2220/W/16/3152054

² APP/X2220/A/14/2217154

relating to noise mitigation measures is required in order to provide appropriate living conditions for future occupiers. Archaeological investigation is justified for the reasons given by Kent County Council Archaeology at the application stage, and the securing of the Right of Way is required in order to secure appropriate community benefits to the proposed open space. A condition in relation to contaminated land would be necessary in order to avoid harm to health the environment or living conditions.

26. Conditions relating to SUDs and foul water drainage are required in order to ensure an acceptable impact on the sewerage system. Based on the evidence submitted, I am satisfied that the works to be undertaken by Southern Water are due to be completed in 2020. Therefore there is a reasonable likelihood of the action in question being performed within the time-limit imposed by the permission.
27. Conditions in relation to affordable housing and an open space management plan were recommended by the Council. However, these are broadly covered in the UU and therefore the conditions do not meet the tests of necessity. One aspect relating to the implementation of the community space is not included in the UU so this is secured as a condition in order to comply with development plan policy DM25 of the Core Strategy.
28. For the reasons above, and subject to the conditions listed below, this appeal should be allowed.


INSPECTOR

Schedule of Conditions:

- 1) Details of the appearance, landscaping and scale (hereinafter called "the reserved matters"), shall be submitted to and approved in writing by the local planning authority before development takes place. The development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The commencement of development shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 0413/ARIWC/2 received on 18.10.2017, 0437/AR received 15.11.2016
- 5) No development shall commence until details of the existing site levels, proposed site levels and finished threshold levels of each building have been submitted to and approved in writing by the local planning authority.
- 6) No development shall commence above ground until a scheme for the enhancement of biodiversity on site has been submitted to and approved in writing by the local planning authority. The approved scheme shall take account of any protected species that have been identified in the surveys and include a timetable for implementation. Such protection measures shall include:
 - a) Bat surveys to Trees T24 and T29 should these be identified at later stages for removal;
 - b) Any pruning of the Trees T24 and T29 should be supervised by an appropriately licenced ecologist;
 - c) Details of all lighting for the site which shall fully comply with the Bat Conservation Trust Guidance;
 - d) No disturbance of breeding birds between 1st March and 11th August. If scrub and/or trees need to be removed during this period, the area subject to such removal should be inspected by a suitably experienced ecologist no later than one week prior to removal;
 - e) The use of boundary materials designed so that they can be negotiated by hedgehogs.
 - f) Details of the nature and extent of habitat creation for all habitat types to include the specification of native seed mixes and species for tree/shrub planting;
 - g) Ecological design considerations for the proposed sustainable drainage system;
 - h) Habitat management practices to promote biodiversity within the retained areas of trees;
 - i) Programme of and arrangements for monitoring against stated and measurable objectives;

- j) Procedure for the identification, agreement and implementation of contingencies and/or remedial actions where the monitoring results show objectives are not being met; and
- k) A management plan and maintenance plan for the lifetime of the development and details of the body/organisation(s) responsible for implementation of the plan.

In addition a biodiversity scheme including enhancements shall be submitted at the reserved matters stage and include the following:

- i) Provision of a wildlife pond
- ii) The use of native planting for the supplementary of any landscape buffer and site boundaries
- iii) The use of bat and bird boxes
- iv) Any other enhancements identified in the Extended Phase 1 Habitats Survey and Species surveys dated 15.11.2016.

Development and future management shall be carried out in accordance with the approved scheme.

- 7) No development shall commence until a site-wide Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include and provide for:
- a) the management and routing of construction traffic, including: the location of access points for site traffic, routes within the site to be kept free of obstruction, parking of construction vehicles and vehicles of site operatives and visitors, wheel washing facilities, a scheme for the prevention of surface water discharges onto the highway, directional signage on and off site;
 - b) loading and unloading of plant and materials;
 - c) the location and size of site compounds and areas for storage of plant and materials used in constructing the development;
 - d) the location and form of temporary buildings and temporary lighting, details of the erection and maintenance of security hoardings;
 - e) details for the safe storage of any fuels, oils and lubricants;
 - f) a scheme to control surface water run-off, prevent pollution and manage flood risk;
 - g) details of proposed temporary sewerage systems;
 - h) a scheme for the handling and storage of topsoil;
 - i) measures, including the construction of exclusion zones, to prevent soil compaction in large scale planting areas and measures to remediate soil compaction;
 - j) details of measures to protect trees and hedgerows;

- k) a scheme for the protection of areas of ecological interest and mitigation of any harm to such areas, including timing of works and precautionary work practices;
- l) measures to control the emission of dust and dirt during construction;
- m) measures for the control of noise and vibration during construction, including delivery and construction working hours;
- n) a scheme for recycling/disposing of waste resulting from construction works;
- o) procedures for maintaining good public relations, including complaint management procedures, community consultation and liaison; and
- p) The operation of the CMP in the context of any phased implementation of the construction period.

The approved CMP shall be adhered to throughout the construction period.

- 8) No development shall commence until the precise location and boundaries of the areas of formal and informal public open space to be provided and a timetable for delivery has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. The public open space shall be retained thereafter and used for public amenity purposes only.
- 9) No development shall commence above ground until a detailed surface water drainage scheme based on sustainable drainage principles, effective long-term maintenance of the scheme and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a) Infiltration testing of the site to establish ground conditions, infiltration rates and design criteria,
 - b) identify methods to manage surface water runoff up to the 1:100 year event plus climate change,
 - c) set out the proposed (SuDS) methods to delay and control the surface water discharged from the site in order to mitigate the risk of surface water flooding on the site, avoid increasing the flood risk downstream and prevent pollution of the receiving groundwater and/or surface waters,
 - d) a management and maintenance plan for the lifetime of the development which shall include a timetable for implementation, the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime,
 - e) A verification report to demonstrate the suitable operation of the approved drainage system.

