

Dated 20 July 2022

**DOVER DISTRICT COUNCIL**

and

**ENGLISH RURAL HOUSING ASSOCIATION LIMITED**

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**PLANNING OBLIGATION BY DEED OF A G R E E M E N T**

Under Section 106 Town and Country Planning Act 1990  
relating to -  
Land to the South West of Village Hall Coxhill  
Shepherdswell  
Kent

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Ref: SML/ERHA-1-117  
Planning Reference: 20/01508

2022

20th

July

- ## 1. INTERPRETATION

- 1.1 Save as herein provided the Interpretation Act 1978 shall apply to this Agreement as if this Agreement were an Act of Parliament
- 1.2 In this Agreement the following words and expressions shall unless the context otherwise requires have the meanings set opposite them:

## MEANINGS

means any of the ten dwellings referred to as social housing in the Planning Application to be constructed on the Application Site pursuant to the Planning Permission and to be managed by a Registered Provider of Social Housing at an Affordable Rent in accordance with the provisions of this Agreement to be located on the land shown edged red on the attached Plan 2

means a rent which does not exceed 80% of the local open market rent (inclusive of any service charges where applicable) for the relevant property type

all that land known as land to the South West of Village Hall  
Coxhill Shepherdsweil Kent the subject of the Planning

Application shown edged red on the Plan and where the context requires any part or parts of that land

**“Commencement”**

the commencement of the carrying out of a Material Operation in relation to the Development (and cognate expressions with an initial capital letter “C” such as “Commence” shall be construed accordingly)

**“Complete”**

the date that a Dwelling is substantially ready for Occupation by a resident and “Completed” and “Completion” shall be construed accordingly

**“the Council”**

Dover District Council of Council Offices, White Cliffs Business Park, Whitfield, Dover CT16 3PJ in its statutory capacity as a local planning authority or any successor planning authority including any agent or any other person appointed or nominated by it for the purpose of this Agreement

**“Development”**

the development of the Application Site by the construction of thirteen (13) dwellings as set out in the Planning Application and described in the First Schedule or substantially the same development as may be approved by the Council pursuant to a lawful amendment or variation to the Planning Permission

**“Dwelling”**

any one of the ten Affordable Housing Units to be constructed on the Application Site in accordance with the Planning Permission

**“the Head of Planning, Regeneration and Development ”** the Head of Planning, Regeneration and Development of the Council or such other person as may be appointed from time to time by the

	Council to discharge the functions of the post including the nominee of the Head of Planning, Regeneration and Development
<b>“Immediate Family”</b>	one or more of the parents, child, children, siblings or other relationship where it can be demonstrated to the satisfaction of the Council that there is a genuine need to give or receive support or that the person or persons could normally be expected to reside together
<b>“Implementation Date”</b>	the date specified in the Implementation Notice
<b>“Implementation Notice”</b>	the notice served by the Owner on the Council announcing its intention to implement the Development by the carrying out of a Material Operation in accordance with and pursuant to the Planning Permission on a specified date no earlier than two (2) weeks from the date of the Implementation Notice
<b>“Index”</b>	the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
<b>“Index Linked”</b>	adjusted in accordance with provisions of Clause 5 (and <b>“Index Linking”</b> shall refer to the process of such adjustment)
<b>“Interest”</b>	interest at two percentage points above the base rate of the Bank of England from time to time and calculated under Clause 6

**“Local Criteria”**

a person fulfils the Local Criteria in relation to a Parish (being either the Principal Parish or the Neighbouring Parishes) if:

- (i) the person is a member of either:
  - (a) a self-contained household; or
  - (b) a newly-forming household constrained from forming a self-contained household by its lack of accommodation suitable to meet its housing needsand which household is unable to afford to purchase or rent accommodation within that Parish suitable to meet its housing needs from its own resources (which shall be taken to include any ability to borrow on mortgage and any state-funded financial support); and
- (ii) one of the following paragraphs applies:-
  - (a) the person has had his or her only or principal home in that Parish for a continuous period of at least three years immediately prior to making an application; or
  - (b) the person has had his or her only or principal home in that Parish for a period of (or periods totalling) not less than five years within the last ten years immediately prior to making an application; or
  - (c) the person has been previously resident in that Parish and has parents, child, children or siblings who have been resident in the Parish for a continuous period of at least ten years and intend to remain resident in the Parish prior to making an application; or
  - (d) the person is employed either in full time or Part Time Employment in the Parish; or

