

**DATED** 10 April **2024**

**(1) HASTINGS BOROUGH COUNCIL**

**and**

**(2) EAST SUSSEX COUNTY COUNCIL**

**and**

**(3) BIRCHPARK LIMITED**

---

**DEED OF AGREEMENT**

**PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY  
PLANNING ACT 1990**

**RELATING TO  
Site of the Former Dane Court Nursing Home  
32-36 Chapel Park Road  
St Leonards on Sea  
TN37 6HU**

**PLANNING APPLICATION NO: HS/FA/22/00409**

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**HASTINGS BOROUGH COUNCIL**

**MURIEL MATTERS HOUSE**

**BREEDS PLACE**

**HASTINGS**

**EAST SUSSEX**

**TN34 3UY**

THIS AGREEMENT is made the 10<sup>th</sup> day of April 2024

**BETWEEN**

- (1) **HASTINGS BOROUGH COUNCIL** of Muriel Matters House, Breeds Place, Hastings, East Sussex, TN34 3UY ('the Council')
- (2) **EAST SUSSEX COUNTY COUNCIL** of County Hall, St Anne's Crescent, Lewes, East Sussex, BN7 1UE ("the County Council")
- (3) **BIRCHPARK LIMITED** a company registered in the Isle of Man with company number 11948V (**Registered overseas entity number OE003988**) of PO Box 145, Level 6, 10A Prospect Hill, Douglas, IM991FY ('the Owner')

**RECITALS**

- (A) The Council is the local planning authority for the administrative area in which the Site is situated and is the planning authority by whom the obligations contained in this Deed are enforceable.
- (B) The County Council is the highway authority for the purposes of the 1980 Act, the county planning authority for the purposes of the Act and a local authority for the purposes of the 1972 Act for the area within which the Site is situated.
- (C) The Owner is the freehold owner of the Site registered at HM Land Registry under title numbers ESX8795, ESX12126 and ESX67607.
- (D) The Owner submitted the Planning Application for the Development to the Council under reference number HS/FA/22/00409. The Council's Planning Committee having regard to the provisions of the Local Plan and to all other

material considerations resolved on 4<sup>th</sup> October 2023 to grant the Planning Permission for the Development subject to the prior completion of this Deed.

- (E) The Council and the County Council have agreed to enter into this Deed in order to secure the Planning Obligations contained in this Deed. The Council and the County Council consider this Deed is necessary to make the Development acceptable in planning terms as the Planning Obligations are directly related to the Development and fairly and reasonably related in scale and kind to the Development.
- (F) The Parties agree that the obligations contained in this Deed are in accordance with the National Planning Policy Framework and satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
- (G) The Council has not adopted the Community Infrastructure Levy tariff.

**NOW THIS DEED** is made in pursuance of Section 106 of the Act and contains planning obligations and is a planning obligation for the purposes of that Section and **WITNESSES** as follows:-

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

For the purposes of this Deed the following expressions shall have the following meanings:

**1972 Act**

means the Local Government Act 1972 (as amended)

**1980 Act**

means the Highways Act 1980 (as amended)

**Act**

means the Town and Country Planning Act 1990 (as amended).

**Assistant Chief Executive, Governance Services**

means the Assistant Chief Executive, Governance Services for the time being of the County Council and shall include his duly authorised agents and representatives and any successor of his

**Badger Mitigation Strategy**

means the revised Badger Mitigation Strategy as referenced in the Biodiversity Enhancement Strategy

**Biodiversity Enhancement Strategy**

means the Strategy as set out in the Report of Middlemarch dated March 2022 at Appendix 2 of this Deed

**Commencement of  
Development**

shall have the same meaning as ascribed to a 'material operation' by Section 56(4) of the Act PROVIDED THAT for the purposes of determining whether or not a material operation has been carried out there shall be disregarded such operations as site clearance, archaeological investigations, demolition work, engineered groundworks, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, piling, erection of any temporary means of enclosure and the temporary display of site notices or advertisements and "**Commenced**" and

**"Commencement"** shall be construed accordingly

**Development**

the erection of an 80 Bedroom Care Home with associated access, parking, open space and landscaping as set out in the Planning Application and authorised by the Planning Permission

**Director**

means the Director of Communities, Economy and Transport for the time being of the County Council and shall include his duly authorised agents and representatives and any successor of his.