The approved surface water drainage scheme shall be implemented in full before occupation and thereafter managed and maintained in accordance with the approved details.

- 10) No occupation of the dwellings hereby approved shall take place until the relevant phase of Southern Water's planned capital works for Whitfield for

improvements to the foul sewerage network and its capacity has been completed. Confirmation shall be obtained of the availability of capacity in the network to be submitted and approved by the local planning authority.

- 11) Prior to the submission of the first reserved matters application full details of the proposed means of disposal of foul water discharge from the development, a long term management and maintenance plan and a programme/timetable for its implementation shall be submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved scheme has been fully implemented and retained and maintained thereafter.
- 12) If, during the course of construction of the approved development, contamination on the site is found to be present or caused, the occurrence shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development or relevant phase of development is resumed or continued.
- 13) The application for the reserved matter of 'layout' shall include a survey of the development site as existing including, the following information at a suitable scale:
 - a) Location, species, girth or stem diameter, accurately planned crown spread and reference number of all trees on and adjoining the site with a stem diameter of 75 mm or greater at a point 1.5 metres above ground level.
 - b) A numbered tree condition schedule with proposals for removal of trees, details of retained trees and for surgery or other works, where applicable, to retained trees.
 - c) Existing and proposed levels including, where appropriate, sufficient detail to allow proper consideration of existing tree protection.
 - d) Location, spread and other relevant details of existing hedgerows, hedges and other significant areas of vegetation.
 - e) Location and dimensions of existing watercourses, drainage channels and other aquatic features with water, invert and bank levels as appropriate.
 - f) Existing boundary treatments and forms of enclosure.
- 14) The approved development shall be carried out in such a manner as to avoid damage to the existing trees, including their root systems, and other planting to be retained by putting in place the following measures prior to commencement of the development:
 - a) All trees to be preserved shall be marked on site and protected during any operation on site by temporary fencing in accordance with BS 5837:2005 (or as may be subsequently amended). Such tree protection measures shall remain throughout the period of construction
 - b) No fires shall be lit within the spread of branches or downwind of the trees and other vegetation;

- c) No materials or equipment shall be stored within the spread of the branches or root protection area of the trees and other vegetation;
- d) No roots over 50mm diameter shall be cut, and no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches or root protection areas of the trees and other vegetation at any time;
- e) Ground levels within the spread of the branches or root protection areas (whichever the greater) of the trees and other vegetation shall not be raised or lowered in relation to the existing ground level.
- f) No trenches for underground services shall be commenced within the root protection areas of trees which are identified as being retained in the approved plans, or within 5m of hedgerows shown to be retained without the prior written consent of the local planning authority. Such trenching as might be approved shall be carried out to National Joint Utilities Group recommendations.

These measures shall be retained as such for the duration of the construction period.

- 15) No dwelling shall be occupied until the approved access to the site and visibility splays, sightlines and their associated highway works have been provided and carried out in full. There shall be no obstructions to visibility over 1 metre above carriageway level within the splays. The accesses, splays and sightlines shall be retained as such thereafter.
- 16) No dwelling shall be occupied until space has been laid out within the site for cars to be parked. These vehicle parking spaces shall be retained for this purpose thereafter.
- 17) No dwelling shall be occupied until the following works have been completed:
 - a) Footways and/or footpaths (with the exception of the wearing course)
 - b) Carriageways (with the exception of the wearing course); including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any are required by the Highway Authority).
- 18) No dwelling shall be occupied until the site has been provided with vehicular turning facilities, visitor and communal parking spaces and an access road. Details of these facilities, spaces and road shall have been submitted to and approved in writing by the local planning authority and these shall be provided to an adoptable standard and retained as such thereafter.
- 19) No dwelling shall be occupied unless that dwelling has been provided with covered cycle parking facilities. Details of the number and location of each of these cycle parking facilities shall have been submitted to and approved in writing by the local planning authority. These facilities shall be retained as approved thereafter.
- 20) No dwelling shall be occupied unless that dwelling has been provided with refuse and recycling facilities. Details of the type and location of these facilities shall have been submitted to and approved in writing by the local planning authority prior to occupation. These facilities shall be retained as such thereafter.

- 21) No development shall commence above ground until details of the existing and proposed route of the Public Right of Way, public footpath ER54 has been submitted to and approved in writing by the Local Planning Authority. No development shall take place over the Public Right of Way until details of the confirmation of its diversion or extinguishment have been obtained and submitted to the local planning authority.
- 22) No development shall take place until a written specification and timetable for a programme of archaeological works has been submitted to and approved in writing by the local planning authority. The development shall take place in accordance with these approved details.
- 23) No development shall commence above ground until a detailed noise mitigation scheme for protecting the dwellings hereby approved from noise from the A2 (London Road) has been submitted to and approved in writing by the local planning authority. Such a scheme shall accord with the recommendations of the Noise Impact Assessment dated 22.02.2017 and shall include the erection of at least a 4 metre high acoustic fence along the southern A2 boundary as identified in the approved plans. The approved noise mitigation measures shall be fully completed before any dwelling is occupied and shall thereafter be permanently retained and maintained in that form.