- (e) the person needs to relocate his or her only or principal home to that Parish to take up full time or Part Time Employment within the Parish; or
- (f) the person needs to relocate his or her only or principal home to that Parish in order to effectively provide or receive support to or from one or more members of the person's Immediate Family who has or have their only or principal home in that Parish and has or have no plans to leave that Parish,

and where the Parish Council of the Principal Parish or the Neighbouring Parishes, as applicable, has confirmed in writing to the Council and the Registered Provider of Social Housing that the conditions set out in either (a) (b) (c) (d) (e) or (f) are met or if not met, then the final decision is to be by the Council and the Registered Provider of Social Housing

**“Local Person”**

either:-

- 1 a person who fulfils the Local Criteria in relation to the Principal Parish; or
- 2 if the relevant Registered Provider of Social Housing has used reasonable endeavours (which includes advertising on the Council's choice based lettings scheme advertising in at least two consecutive parish magazines (if one exists) poster displays on parish notice boards parish shop windows community centres and other locations where they are likely to be seen by potential applicants for at least six months before Completion for first lettings or if a re-let then within fourteen (14) days of

notification from the vacating occupier) to identify a person within 1 above, but has been unsuccessful, a person who fulfils the Local Criteria in relation to the Neighbouring Parishes; or3. if there is no appropriate person who fulfils the Local Criteria 1 and 2 above, such other person as the Council may approve, after, if appropriate, discussion with the Parish Council of the Principal Parish, in its absolute discretion and on such terms as it may consider appropriate in the particular case.

**“Material Operation”**

a material operation within the meaning of Section 56(4) of the Planning Act save that for the purpose of this definition the carrying out of any work of demolition works of site clearance ground investigation and site survey works construction of boundary fencing or hoardings construction of temporary accesses and/or highway works archaeological investigation site decontamination or remediation works landscaping works and noise attenuation works shall not be deemed to be the carrying out of any  
**“Material Operation”**

**“Monitoring Fee”**

The sum of £236 Index Linked towards the Council’s costs of monitoring the Development and checking compliance with the provisions of this Deed and the Planning Permission

**“Neighbouring Parishes”**

the Parishes of Eythorne & Elvington, Womenswold and Lydden (or any of them) in the County of Kent each as defined by their administrative boundaries from time to time

<b>“Nomination Agreement”</b>	means a written agreement to be entered into between the Council and the Owner granting 50% nomination rights to the Council and 50% nomination rights to the Owner in respect of each and every letting of an Affordable Housing Unit
<b>“Occupation”</b>	occupation of a Dwelling other than occupation for the purpose of construction security marketing or repair (and cognate expressions with an initial capital letter “O” such as Occupy shall be construed accordingly)
<b>“Open Market Dwelling”</b>	any dwelling forming part of the Development other than the Affordable Housing Units
<b>“Owner”</b>	The Owner and any successors in title of the Application Site or part thereof
<b>“Part Time Employment”</b>	a minimum of 10 hours work per week on a permanent contract
<b>“Plan”</b>	the plan annexed hereto and marked <b>“Plan”</b>
<b>“Plan 2”</b>	the plan annexed hereto and marked <b>“Plan 2”</b>
<b>“Planning Act”</b>	the Town and Country Planning Act 1990
<b>“Planning Application”</b>	the application for Planning Permission registered by the Council under reference 20/01508 (being the application for the erection of 13 dwellings)
<b>“Planning Permission”</b>	the planning permission granted or authorised to be granted pursuant to the Planning Application by way of a decision notice



<b>“Principal Parish”</b>	the Parish of Shepherdswell in the County of Kent as defined by its administrative boundaries at the date of this Agreement
<b>“Registered Provider of Social Housing”</b>	a body registered as a provider of social housing under part 2 of the Housing and Regeneration Act 2008 or such other class of body as may be constituted under any legislation replacing that provision
<b>“Working Guidelines and Service Level Agreement”</b>	guidelines for the allocation of dwellings as set out in the Council’s current “Affordable Housing – Rural Exception Schemes SPD” or any replacement guidance which may be issued by the Council from time to time

