

DATE: 17 February

2023

DOVER DISTRICT COUNCIL

and

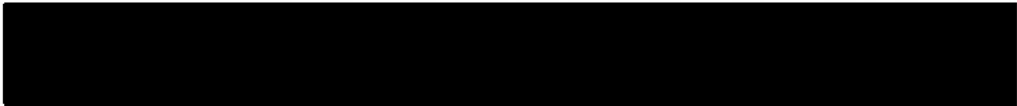


PLANNING OBLIGATION BY DEED OF AGREEMENT
Pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended)

Relating to the development of
land at Aylesham Working
Mens Club, Burgess Road,
Aylesham, Canterbury

THIS DEED is made the 17 day of February 2023

PARTIES

- (1) DOVER DISTRICT COUNCIL ("the District Council") of White Cliffs Business Park, Dover, Kent, CT16 3PJ
- (2) 

RECITALS

- 1 The Owner is the freehold owner of the Land being part of the land registered under the Title
- 2 The District Council is the Local Planning Authority for the purposes of the Act for the area in which the Land is situated.
- 3 The County Council is the County Planning Authority and Local Education Authority and is responsible for the provision of education, library, adult social; community, youth, waste and adult social, services for the area in which the Land is situated.
- 4 The Planning Application has been submitted by the Owner to the District Council seeking permission to undertake the Development and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed the need for which would not be generated but for the Development.
- ~~5 The District Council resolved on 15 September 2022 to grant planning permission~~
to carry out the Development subject to the prior completion of this Deed and the conditions to which the Planning Permission is expressed to be subject.

NOW THIS DEED WITNESSETH as follows:

1 DEFINITIONS AND INTERPRETATION

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

"the Accessible Green Space Contribution"	means the sum of £1,445.58 paid as a contribution towards the provision of accessible green space within the settlement of Aylesham
"the Act"	means the Town and Country Planning Act 1990 as amended
"Affordable Housing"	means affordable housing as defined in Annex 2 to the National Planning Policy Framework.
"the Affordable Housing Contribution"	means the sum of £162,750.00 paid as a contribution towards the provision of Affordable Housing within the district of Dover.
"the Children's Equipped Play Space Contribution"	means the sum of £5,206.06 paid as a contribution towards the improvement of the Station Field, Aylesham play area
"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

“the Community Learning Contribution”

means the sum of £344.82 paid as a
contribution towards additional resources
for Dover District Adult Education
Service

“the County Contributions”

means the Community Learning
Contribution, the Libraries Contribution,
the Secondary Education Contribution,
the Primary Education Contribution, the
Social Care Contribution, the Youth
Services Contribution and the Waste
Contribution together

"the County Council"

means THE KENT COUNTY COUNCIL
of County Hall, Maidstone, Kent ME14
1XQ

"County Council Index"

means the General Building Costs Index
as prepared by the BCIS for the RICS or
such other index as the County Council
may reasonably nominate in the event
that the Index shall no longer be
published or its name or methodology be
materially altered

"the Development"

The development of the Land by the
erection of a three-storey residential
building comprising 21 self-contained
flats, a drinking establishment and
associated parking and formation of an
additional access and for use in the
manner as set out in the Planning
Application

"the Disputes Resolution Procedure"

means the procedure referred to in
clause 12 and set out in the Third
Schedule hereto

"the District Council Contributions"

means the SAMM Contribution, the
Affordable Housing Contribution, the
Accessible Green Space Contribution,
the Outdoor Sports Contribution, the
Children's Equipped Play Space
Contribution and the Monitoring Fee
together

"the District Council's Costs"

means the sum of £800 being the
agreed contribution to the District
Council's proper and reasonable legal
and administrative costs for the

preparation, execution and registration
of this Deed

"Dwelling"

means a dwelling (including a house,
flat, maisonette or bungalow) to be
constructed pursuant to the Planning
Permission and 'Dwellings' shall be
construed accordingly

"the Index"

means the "all Items" index figure of the
Index of Retail Prices published by the
Office for National Statistics or such
other index as the District
Council may reasonably nominate in the
event that the Index of Retail Prices shall
no longer be published or its name or
methodology be materially altered

"Interest"

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

"the Land"

Means the land known as land at
Aylesham Working Mens Club, Burgess
Road, Aylesham, Canterbury against
which this Deed may be enforced as
shown more particularly edged red on
the attached Plan