**Highway Drawing**

means the drawing numbered 3593-F01 attached as Appendix 4 to this Deed

**Highway Works**

means the works set out in Section B of Part 1 of Schedule 2 of this Deed

### **Index Linked**

that where a sum payable under this Deed is required to reflect changing costs the sum shall be increased in accordance with the provisions of clause 7 of this Deed and "Indexation" shall be construed accordingly.

### **Inflation Index**

the "all items" index figure of the Retail Prices Index published by the Office for National Statistics and if the name or basis of computation of such index should change any official replacement of the said index by the Office of National Statistics and in the absence of such official replacement such other index as may be agreed between the Owner the Council and the County Council.

### **Monitoring Contribution**

means a non-refundable sum of £550 (five hundred and fifty pounds) payable to

the Council for the purposes of the Council's monitoring and reporting of the planning obligations through the s.106 Agreement in accordance with the provisions of Part 2 of Schedule 1 of this Deed

### **Necessary Highway Consents**

means any by-law approvals, and other consents, licences, permissions and orders required from the County Council for the carrying out of the Highway Works.

### **Occupation**

the occupation of any part of the Site to be sold or occupied pursuant to the Planning Permission Provided that this shall not include occupation of any part of the Site for the purposes of marketing or occupation of any part of the Site for development purposes and "Occupy", "Occupied" and "Occupier" shall be construed accordingly.



**Parties**

means the Council, the County Council and the Owner and "Party" shall mean any one of them (as the context requires).

**Payment Notice**

means a notice in the form set out in Schedule 3 of this Deed.

**Plan**

means the drawing numbered 2610 dated November 2023 attached at Appendix 1 to this Deed.

**Planning Application**

means the planning application for planning permission submitted to the Council for the Development of the Site and allocated reference number HS/FA/22/00409

**Planning Obligations**

means the planning obligations entered into by the Owner set out in this Deed.

## **Planning Permission**

means the planning permission subject to conditions to be granted in pursuance of the Planning Application substantially in the form of the draft attached at Appendix 5 to this Deed and this shall include in each case any permission granted pursuant to an application under section 73 of the Act to amend or vary the Planning Permission unless the Council decides that a new agreement under Section 106 of the Act is required.

## **Section 278 Agreement**

means an agreement substantially in the form set out in Appendix 3 to this Deed with such amendments as are required by the Owner and which may be agreed by the County Council and made under section 278 of the 1980 Act to secure the carrying out of Highways Works.

**Specified Date**

means the date specified in the relevant clause or paragraph of this Deed upon which an event is to occur which will trigger an obligation arising under this Deed to be performed or a payment made or if no date is specified then fifteen (15) Working Days after the occurrence of the event triggering the relevant obligation or payment.

**Site**

the area of land the subject of the Planning Application against which this Deed may be enforced shown for the purposes of identification only edged red on the Plan.

**Travel Plan**

means a Travel Plan that shall

1. ensure that private car trips to and from the Site are minimized
2. include targets for reduced car use

3. incorporate a monitoring programme so as to ensure that the targets within the Travel Plan are met

**Travel Plan Audit Fee**

means the sum of Six Thousand Pounds (£6000.00) plus interest payable under Clause 6.2 (if any) and Indexation payable under Clause 7 (if any) towards the costs of auditing the Travel Plan payable by the Owner in accordance with the provisions Section A of Part 2 of Schedule 2 of this Deed

**Working Day**

means a day other than a Saturday or Sunday or public holiday in England or the days after Boxing Day until January 2.

## **STATUTORY AUTHORITIES**

- 1.2 This Deed is made pursuant to section 106 of the Act and section 111 of the 1972 Act and section 1 of the Localism Act 2011 and all other enabling powers.
- 1.3 The covenants, restrictions and requirements contained in this Deed are Planning Obligations for the purposes of Section 106 of the Act whether expressed to be Planning Obligations or not and are enforceable by the Council and the County Council in accordance with Section 106 of the Act against the Owner and any person deriving title from the Owner (subject to Clauses 1.9-1.11 inclusive and clause 1.31).
- 1.4 The obligations are undertaken by the Owner with the intention that they shall bind their respective interests in the Site and shall be enforceable by the Council and the County Council as the respective planning authority, county planning authority and highway authority for the area of the Site.
- 1.5 Except insofar as legally or equitably permitted nothing in this Deed shall fetter or restrict the discretion of the Council and the County Council in the exercise of their powers under any statutory enactment or other enabling power for the time being in force.

