

DATE: 25 November

2022

AARDVARK HOMES LIMITED

and

[REDACTED]

and

[REDACTED]

and

[REDACTED]

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

Relating to the Development of land
at Lynwood, Sandwich Road,
Whitfield, CT16 3JX

Ref: **DOV/20/00493**

THIS DEED is made the **25** day of **November** 2022

GIVEN BY

(1) AARDVARK HOMES LIMITED (Company registration no: 060267409) of Unit 1A, Park Farm Industrial Estate, Folkestone, Kent, CT19 5EY ("the First Owner"); and

(2)

TO

DOVER DISTRICT COUNCIL ("the District Council") of White Cliffs Business Park, Dover, Kent, CT16 3PJ

RECITALS

- 1 The First Owner is the freehold owner of the land registered under title number K221924 and being the land on which the Development is to be carried out.
- 2 The Second Owners are the freehold owners of neighbouring land registered under title number K537883 a small part of which is required to provide and maintain a visibility splay in order for the Development to be acceptable in planning terms.
- 3 The District Council is the Local Planning Authority for the purposes of the Act for the area in which the Land is situated.
- 4 The Planning Application has been submitted by the First Owner to the District Council seeking permission to undertake the Development and the First Owner and the Second Owners give this undertaking to the District Council in order to mitigate the impact of the Development on highway safety by ensuring the provision and maintenance of an appropriate visibility splay.

NOW THIS DEED WITNESSETH as follows:

1 DEFINITIONS AND INTERPRETATION

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

"Act"

means the Town and Country Planning Act 1990 as amended

"Commencement of the Development"

means 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

"Development"

the development of the Land for use in the manner as set out in the Planning Application being the erection of 4 detached dwellings with integral garages, parking and vehicle access at Lynwood, Sandwich Road, Whitfield, CT16 3JX

"Disputes Resolution Procedure"

means the procedure referred to in clause 8 and set out in the Second Schedule hereto

"Dwelling"

means any dwelling constructed pursuant to the

Planning Permission

"First Owner's Land"

means the land known as Lynwood, Sandwich Road, Whitfield, Dover, CT16 3JX and registered with HM Land Registry under title number K221924 shown edged red on Plan 1

"the Land"

means the First Owner's Land and the Visibility Splay.

"Occupation"

means occupation for any purpose permitted by the Planning Permission but does not include occupation by personnel engaged in the construction fitting-out or decoration or occupation for marketing or display or occupation in relation to security operations of any part of the Development and for the avoidance of doubt in the case of a sale of a freehold or long leasehold interest to a third party Occupation commences the date of legal completion of the sale rather than exchange of contracts and "Occupy" "Occupier" "Occupiers" and "Occupied" shall be construed accordingly

"Plan 1"

means the plan attached to this Deed at Appendix 1

"Plan 2"

means the plan attached to this Deed at Appendix 2

"the Planning Application"

means the application for planning permission to carry out the Development on the First Owner's Land and given the District Council's reference number **DOV/20/00493**

"the Planning Permission"

means the planning permission to be granted by the District Council pursuant to the Planning Application

"the Second Owners' Land"	means the land known as part of Eastling Down Farm, Sandwich Road, Whitfield, Dover and registered with HM Land Registry under title number K537883.
"Statutory Undertakers"	means statutory undertakers as defined in Article 2 of the Town and Country Planning (General Permitted Development) Order 2015
"Visibility Splay"	means that part of the Second Owners' Land within title number K537883 shown edged red on Plan 2

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 to the successor to its statutory functions.
- 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.
- 2.9 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 First Owner and the Second Owners to the intent that it shall bind their respective interests in the First Owner's Land and the Visibility Splay and their successors in title to each and every part thereof and their assigns and shall be enforceable by the District Council.

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: 6.3, 6.7, 6.8, 8, 10

5 THE FIRST OWNER'S AND THE SECOND OWNERS' COVENANTS

- 5.1 The First Owner and the Second Owners covenant with the District Council to observe the restrictions and perform the obligations set out in the First Schedule.

6 MISCELLANEOUS

- 6.1 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.
- 6.2 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 other than at the request of the First Owner by the District Council pursuant to the Act without the written consent of the First Owner or if the Planning Permission expires or is otherwise withdrawn prior to the Commencement of Development.
- 6.3 If the District Council agrees pursuant to an application by the First Owner under Section 73 or 73A 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 First 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 or 73A or 78 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.