"the Libraries Contribution"

means the sum of £1,164.45 paid as a
contribution towards the provision of
additional resources, equipment and
stock to be made available at Aylesham
Library

"Monitoring Fee"

means the sum of £236 paid as a
contribution towards the costs of

monitoring the compliance of the Development with the terms of this Deed

"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

"the Outdoor Sports Facilities Contribution"

means the sum of £5,389.02 paid as a contribution towards the provision of outdoor sports facilities within the settlement of Aylesham

"the Plan"

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 Land and given the District Council's reference number **DOV/20/00693**

"the Planning Permission"

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

“the Primary Education Contribution”

means the sum of £8,123.50 paid as a contribution towards the expansion of St. Joseph’s Catholic Primary School, Aylesham

“the SAMM Contribution”

means the sum of £539.32 paid as a contribution towards the District Council’s Thanet Coast and Sandwich Bay SPA Strategic Access Mitigation and Monitoring Strategy dated September 2022

“the Secondary Education Contribution”

means the sum of £7,945.00 paid as a contribution towards the expansion of selective and non-selective secondary schools within the district of Dover

“the Social Care Contribution”

means the sum of £3,084.48 paid as a contribution towards the provision of specialist care accommodation, assistive technology systems, adapting community facilities, sensory facilities and changing places within the district of Dover

“the Title”

means title number TT37028 registered with title absolute at HM Land Registry

“Trigger Date”

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

“Trigger Event”

means an event that triggers a payment of any sum by the Owner and/or the coming into effect of any other obligation under this Deed

"the Waste Contribution"

means the sum of 1,194.12 paid as a contribution towards works at the Dover Household Waste Recycling Centre to increase capacity

"the Youth Services Contribution"

means the sum of £1,375.50 paid as a contribution towards the provision of additional resources for the Youth Service locally including: Pie Factor Music, detached youth work covering anti-social behaviour and normal and preventative services , Aylesham Youth Provision and Not in Education Employment or Training, and local grants to Aylesham young people projects

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 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.
- 2.8 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 Owner to the intent that it shall bind the Owner and their successors

in title to each and every part of the Land and their assigns and shall be enforceable by the District Council against the Owner.

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: 3, 4, 5.2.1, 5.2.4, 7.3, 7.7, 7.8, 11, 13 and 14

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the District Council to observe the restrictions and perform the obligations set out in the First Schedule.

5.2 The Owner covenants with the District Council and separately with the County Council:

5.2.1 to give notice to the District Council of the date of the Commencement of the Development not less than 14 (fourteen) days before such date occurs ("the Commencement Notice").

5.2.2 Within 14 (fourteen) days after any Trigger Date to notify the District Council of the date and the event that occurred on the Trigger Date.

5.2.3 To retain such records and information and within 14 (fourteen) 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 Owner is complying with all their obligations under this Deed and the conditions to be attached to the Planning Permission.

5.2.4 To pay the District Council's Costs on the completion of this Deed.

6 THE DISTRICT COUNCIL'S COVENANTS

The District Council covenants with the Owner to perform the obligations set out in the Second Schedule.

7 MISCELLANEOUS

- 7.1 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.
- 7.2 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 by the District Council pursuant to the Act without the written consent of the Owners or if the Planning Permission expires or is otherwise withdrawn prior to the Commencement of Development.
- 7.3 If the District Council agrees pursuant to an application by the Owner under Section 73 or 73A of the 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 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 Act and the covenants or provisions in this Agreement shall be deemed to be accordingly modified to correspond to any such varied permission
- 7.4 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 Regeneration and Development quoting reference: DOV/20/00693 and in the case of the Owner it should be addressed to [REDACTED]
[REDACTED]
- 7.5 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.
- 7.6 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.
- 7.7 This Deed is a Local Land Charge and shall be registered as such by the District Council.
- 7.8 Nothing contained or implied in this Deed shall fetter prejudice or affect the rights discretions powers duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.9 No variation or modification of this Deed shall be valid unless made by Deed and executed by all the parties or their respective successors.
- 7.10 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.
- 7.11 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.
- 7.12 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
- 7.13 This Deed shall not be enforceable against owner-occupiers or tenants of individual dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 7.14 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission including any new permission granted pursuant to an application by the Owner under Section 73 or 73A of the Act) granted (whether or not on appeal) after the date of this Deed.

8 WAIVER

No waiver (whether express or implied) by the District 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 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.