## **CONDITIONALITY**

- 1.6 It is hereby agreed and declared that save for the provisions of Clause 1.16 which shall have effect on the date of this Deed the obligations under this Deed shall not have effect unless and until the grant of the Planning Permission by the Council.

## **THE OWNER'S COVENANTS**

- 1.7 The Owner covenants with the Council and the County Council that they will carry out their obligations with the restrictions and requirements set out in Schedules 1 and 2 and Clause 1.16 of this Deed.

## **THE COUNTY COUNCIL'S COVENANTS**

- 1.8 The County Council covenants with the Owner that it will carry out and comply with the restrictions and requirements set out in Schedule 3 of this Deed.

## **RELEASE AND DISCHARGE**

- 1.9 The Owner and any successor or assignee with an interest in the Site shall cease to have any statutory or contractual obligation or liability under the terms of this Deed in relation to the Site or any part of it once it shall have parted with all its respective interest in the Site or that part save in so far as it relates to any relevant prior breach of its obligations under this Deed.
- 1.10 Nothing in this Deed shall be construed as prohibiting or limiting the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted by the Council or any other competent authority after the date of this Deed and Provided Further that this shall not prevent any subsequent section 106 Agreement being entered into in respect of the Site which might vary or supersede this Deed.
- 1.11 None of the terms, obligations and covenants in this Deed shall be binding upon or enforceable against:(a) any statutory undertakers in relation to any part or parts of the Site acquired by them for electricity substations gas governor stations or pumping stations or the provision of other infrastructure as may be required to fulfil their statutory functions;

## NOTICES

1.12 Any notice or other written communication to be served upon or given to the Parties shall be in writing and shall be sent to the address provided in Clause 1.13 or such substitute address in England as may from time to time have been notified in writing by that Party:

- (a) by hand Provided That a signed and dated written receipt on the recipients headed paper must be obtained at the time of delivery from the recipient; or
- (b) by special or recorded delivery post; or
- (c) such other method of service as may be agreed in writing between the Parties concerned.

1.13 The Council: Hastings Borough Council

Contact: Chief Legal Officer

Address: Hastings Borough Council, Muriel Matters House, Breeds Place, Hastings, East Sussex, TN34 3UY.

The County Council: East Sussex County Council

Contact: Assistant Chief Executive, Governance Services

Address: East Sussex County Council, County Hall, St Anne's Crescent, Lewes, East Sussex, BN7 1UE

The Owner : Birchpark Limited

Contact: The Company Secretary

Address: , Level 6, 10a Prospect Hill, Douglas, Isle Of Man, IM1 1EJ

1.14 Any notice served shall be deemed to have been validly served or given

1.14.1 If personally delivered at the time of delivery.

1.14.2 If posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom.

1.14.3 In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority in a pre-paid first-class envelope or recorded delivery envelope as the case may be.

### **THIRD PARTY RIGHTS**

1.15 No third party is intended to have a right to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **COST OF DEED**

1.16 The reasonable and proper legal costs of the Council and the County Council in connection with the preparation and completion of this Deed shall be paid by the Owner prior to the completion of this Deed.

### **MISCELLANEOUS**

1.17 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.

1.18 Where reference is made to a Clause, Recital, Schedule, Paragraph or Plan such reference (unless the context requires otherwise) is a reference to a clause, recital,



schedule, paragraph or plan contained in (or in the case of plans attached to) this Deed.