- 1.3 Reference in this Agreement to a clause schedule paragraph or part are references where the context so admits to a clause schedule paragraph of a schedule or part of a schedule in this Agreement and references in a schedule to a paragraph or a part are (unless the context otherwise requires) reference to a paragraph or part of that schedule
- 1.4 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement
- 1.5 Covenants made hereunder:-
- (i) if made by more than one person or company are made jointly and severally; and
  - (ii) are to the intent that the same shall bind whomsoever shall become a successor or successors in title to the relevant part of the Application Site; and
  - (iii) shall operate as a charge on the Application Site and shall be registered in the Council’s register of local land charges
- 1.6 All references 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

2. **RECITALS**

- 2.1 The Council is the local planning authority for the purpose of the Planning Act for the area within which the Application Site is situate and for the purpose of this Agreement is the authority by whom the planning obligations hereinafter contained are enforceable
- 2.2 The Owner is interested as freehold owner in the Application Site by virtue of a Transfer of the Application Site dated 23 March 2022 between The Church Commissioners for England and English Rural Housing Association Limited and which is being registered at the Land Registry with title absolute
- 2.3 The Council's Planning Committee resolved to grant Planning Permission for the Development on 20 January 2022 subject to the completion of this Agreement under section 106 of the Planning Act
- 2.4 The Council and the Owner have accordingly agreed to enter into this Agreement pursuant to the provisions of section 106 of the Planning Act upon the terms and conditions hereinafter appearing with the intention that it should be binding not only upon the Council and the Owner but also upon their respective successors in title and any persons claiming through under or in trust for them

3. **AGREEMENT**

- 3.1 This Agreement is completed pursuant to section 106 of the Planning Act and the covenants by the Owner hereinafter contained shall be ones to which the provisions of section 106 of the Planning Act and section 111 of the Local Government Act 1972 shall apply and shall be binding and enforceable against the Owner and its successors in title to the Application Site or any part or parts thereof
- 3.2 The obligations of the Owner contained in the Second Schedule will be conditional on the grant of Planning Permission and will take effect from the Commencement of Development and will be enforceable as applicable by the Council

- 3.3 The parties hereby agree and acknowledge that the covenants obligations and restrictions pursuant to this Agreement shall only be enforceable against the Owner in the event that the Development is Commenced pursuant to the Planning Permission
- 3.4 No party will be liable for any breach of the covenants obligations and restrictions contained in the Second Schedule of this Agreement in respect of any period during which that party no longer has an interest in the Application Site or the part in respect of which the breach occurs
- 3.5 Subject as herein provided the Owner for itself and its successors in title to the Application Site hereby agrees and covenants with the Council that the Application Site shall be subject to the terms restrictions and obligations as to the manner of carrying out the Development and otherwise contained in the Second Schedule
- 3.6 If the Council agrees pursuant to an application by the Owner under Section 73, 73A or 96A of the Planning Act to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal by the Owner under Section 78 of the Planning Act this Agreement shall also apply to any development carried out pursuant to such varied planning permission granted pursuant to Section 73, 73A, 78 or 96A of the Planning Act and the covenants or provisions in this Agreement shall be deemed to be accordingly modified to correspond to any such varied permission
- 3.7 Nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local planning authority, or local housing authority or in any other capacity and, in the exercise of such functions, its rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council was not a party to this Agreement
- 3.8 In the event that any part of this Agreement may be subject to challenge review deletion or otherwise be rendered null void or voidable the balance of the said Agreement shall remain in full force and effect so long as the issue of the Planning

Permission to the Owner and the commercial purpose and intent of this Agreement are not materially and adversely affected

3.9 It is hereby agreed and declared between the parties that this Agreement is not to be interpreted as the granting of any consent or approval under any legislation whatsoever

3.10 It is hereby agreed and declared between the parties hereto that this Agreement constitutes the whole agreement between the parties relating to the subject matter and that subject to Sections 106A and 106B of the Planning Act any release variation or discharge of the Owner's or the Council's liability under the Agreement shall not take effect unless evidenced in writing in a document under the seal of the Council

3.11 There is no express or implied intention on the part of any of the parties hereto that any of the rights or obligations contained within this Agreement shall be enforceable by any person who is not a party to this Agreement except so far as he shall be a successor in title to the Owner in respect of the Application Site