9 **INDEXATION**

Any sum which become payable under this Deed other than the District Council's Costs shall be increased by an amount equivalent to the increase in the Index in respect of the District Council Contributions the date hereof until the date on which such sum is payable and an amount equivalent to the increase in the County Council Index in respect of the County Council Contributions from April 2020 until the date on which such sum is payable.

10 **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.

11 **CHANGE IN OWNERSHIP**

The Owner agrees with the District Council to give the District 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.

12 **DISPUTE RESOLUTION**

12.1 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 Third Schedule.

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

13 **RIGHT OF INSPECTION**

The Owner shall upon reasonable notice (without prejudice to the District Council's statutory rights of entry) permit any person duly authorised by the District Council or the County Council to enter that part of the Land that is being or has been developed pursuant to the Planning Application to ascertain whether there is or has been any breach of the obligations hereunder and any such person authorised by the District Council or the County Council shall observe all reasonable site security access and health and safety arrangements PROVIDED THAT in the event of the District Council or the County Council being concerned with regard to a

possible breach it shall use its reasonable endeavours to notify the Owner as soon as reasonably practicable in order that the matter may be discussed with the Owner and any remedial action agreed if appropriate but FURTHER PROVIDED THAT nothing within this clause 14 shall prevent the District Council from exercising any statutory right of entry or inspection or from taking legal proceedings to enforce the obligations set out herein.

14 JURISDICTION

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

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

FIRST SCHEDULE

The Owner covenants with the District Council and the County Council as follows:

1. To pay the SAMM Contribution to the District Council. Payment to be made prior to the Commencement of Development.
2. Not to permit the Commencement of Development unless and until the SAMM Contribution has been paid to the District Council.
3. To pay the Accessible Green Space Contribution to the District Council prior to the Occupation of any Dwelling.
4. Not to permit the Occupation of any Dwelling unless and until the Accessible Green Space Contribution has been paid to the District Council.
5. To pay the Outdoor Sports Facilities Contribution to the District Council. Payment to be made prior to the Occupation of any Dwelling.
6. Not to permit the Occupation of any Dwelling unless and until the Outdoor Sports Facilities Contribution has been paid to the District Council.
7. To pay Affordable Housing Contribution to the District Council prior to the Occupation of 50% of the Dwellings.
8. Not to permit the Occupation of 50% or more of the Dwellings unless and until Affordable Housing Contribution has been paid to the District Council.
9. To pay the Children's Equipped Play Space Contribution to the District Council. Payment to be made prior to the Occupation of any Dwelling.
10. Not to permit the Occupation of any Dwelling unless and until the Children's Equipped Play Space Contribution has been paid to the District Council.
11. To pay the Primary Education Contribution to the District Council on behalf of the County Council prior to the Occupation of any Dwelling.
12. Not to permit the Occupation of any Dwelling unless and until the Primary

Contribution has been paid to the District Council on behalf of the County Council.

13. To pay the Secondary Education Contribution to the District Council on behalf of the County Council prior to the Occupation of any Dwelling.
14. Not to permit the Occupation of any Dwelling unless and until the Secondary Education Contribution has been paid to the District Council on behalf of the County Council..
15. To pay the Community Learning Contribution to the District Council on behalf of the County Council prior to the Occupation of any Dwelling.
16. Not to permit the Occupation of any Dwelling unless and until the Community Learning Contribution has been paid to the District Council on behalf of the County Council.
17. To pay the Youth Services Contribution to the District Council on behalf of the County Council prior to the Occupation of any Dwelling
18. Not to permit the Occupation of any Dwelling unless and until the Youth Services Contribution has been paid to the District Council on behalf of the County Council
19. To pay the Libraries Contribution to the District Council on behalf of the County Council prior to the Occupation of any Dwelling.
20. Not to permit the Occupation of any Dwelling unless and until the Libraries Contribution has been paid to the District Council on behalf of the County Council.
21. To pay the Social Care Contribution to the District Council on behalf of the County Council prior to the Occupation of any Dwelling.
22. Not to permit the Occupation of any Dwelling unless and until the Social Care Contribution has been paid to the District Council on behalf of the County Council.
23. To pay the Waste Contribution to the District Council on behalf of the County Council prior to the Occupation of any Dwelling.

24. Not to permit the Occupation of any Dwelling unless and until the Waste Contribution has been paid to the District Council on behalf of the County Council.
25. To pay the Monitoring Fee to the District Council for each Trigger Event that occurs under this Deed. Payment to be made when notification of any Trigger Event is given to the District Council in accordance with clause 5.2.2.