- 1.19 For the avoidance of doubt the provisions of this Deed shall not have any effect until this document has been dated.
- 1.20 Reference to the Council shall include any successors to their functions as local planning authority, county planning authority or highway authority and references to the Owner includes successors in title to the Site or part thereof and references to any other party include the successors in title of that party.
- 1.21 The Planning Obligations restrictions and requirements contained in this Deed shall be treated as Local Land Charges and registered at the Local Land Charges Registry for the purposes of the Local Land Charges Act 1975.
- 1.22 References to statutes, by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation re-enacting or made pursuant to the same.
- 1.23 Unless the context otherwise requires words in the singular include the plural and words in the plural include the singular.
- 1.24 Unless the context otherwise requires words importing the masculine gender include the feminine.
- 1.25 Unless the context otherwise requires words importing the feminine gender include the masculine.
- 1.26 Subject to clause 1.9 where a Party includes more than one person any obligations of that Party shall be joint and several.

- 1.27 If any provision or sub-provision of this Deed is held to be invalid illegal or unenforceable (for whatever reason) under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remaining provisions of this Deed shall remain unaffected.
- 1.28 Where the agreement, approval, consent or expression of satisfaction is required from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 1.29 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) they are modified by any statutory procedure or expire prior to the Commencement of Development.
- 1.30 The Owner hereby AGREES and DECLARES that permission shall be granted to authorised officers of the Council upon reasonable notice and request and at reasonable times (except in an emergency) and subject to any instructions which any contractor may give to ensure safety for officers of the Council (or their nominated representatives) at their own or at the Council's risk to gain access to the Site in order to monitor compliance with this Deed following Commencement of Development.
- 1.31 This Deed shall not be enforceable against any future mortgagee or chargee who from time to time shall have the benefit of a charge or mortgage registered against any part or parts of the Site unless and until it takes possession of any part or parts of the Site in which case it too will be bound by the obligations affecting the part or parts of the Site in which it is in possession as if it were a person deriving title from the Owner for all such time that it remains in possession PROVIDED THAT the mortgagee / chargee will not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the mortgagee or chargee is in possession of all or any part of the Site/

## **2. DISPUTE RESOLUTION**

- 2.1 In the event of there being any dispute between the Parties in respect of any matter to be agreed pursuant to this Deed such dispute shall be determined in accordance with this clause and any Party may at any time require by notice to the other Parties an independent expert to be appointed to resolve the dispute.
- 2.2 The expert (who shall be a person having not less than 10 (ten) years' experience of the type of dispute in question) shall be agreed upon by the Parties within 4 (four) weeks of the notice pursuant to Clause 2.1 and in default of such agreement shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors or the Law Society (as appropriate) on the application of the Party or Parties made at any time thereafter.
- 2.3 The expert shall give notice of his appointment to the Parties and invite them to submit written representations to him and if any submissions are received the expert will provide them to the other Party within a specified period (which will not exceed 4 (four) weeks) if they wish with an invitation to respond within a specified period (not exceeding 2 (two) weeks).
- 2.4 The expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said specified period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgment.
- 2.5 The expert shall give notice in writing of his decision with reasons therefore to the Parties within 2 (two) months of his appointment or within such extended period as the Parties may together allow.
- 2.6 The decision of the expert shall be final on all matters referred to him and in the absence of manifest error or fraud shall be binding on the Parties.
- 2.7 If for any reason the expert fails to give notice of his decision within the time and in the manner herein before provided the Party or Parties may apply to the

President of the Royal Institution of Chartered Surveyors or the Law Society (as appropriate) for a substitute to be appointed in his place and the procedure may be repeated as many times as necessary.

2.8 Each Party shall bear its own costs save that the cost of appointing the expert and the fees of the expert and of the Royal Institution of Chartered Surveyors or of the Law Society (as appropriate) and any costs properly incurred by the expert arriving at his determination (including any fees and costs of any advisers of the expert) shall be in the expert's decision.

2.9 It is agreed that nothing in this Clause shall be taken to fetter the Parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed.

### **3. WARRANTY AS TO TITLE**

3.1 The Owner confirms and warrants to the Council that it has not leased, mortgaged, charged or otherwise knowingly created any legal interest in the Site (as defined by section 106 of the Act) at the date of this Deed save for those charges noted on the title to the Site and that Recital (C) of this Deed is correct and accurate in every respect.

### **4. WAIVER**

4.1 The Owner undertakes that no waiver (whether express or implied) by the Council and /or the County Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council and/or the County Council from enforcing any of the relevant covenants, terms or conditions or from acting upon any subsequent breach or default.