#### 4 **NOTICES**

Any notice under this Agreement shall be in writing and shall be duly served if it is delivered or sent by first class post to a party at:

4.1 its address given in this Agreement;

4.2 its registered office;

4.3 such other address as may be notified in writing from time to time and has actually been so notified

#### 5 **INDEXATION**

5.1 Where any sum mentioned in this deed is stated to be "Index Linked" the stated sum or the part of it which is payable shall be increased in line with the Index

5.2 Indexation shall be calculated by applying to such sum the percentage increase in the Index between the quarterly Index figure for the period specified and the quarterly Index figure for the quarter immediately preceding the date of actual payment of such sum

5.3 In the event that the index ceases to be published then the Council shall specify an alternative index to be used and after the date of such cessation the relevant increase shall be taken as referring to the increase in such alternative index from the date of cessation

## 6. **INTEREST**

If any payment due under this deed is not made by the date on which it is due, the sum due shall bear Interest from the due date until the date on which payment is received and the Owner covenants with the Council to pay any Interest accrued at the same time as the principal sum on which it has accrued

## 7 **THIRD PARTY RIGHTS**

A person or body that is not (or is not a successor in title to) a party to this Agreement shall not in their own right enforce the terms covenants and obligations of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999

## 8 **COSTS**

On completion of this Agreement the Owner covenants to pay the Council's reasonable legal costs incurred in connection with the completion of this Agreement

## 9 **DISPUTE**

If any dispute or question whatever arises between the parties as to the construction or effect of any provision in this Agreement the matter in dispute will be determined by an expert appointed by agreement between the parties or in the absence of agreement

within fourteen (14) days if one party gives notice to the others of its nomination or nominations appointed by the president for the time being of the Royal Institution of Chartered Surveyors on the application of any party to this agreement whose decision (including on the question of costs) shall be final

## 10 **PARTIES**

Nothing in this Agreement shall create a legal partnership between any of the parties

## 11 **GOVERNING LAW AND JURISDICTION**

This Agreement and any dispute or claim arising out of or in connection with it or its formation (including non-contractual disputes) is to be governed by and interpreted in accordance with the law of England

**IN WITNESS** whereof the parties hereto have executed this Agreement as a deed the day and year first before written

## **THE FIRST SCHEDULE**

### **The Development**

The erection of 13 dwellings of which 10 are proposed as affordable rent (rural exceptions housing) with associated parking and new access road

## **THE SECOND SCHEDULE**

### **Planning obligations**

The Owner covenants for itself and its successors in title with the Council as follows:-

#### **1. Implementation Notice**

- 1.1 Prior to Commencement of Development to serve the Implementation Notice on the Council
- 1.2 Not to Commence Development before the Implementation Date specified in the Implementation Notice

#### **2. Local Needs Rural Housing**

- 2.1 No Affordable Housing Unit shall be Occupied otherwise than by a Local Person (together with any Immediate Family) nominated in accordance with the Nomination Agreement
- 2.2 No Affordable Housing Unit shall be used other than as Affordable Housing and the tenure of each Affordable Housing Unit shall accord with that specified in the Third Schedule
- 2.3 No Affordable Housing Unit shall be managed other than by a Registered Provider of Social Housing approved in writing by the Council

- 2.4 Not to permit or otherwise allow any of the Affordable Housing Units to be let other than at a sum not exceeding the Affordable Rent
- 2.5 No more than one (1) Open Market Dwelling may be Occupied before all of the Affordable Housing Units are ready for Occupation
- 2.6 The Owner will endeavour to allocate Affordable Housing Units to Local Persons registered with the Council's choice based letting systems Kent Homechoice SUBJECT TO the Owner's nomination rights under the Nomination Agreement to undertake direct lettings and to allocate Affordable Housing Units to Local Persons who are unable to register with Kent Homechoice