SECOND SCHEDULE
The District Council's Covenants

1. To co-operate insofar as is reasonable with the Owner in the performance of its obligations under this Deed
2. The District Council hereby covenants with the Owner to use the District Council Contributions for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the District Council shall agree and to pay the County Council Contributions to the County Council
3. At the payee's request to return any part of the sums aforesaid which shall not have been used for the purposes set out above within a period of 10 years from the date of the payment of the last contribution together with simple interest at the base rate prevailing from time to time of HSBC Bank Plc calculated from the date of receipt of the relevant sum by the District Council as evidenced by the District Council's official receipt provided that the District Council shall not be obliged to return any part of any contribution which has been spent or contractually committed prior to the date of the request
4. At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when the District Council is satisfied that such obligations have been performed

THIRD 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,

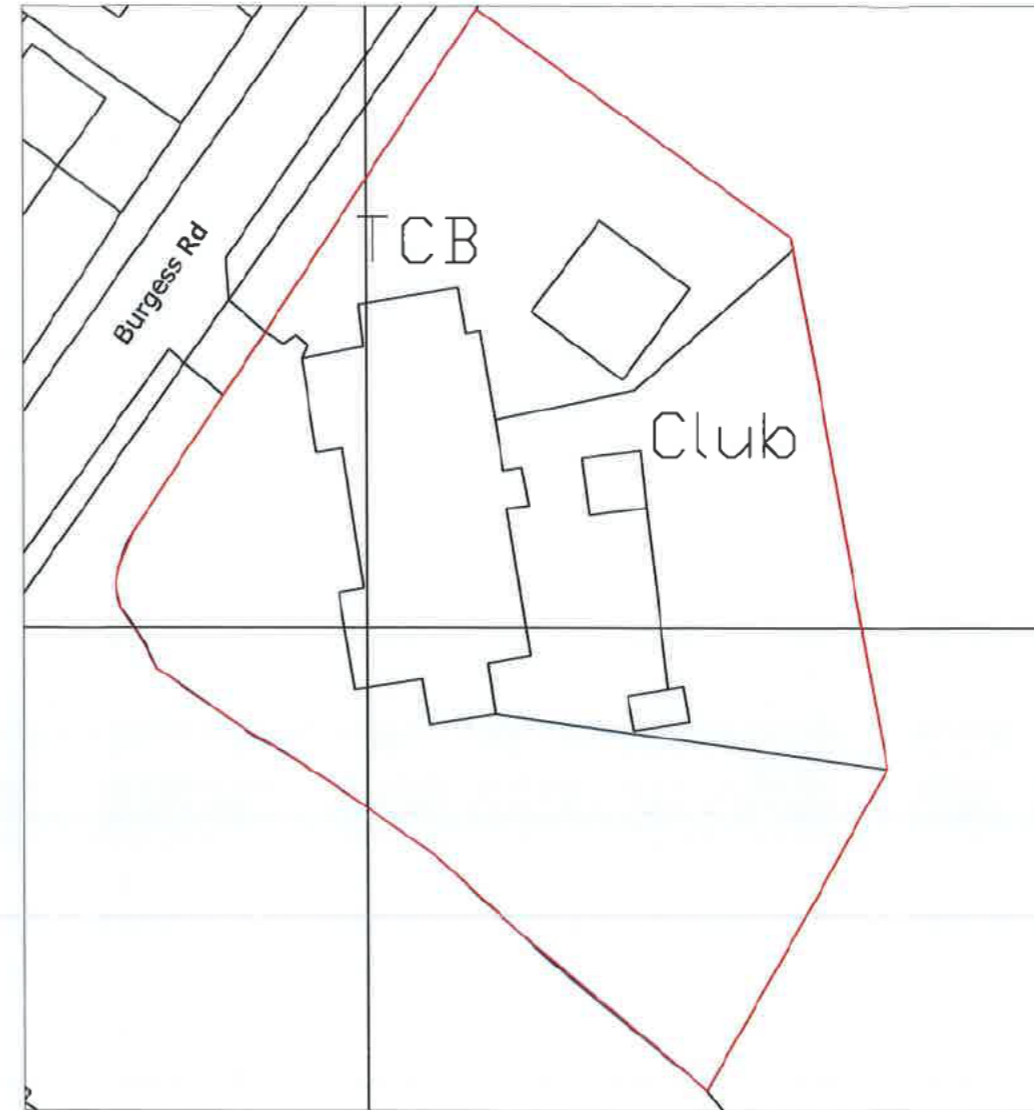
damages, any other means of enforcing this Deed and consequential and interim orders and relief.