## **5. SPECIFIED DATE AND PAYMENT NOTICE**

The Owner undertakes that where this Deed imposes a requirement for the payment of a financial contribution on a Specified Date:-

- 5.1 written notice of the Specified Date shall be given to the Council or the County Council (as appropriate) in the form of the Payment Notice not more than five (5) Working Days after such Specified Date.
- 5.2 if the written notice of a Specified Date is not given, the Council or the County Council (as appropriate) shall be entitled (acting reasonably) to determine the Specified Date and shall give written notice to the Owner of its determination.
- 5.3 to make the payment due under this Deed to the Council or the County Council (as appropriate) and to attach a fully completed Payment Notice with such payment.

## **6. PAYMENT OF SUMS DUE**

- 6.1 All sums payable under this Deed shall (unless otherwise stated in this Deed) become due after ten (10) Working Days after the Specified Date and shall henceforth be debts due to the Council or the County Council (as relevant) recoverable by action as a simple contract debt and may be deducted from any monies due to the Owner from the Council or the County Council under any contract agreement or arrangement whatsoever.
- 6.2 If any such sums are not paid by the Due Date then the Owner shall thereafter be liable to pay to the Council or the County Council (as relevant) interest on the same calculated on a daily basis at a daily rate of 1/365th of the annual rate of interest of 4% per annum greater than the National Westminster Bank PLC base rate in force from time to time from the Specified Date to the date of payment thereof.

## **7. INDEX LINKING**

- 7.1 The Monitoring Contribution and the Travel Plan Audit Fee shall be Index Linked so that the sum actually payable shall be recalculated by the application of the following formula:-

$$A = \frac{B \times C}{D}$$

where:

A is the sum actually payable on the relevant Specified Date

B is the original sum mentioned in this Deed

C is the Inflation Index for the quarter immediately preceding the relevant Specified Date

D is the Inflation Index for the quarter immediately preceding the date of this Deed

C divided by D is equal to or greater than 1.

## **8. JURISDICTION**

- 8.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England.

## SCHEDULE 1

### THE OWNER'S OBLIGATIONS TO THE COUNCIL

#### PART 1

#### NOTICE OF COMMENCEMENT OF DEVELOPMENT / CHANGE IN OWNERSHIP / OCCUPATION

- 1.1 The Owner hereby covenants with the Council to provide the Council with no less than ten (10) Working Days prior written notice of Commencement of Development, or First Occupation in respect of the Site.
- 1.2 The Owner hereby covenants with the Council to provide the Council with the following details within ten (10) Working Days of completion of any conveyance, transfer or lease for a term of more than 20 years (or that lease's assignment) ("the Disposition") entered into in respect of all or any part of the Site:
  - 1.2.1 the name and address of the person to whom the Disposition was made; and
  - 1.2.2 the nature and extent of the interest disposed of.

#### PART 2

#### MONITORING CONTRIBUTION

2. The Owner hereby covenants with the Council in respect of the Development:
  - 2.1 To pay to the Monitoring Contribution to the Council prior to Commencement of Development
  - 2.2 Not to Commence Development until the Monitoring Contribution has been paid to the Council.

## **PART 3**

### **BIODIVERSITY ENHANCEMENT STRATEGY**

3. The Owner hereby covenants with the Council:

3.1 . Unless otherwise approved in writing by the Council not to Commence the Development until the Owner has provided the Council with no less than ten (10) Working Days' notice in writing of the implementation of the approved Biodiversity Enhancement Strategy;

3.2 to thereafter implement and comply with the approved Biodiversity Enhancement Strategy and the Badger Mitigation Strategy in accordance with the time limits set out therein (unless otherwise agreed in writing by the Council);

3.3 not to carry out any changes to the approved Biodiversity Enhancement Strategy and the Badger Mitigation Strategy without the prior written consent of the Council

3.4 No building forming part of the Development shall be Occupied until the Biodiversity Enhancement Strategy and the Badger Mitigation Strategy have been implemented.