**General Restriction**

- 2.5 On any transfer of an Affordable Housing Unit to a Registered Provider of Social Housing, to use its reasonable endeavours to procure that the Registered Provider of Social Housing (or any such other body or entity providing affordable housing as the Head of Planning, Regeneration and Development may expressly approve in writing for the purpose of such transfer or lease in the Council's absolute discretion) covenants with the Council (if required by the Council acting reasonably) not to use or Occupy any Affordable Housing Unit or permit it to be Occupied otherwise than in accordance with a Nomination Agreement or arrangement agreed in writing between the Head of Planning, Regeneration and Development and the Registered Provider of Social Housing in accordance with any statutory requirements or any reasonable housing requirements of the Council and for the avoidance of doubt on any freehold or leasehold transfer of the Application Site or any Affordable Housing Unit to the leasehold owner as a Registered Provider of Social Housing the leasehold owner covenants with the Council and with the freehold owner to comply with the requirements of this paragraph 2.5 such as to discharge the freehold owner's reasonable endeavours obligation hereunder
- 2.6 The 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 Unit or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

2.6.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit; and

2.6.2 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 Unit 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

2.6.3 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 Unit free from the provisions in this Agreement which provisions shall determine absolutely

2.8 Action to be taken prior to any disposition leading to a change of proprietorship or disposition by way of transfer or lease or the grant or transfer of any tenancy or licence of any Affordable Housing Unit (excluding for the avoidance of doubt dispositions such as the freehold transfer of the Application Site which do not lead to a change of tenancy of any Affordable Housing Unit)

2.8.1 if there are in existence Working Guidelines, a Service Level Agreement or other similar agreement between the Council, the Owner and the relevant parish council for the allocation of the Affordable Housing Unit: then the procedures for the allocation of the Affordable Housing Unit set out in such Working Guidelines shall be adhered to subject to the following but if there are no Working Guidelines or agreement in place or if in the absolute reasonable discretion of the Council it is not being complied with, then

2.8.2 the Owner will send written notice to the Council (addressed to the Head of Planning, Regeneration and Development) of the person(s) to whom such disposition grant or transfer is intended to be made together with such other information as the Council shall within fourteen (14) days of receipt of such notice properly and reasonably request and not to complete such disposition until the Head of Planning, Regeneration and Development shall have confirmed in writing that the Council is of the opinion that the said person is a Local Person (such decision being conclusive and binding upon the Owner and such person provided that in the case of fraud concealment miss-statement or mistake the Council may reconsider such decision) **PROVIDED THAT** this covenant shall not apply to the extent that any such disposition is covered by the terms of a written waiver signed by the Head of Planning, Regeneration and Development in relation to any dispositions other than transfers of tenancies and **PROVIDED FURTHER** that the decision of the Council shall be forthcoming within fourteen (14) working days failing which the Owner shall be entitled to proceed with such disposition grant or transfer

2.8.3 To provide within fourteen (14) days of being requested to do so in writing by or on behalf of the Council such confirmation whether any covenant herein contained has been is being or will be complied with

### 3. **MONITORING FEE**

Not to commence Development until the Owner has paid to the Council on or before the Commencement Date the Monitoring Fee Index Linked from the date hereof

**THE THIRD SCHEDULE**  
Affordable Housing Scheme

Dwelling Type	Number of units	Tenure Type
One bedroom flats (plots 3 and 4)	2	Affordable Rent
Two bedroom flats (plots 5 and 6)	2	Affordable Rent
Two bedroom houses (plots 1, 2, 8 and 9)	4	Affordable Rent
Three bedroom houses (plots 7 and 10)	2	Affordable Rent

THE COMMON SEAL of DOVER DISTRICT COUNCIL was hereunto )  
affixed in the presence of )

Authorised Signatory



171230

THE COMMON SEAL OF ENGLISH RURAL  
HOUSING ASSOCIATION LIMITED

Was hereunto affixed in the presence of:

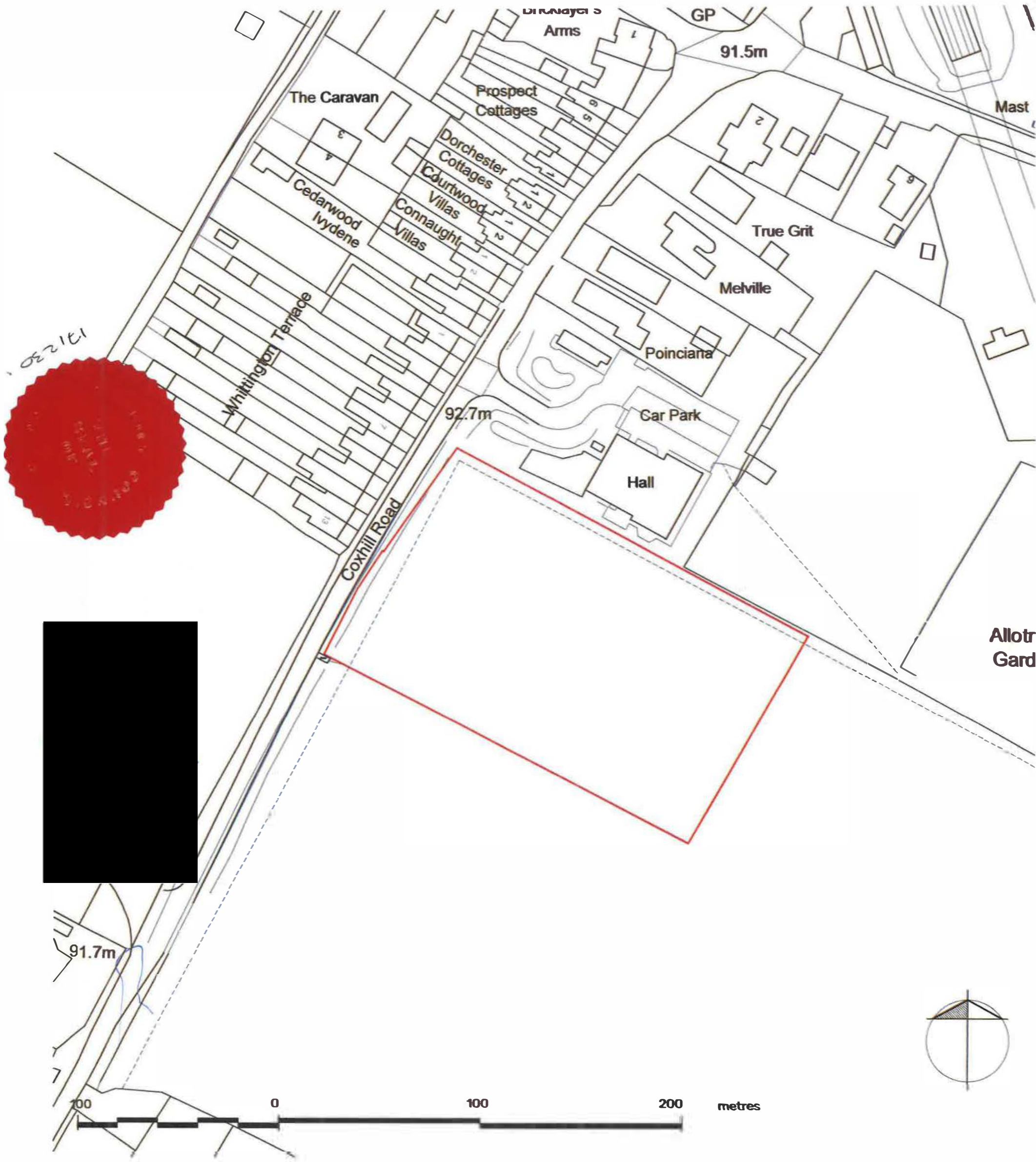
Authorised signatory:



Authorised signatory:



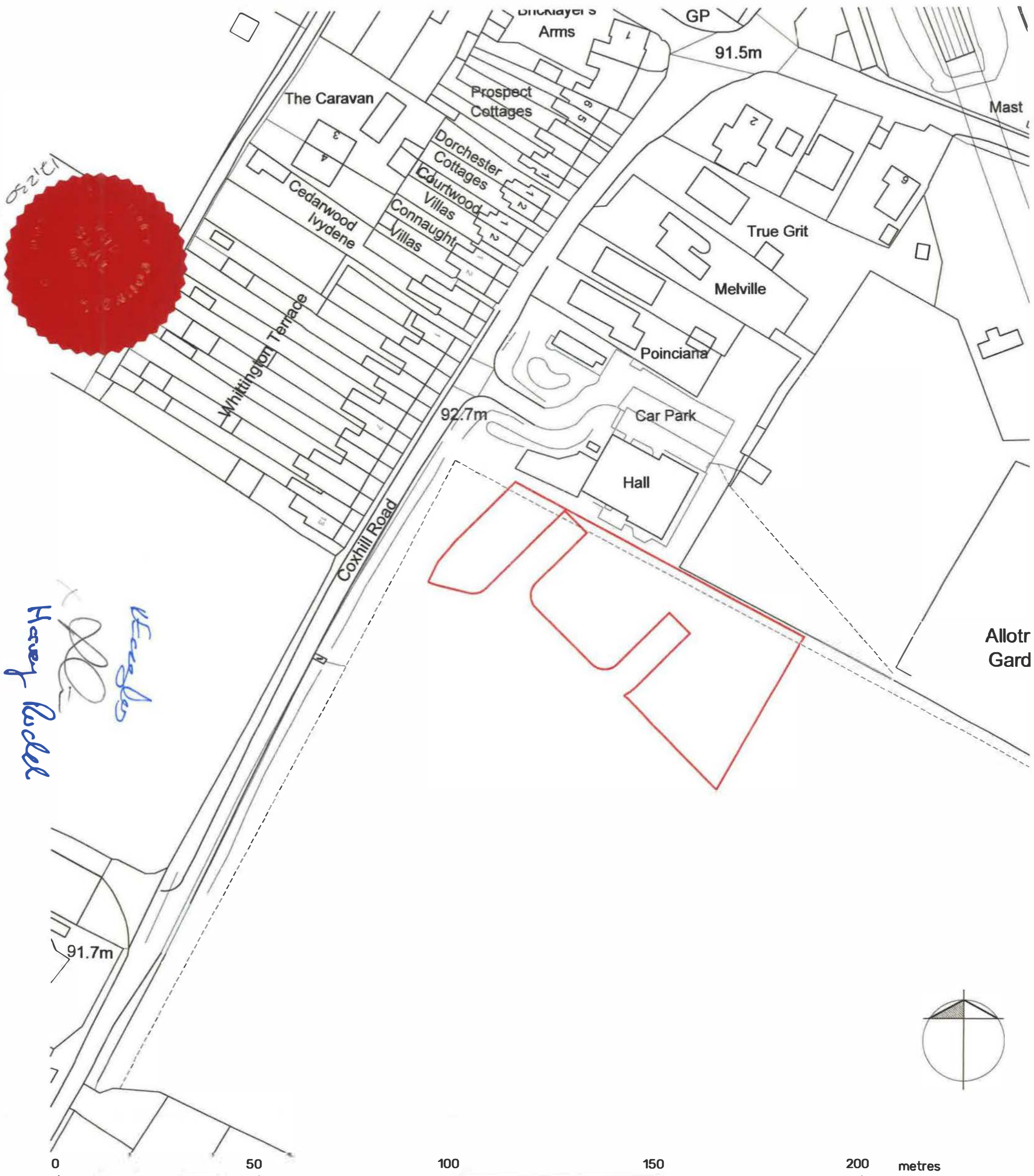
1613 (SHEP) 0622



 <div>Wynnehan Building, Occupation Rd, Wye, Ashford, Kent TN25 5BN 01233 812148</div> <div>The Porter Building, 1 Brunel Way, Slough SL1 1PQ 01753 968361 www.osgarchitecture.com</div>	<b>Project Title</b> <b>Proposed Residential Development at Land adjacent Village Hall Coxhill Road Shepherdswell, Kent</b>	<b>Drawing Description</b> <b>Land Transfer Plan (Church Commissioners)</b>		<b>Drawn By</b> TK	<b>Checked By</b> TK
		<b>Scale @ A4</b> <b>1:1250</b>		<b>Purpose</b> <b>PRELIMINARY</b>	
				<b>Drawing No.</b> <b>19-0873_02</b>	
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Harry Buckle

W. Buckle



Wyseplan Building,  
Occupation Rd,  
Wye, Ashford,  
Kent TN25 5EN  
01233 812 148  
  
The Porter Building,  
1 Brunel Way,  
Slough SL1 1PQ  
01753 968 361  
  
www.osgarchitecture.com

Project Title.  
**Proposed Residential  
Development at Land  
adjacent Village Hall  
Coxhill Road  
Shepherdswell, Kent**

Drawing Description.  
**Land Transfer Plan  
(Community Land Trust)**

Scale @ A4.  
**1:1250**

Date.  
**March 2022**

Drawn By. <b>TK</b>	Checked By. <b>TK</b>
Purpose <b>PRELIMINARY</b>	
Drawing No. <b>19-0873_110</b>	Rev.

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