APPENDIX 1

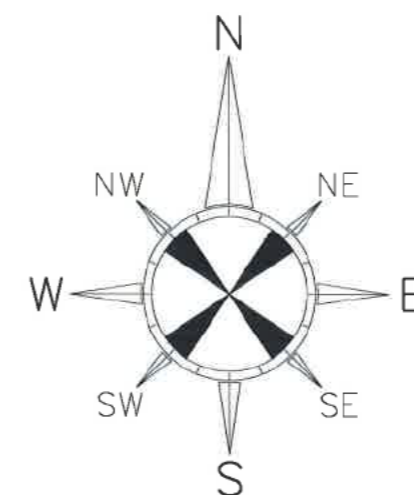
The Plan



Site Plan
1:1250



Block Plan
1:500



REV.	DESCRIPTION	DATE
------	-------------	------

architectural & interior designers

Suite 18@70 Churchill Square Business Centre@

Kings Hill@Kent@

ME19 4YU@

tel:01732523521 fax:01732523522 email:info@gbadesigns.com



proposed alterations to:

Aylesham Sports Club

Aylesham

Site Plan

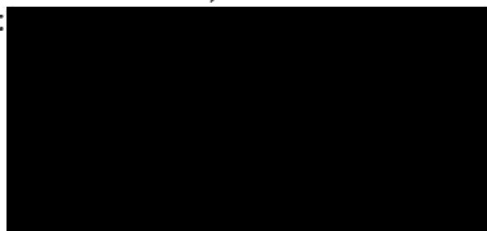
SCALE	DATE:	DWG NO.
-------	-------	---------

As noted	03/06/2020	2333/200
----------	------------	----------

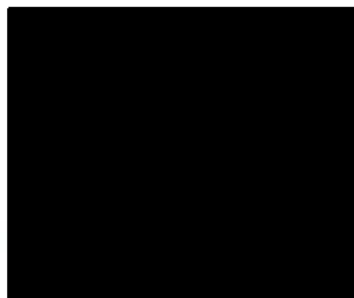
Executed as a deed by affixing the)
Common seal of **DOVER DISTRICT**)
COUNCIL in the presence of:



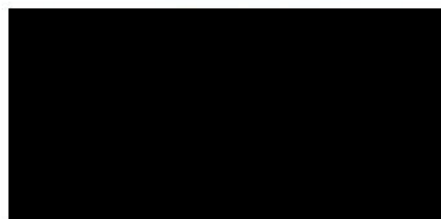
14,342



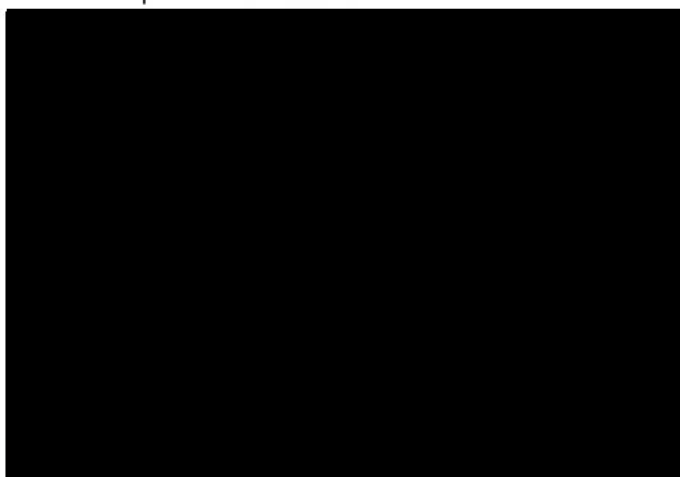
Authorised Signatory



in the presence of:



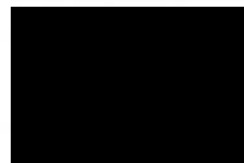
name, address and
occupation of witness



Date 17 February 2023

(1) DOVER DISTRICT
COUNCIL

(2)



**PLANNING OBLIGATION BY DEED
OF AGREEMENT**

pursuant to Section 106 of the
Town and Country Planning Act 1990
Relating to the development of Land
at Aylesham Working Mens Club,
Burgess Road, Aylesham ,

Legal Services
Dover District Council
White Cliffs Business Park
Dover
Kent CT16 3PJ

Ref: **DOV/20/00693**