**SCHEDULE 2**

**THE OWNER'S COVENANTS TO THE COUNTY COUNCIL**

**PART 1**

**SECTION A**

**SECTION 278 AGREEMENT**

The Owner hereby covenants with the County Council:

1. that prior to Commencement of Development it will enter into the Section 278 Agreement with the County Council to secure the carrying out of the Highway Works.
2. Not to Commence Development until it has entered into the Section 278 Agreement paying all of the County Council's proper and reasonable legal costs relating to the Section 278 Agreement.
3. That prior to Occupation of any part of the Development it will complete the Highway Works in accordance with the provisions of the Section 278 Agreement.
4. Not to Occupy or cause or allow Occupation of any part of the Development until it has completed the Highway Works in accordance with the provisions of the Section 278 Agreement.

**SECTION B**

**HIGHWAY WORKS**

The Highway Works are to include:-

1. the relocation of existing traffic calming feature;
2. a review of road markings and any action required as a result of the review; and
3. the construction of a new access to the Site

as shown for illustrative purposes only on the Highway Drawing together with any other ancillary works reasonably required by the Director

## **PART 2**

### **SECTION A**

#### **TRAVEL PLAN AUDITING FEE**

The Owner hereby covenants with the County Council:-

1. To pay the Travel Plan Audit Fee to the County Council prior to Occupation of any part of the Development.
2. Not to Occupy or cause or allow Occupation of any part of the Development until the Travel Plan Audit Fee has been paid to the County Council in full.

### **SECTION B**

#### **TRAVEL PLAN**

1. Prior to the first Occupation of any part of the Development to prepare and submit to the County Council a draft travel plan ("the Draft Travel Plan") such plan to be based on and consistent with the analysis contained in the Travel Plan Statement submitted by Eddisons in support of the planning application and dated November 2021 .
2. Not to Occupy or cause or allow to be Occupied any part of the Development until the Draft Travel Plan has been approved in writing by the County Council as the travel plan ("the Travel Plan")
3. To use best endeavours to achieve the objectives set out in the Travel Plan ("the Travel Plan Objectives") and on the anniversary of the date six (6) months from the date of first Occupation to submit to the County Council base line data and thereafter monitoring information (data and report) in accordance with the methodology(ies) detailed in the Travel Plan.

4. If the monitoring information submitted shows that the Travel Plan Objectives are not being achieved then after each monitoring of the Travel Plan to implement further suitable measures and initiatives in agreement with the County Council to achieve the Travel Plan Objectives before the next monitoring surveys

### **SCHEDULE 3**

#### **THE COUNTY COUNCIL'S COVENANTS TO THE OWNER**

1. The County Council shall use reasonable endeavours to enter into the Section 278 Agreement and any Necessary Highway Consents with the Owner to secure the provision of the Highway Works and their subsequent adoption as publicly maintainable highway within a reasonable time scale so as not to cause unnecessary delay to the Development;

## SCHEDULE 4

### PAYMENT NOTICE

<b>Agreement Details</b>	
Application Site address	
Application	
Date of original agreement  under S106 of the Town and Country Planning Act 1990	
Date of variation of original agreement  [where relevant]	
Parties to agreement	
Details of obligation giving rise to payment (and Clause number)	
<b>Payee Details</b>	
Payee  [name, address and reference]	

**APPENDIX 1**

**Plan**



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Development Site



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Planning Services Manager  
 Hastings Borough Council  
 Muriel Matters House, Breeds Place,  
 Hastings TN34 3UY  
 Tel: 01424 451090  
 email: [planning@hastings.gov.uk](mailto:planning@hastings.gov.uk)

Title: **PLAN TO SECTION 106 AGREEMENT  
 RELATING TO  
 PLANNING APPLICATION HS/FA/22/00409  
 SITE OF FORMER DANE COURT NURSING HOME  
 32-36 CHAPEL PARK ROAD  
 ST LEONARDS ON SEA TN37 6HU**

Scale: 1:1,250

Date: Nov 2023

Drawing No. 2610 Drawn: ST



**APPENDIX 2**  
**Biodiversity Enhancement Strategy**



**32-36 CHAPEL PARK ROAD, HASTINGS  
BIODIVERSITY ENHANCEMENT STRATEGY**

A Report to: Urban Village Group

Report No: RT-MME-156684-07

Date: March 2022



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## REPORT VERIFICATION AND DECLARATION OF COMPLIANCE

Report Version	Date	Completed by:	Checked by:	Approved by:
Final	14/03/2022	Will Rees MSc ACIEEM (Senior Ecological Consultant)	Paul Roebuck MSc MCIEEM (South East Manager)	Tom Docker MSc CEcol MCIEEM (Managing Director)
Rev A	17/03/2022	Will Rees MSc ACIEEM (Senior Ecological Consultant)	Paul Roebuck MSc MCIEEM (South East Manager)	Tom Docker MSc MCIEEM CEcol (Managing Director)

The information which we have prepared is true, and has been prepared and provided in accordance with the Chartered Institute of Ecology and Environmental Management's Code of Professional Conduct. We confirm that the opinions expressed are our true and professional bona fide opinions.