- 6.4 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 Head of Planning and Development quoting reference: DOV/20/00493
- 6.5 Where any approval consent directions action or authority is required to be given by any of the parties hereto such approval consent directions action or authority shall (unless otherwise stated) not be unreasonably delayed or withheld and shall only be effective if given in writing signed by or on behalf of the relevant party and given for the purposes of this Deed.
- 6.6 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.
- 6.7 This Deed is a Local Land Charge and shall be registered as such by the District Council.
- 6.8 Nothing contained or implied in this Deed shall fetter prejudice or affect the rights discretions powers duties and obligations of the District Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 6.9 No variation or modification of this Deed shall be valid unless made by Deed and executed by all the parties or their respective successors.
- 6.10 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.
- 6.11 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.
- 6.12 This Deed shall not be enforceable against Statutory Undertakers holding land for their operational purposes
- 6.13 Nothing in this Deed shall prohibit or limit the right to develop any part of the First

Owner's Land in accordance with a planning permission (other than the Planning Permission including any new permission granted pursuant to an application by the First Owner under Section 73 or 73A of the Act) granted (whether or not on appeal) after the date of this Deed.

7 WAIVER

No waiver (whether express or implied) by the District Council 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 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 DISPUTE RESOLUTION

8.1 Any dispute between the parties under the terms of this Deed may be referred to an expert under the Dispute Resolution Procedure set out in the Second Schedule.

8.2 The decision of an expert appointed under the Dispute Resolution Procedure shall be final and binding on all of the parties to the dispute.

9. COUNCIL'S COSTS

The First Owner shall pay to the District Council on the date of this deed:

(a) the District Council's legal costs in the sum of £1100 together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

(b) the sum of £239 as a contribution towards the District Council's costs of monitoring the implementation of this deed.

10 JURISDICTION

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

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

FIRST SCHEDULE

The First and Second Owners' Covenants

1. The First Owner shall not permit the Occupation of any Dwelling constructed under the Planning Permission unless and until the Visibility Splay is provided in accordance with paragraph 2 of this First Schedule.
2. The First Owner and the Second Owners covenant with the District Council to provide and thereafter maintain the Visibility Splay and at all times shall keep the Visibility Splay free from any obstruction and by regular cutting and trimming of any vegetation that is growing on or onto the Visibility Splay.

SECOND SCHEDULE

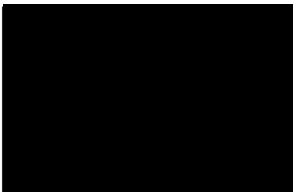
Dispute Resolution Procedure

- 1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to paragraph 1 of this Schedule or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 3 Any expert howsoever appointed shall be subject to the express requirement that

a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

- 4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.
- 5 The provisions of this clause shall not affect the ability of the District 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.

EXECUTED and delivered as a deed by)
AARDVARK HOMES LIMITED by a)
Director)



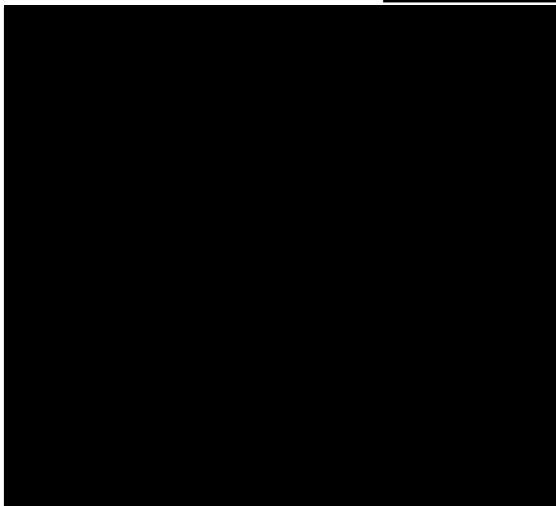
in the presence of:

Witness Signature

Witness Name

Witness Address

Witness Occupation



SIGNED and delivered as a deed by

)

[REDACTED]

)

in the presence of:

Witness Signature

Witness Name

Witness Address

Witness Occupation

SIGNED and delivered as a deed by

)

[REDACTED]

)

in the presence of:

Witness Signature

Witness Name

Witness Address

Witness Occupation

SIGNED and delivered as a deed by

)

[REDACTED]

)

in the presence of:

Witness Signature

Witness Name

Witness Address

Witness Occupation

APPENDIX 1

THE SITE PLAN

H. M. LAND REGISTRY

Plan 1

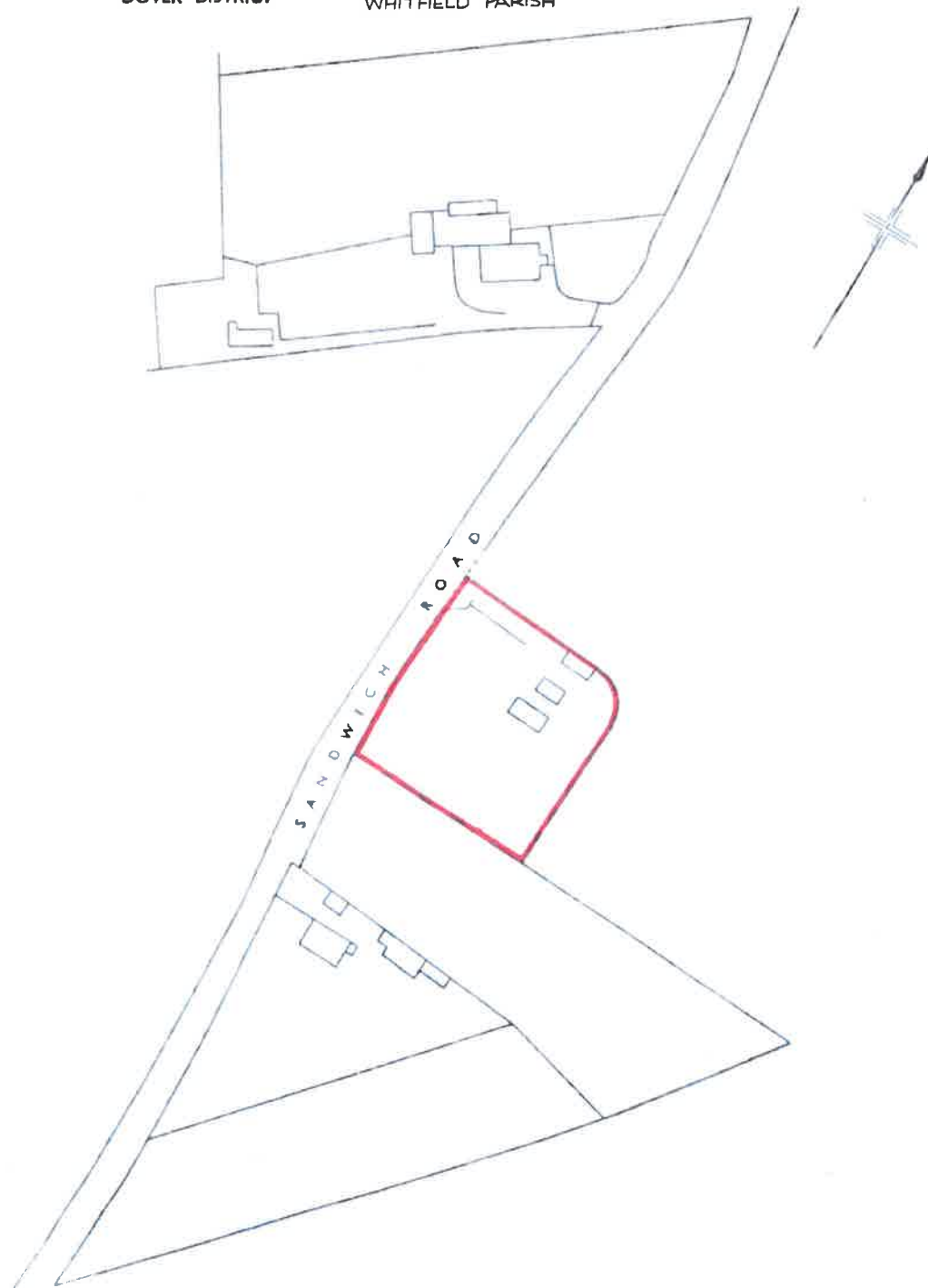
NATIONAL GRID PLAN
KENT

TR 3046

Scale 1/1250
Enlarged from 1/2500

DOVER DISTRICT

WHITFIELD PARISH



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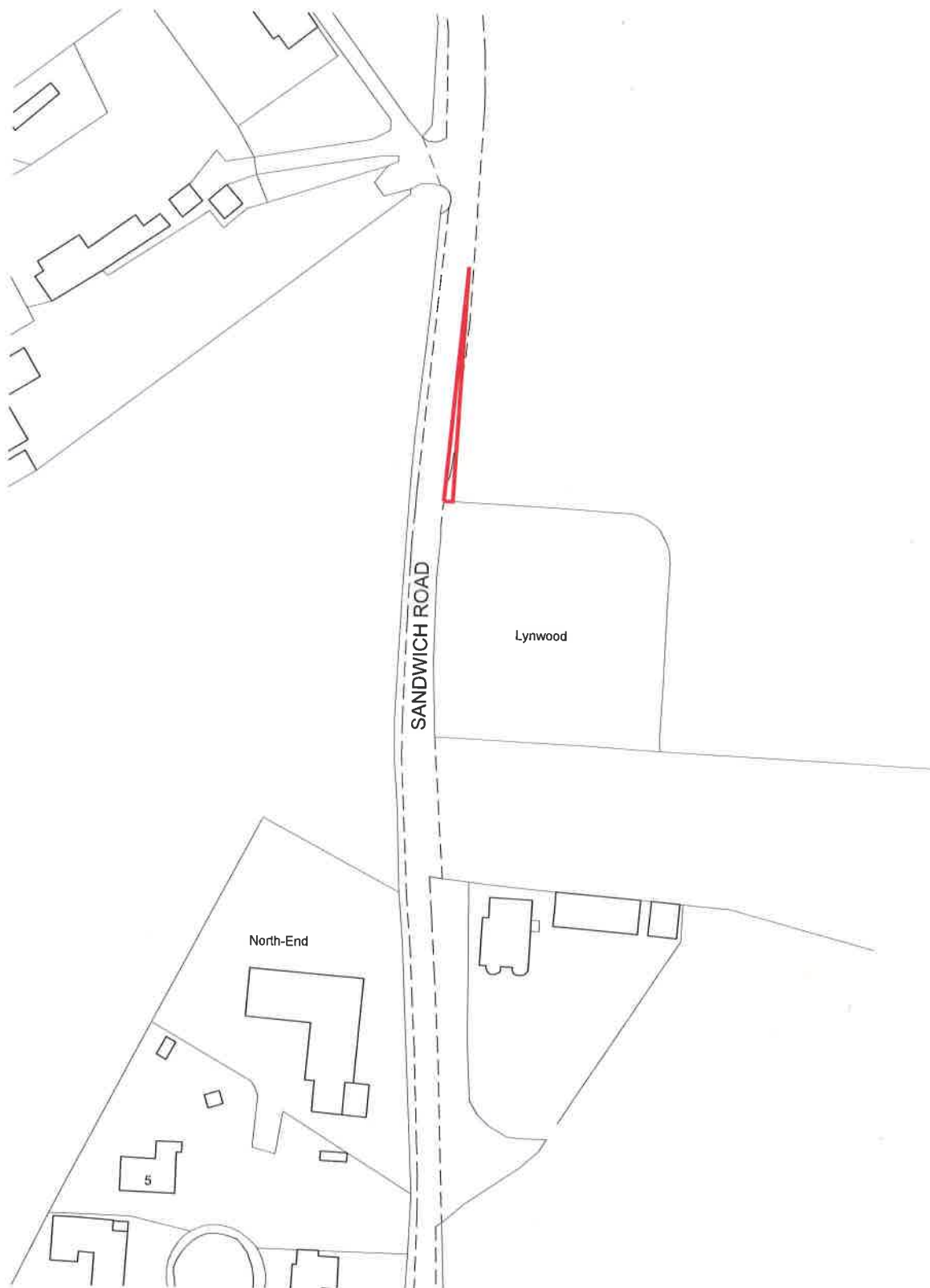
Filed Plan No. K221924

APPENDIX 2

THE VISIBILITY SPLAY



Plan 2



Client Aardvark Homes

Project Residential
 Development
 Lynwood

Title Conveyance Plan

Scale 1:1250 @ a4 Date June 2022 Job No 17.123.150 Rev -

Evegate Park Barn, Evegate, Smeeth, Ashford, Kent. TN25 6SX Company No. 09363947

T: 01303 814455 E: projects@rdaarchitects.co.uk W: www.rdaarchitects.co.uk