### DISCLAIMER

The contents of this report are the responsibility of Middlemarch Environmental Ltd. It should be noted that, whilst every effort is made to meet the client's brief, no site investigation can ensure complete assessment or prediction of the natural environment.

Middlemarch Environmental Ltd accepts no responsibility or liability for any use that is made of this document other than by the client for the purposes for which it was originally commissioned and prepared.

## CONTENTS

<b>1. INTRODUCTION .....</b>	<b>4</b>
1.1 PROJECT BACKGROUND .....	4
1.2 SITE DESCRIPTION AND CONTEXT .....	4
1.3 DOCUMENTATION PROVIDED .....	5
<b>2. ECOLOGICAL BASELINE AND SUMMARY OF IMPACTS.....</b>	<b>6</b>
2.1 NATURE CONSERVATION SITES .....	6
2.2 SUMMARY OF BASELINE ECOLOGY AND IMPACTS .....	6
2.3 CONSTRAINTS AND OPPORTUNITIES.....	8
<b>3. HABITAT RETENTION AND ENHANCEMENT PROPOSALS.....</b>	<b>10</b>
<b>4. HABITAT CREATION PROPOSALS.....</b>	<b>11</b>
4.1 FLOWERING LAWN .....	11
4.1.1 Aims and Objectives.....	11
4.1.2 Habitat Creation and Establishment.....	11
4.1.3 Future Management .....	12
4.1.4 Biodiversity Benefits .....	12
4.2 CREATION OF SCATTERED TREES.....	12
4.2.1 Aims and Objectives.....	12
4.2.2 Habitat Creation and Establishment.....	12
4.2.3 Future Management .....	12
4.2.4 Biodiversity Benefits .....	12
4.3 NATIVE SHRUB THICKETS WITH HERBACEOUS, PERENNIAL AND BULB PLANTING.....	12
4.3.1 Aims and Objectives.....	12
4.3.2 Habitat Creation and Establishment.....	13
4.3.3 Future Management .....	13
4.3.4 Biodiversity Benefits .....	14
4.4 ORNAMENTAL SHRUBS.....	14
4.4.1 Aims and Objectives.....	14
4.4.2 Habitat Creation and Establishment.....	14
4.4.3 Future Management .....	14
4.4.4 Biodiversity Benefits .....	14
4.5 CREATION OF WILDFLOWER GRASSLAND .....	15
4.5.1 Aims and Objectives.....	15
4.5.2 Habitat Creation and Establishment.....	15
4.5.3 Future Management .....	16
4.5.4 Biodiversity Benefits .....	16
4.6 CREATION OF NATIVE HEDGEROW .....	17
4.6.1 Aims and Objectives.....	17
4.6.2 Habitat Creation and Establishment.....	17
4.6.3 Future Management .....	17
4.6.4 Biodiversity Benefits .....	17
4.7 CREATION OF MIXED NATIVE HEDGEROW.....	17
4.7.1 Aims and Objectives.....	17
4.7.2 Habitat Creation and Establishment.....	17
4.7.3 Future Management .....	18
4.7.4 Biodiversity Benefits .....	18
<b>5. SPECIES CONSERVATION MEASURES.....</b>	<b>19</b>
5.1 BAT BOXES.....	19
5.1.1 Aims and Objectives.....	19
5.1.2 Habitat Creation and Establishment.....	19
5.1.3 Future Management .....	20
5.1.4 Biodiversity Benefits .....	20
5.2 BIRD BOXES .....	21
5.2.1 Aims and Objectives.....	21
5.2.2 Habitat Creation and Establishment.....	21
5.2.3 Future Management .....	22
5.2.4 Biodiversity Benefits .....	22

5.3	CREATION OF HEDGEHOG PASSES .....	22
5.3.1	<i>Aims and Objectives</i> .....	22
5.3.2	<i>Creation and Establishment</i> .....	22
5.3.3	<i>Future Management</i> .....	22
5.3.4	<i>Biodiversity Benefits</i> .....	23
5.4	LOG PILES.....	23
5.4.1	<i>Aims and Objectives</i> .....	23
5.4.2	<i>Habitat Creation and Establishment</i> .....	23
5.4.3	<i>Management and Maintenance</i> .....	23
5.4.4	<i>Biodiversity Benefits</i> .....	23
5.5	GENERAL PRINCIPLES.....	23
<b>6.</b>	<b>IMPLEMENTATION AND MONITORING .....</b>	<b>24</b>
6.1	RESPONSIBILITY FOR IMPLEMENTATION OF THE PLAN.....	24
6.2	MONITORING.....	24
<b>7.</b>	<b>SUMMARY OF HABITAT LOSSES/GAINS AND BIODIVERSITY CONTRIBUTION .....</b>	<b>25</b>
7.1	PROTECTION OF ECOLOGICAL RECEPTORS .....	25
7.2	HABITAT LOSSES AND GAINS .....	25
7.3	SUMMARY OF CONTRIBUTION OF DEVELOPMENT TO BIODIVERSITY TARGETS .....	26
<b>8.</b>	<b>DRAWINGS AND FIGURES .....</b>	<b>27</b>

## 1. INTRODUCTION

### 1.1 PROJECT BACKGROUND

In December 2021, Urban Village Group commissioned Middlemarch Environmental Ltd to produce a Biodiversity Enhancement Strategy (BES) associated with a planning application for the development of a three-storey care home with associated hard and soft landscaping at 32-36 Chapel Park Road, Hastings.

Middlemarch Environmental Ltd has previously carried out the following assessments on site:

- Preliminary Ecological Assessment – Report RT-MME-121304-01;
- Pre-Development Arboricultural Survey – Report RT-MME-121304-02;
- Preliminary Ground Level Bat Roost Assessment of Trees – Report RT-MME-121653-01;
- Badger Survey – Report RT-MME-121653-02;
- Reptile Survey – Report RT-MME-121653-03;
- Badger Mitigation Strategy – RT-MME-123315-01; and,
- Composite Ecology Report – Report RT-MME-124245-01.
- Preliminary Ecological Appraisal – Report RT-MME-153447-01 Rev A;
- Preliminary Ground Level Bat Roost Assessment of Trees – Report RT-MME-153447-02 Rev A;
- Reptile Survey – Report RT-MME-153447-03 Rev A; and,
- Badger Survey – Report RT-MME-153447-04 Rev A.

In addition, Middlemarch Environmental Ltd has been commissioned to undertake the following assessments:

- Preliminary Arboricultural Assessment – Report RT-MME-156684-01;
- Arboricultural Impact Assessment – Report RT-MME-156684-02;
- Arboricultural Method Strategy – Report RT-MME-156684-03;
- Preliminary Ecological Appraisal – Report RT-MME-156684-04;
- Badger Survey – Report RT-MME-156684-05;
- Badger Mitigation Strategy – RT-MME-156684-06;
- Biodiversity Net Gain Assessment – RT-MME-156684-08; and,
- Construction Ecological Management Plan – RT-MME-156684-09.

The overall aim of the BES is to outline habitat retention, creation and management practices that will be undertaken in order to enhance the value of the site to biodiversity. The content of this document is guided by the key principles of the National Planning Policy Framework and national and local planning policy and biodiversity targets. The report has the following structure:

- Chapter 2: Ecological Baseline and Summary of Impacts;
- Chapter 3: Habitat Retention and Enhancement Proposals;
- Chapter 4: Habitat Creation Proposals;
- Chapter 5: Species Conservation Proposals;
- Chapter 6: Ecological Monitoring; and,
- Chapter 7: Summary of Habitat Losses/Gains and Biodiversity Contribution.
- Chapter 8: Drawings and Figures.
- Appendix 1: Management Plan.

### 1.2 SITE DESCRIPTION AND CONTEXT

The site under consideration comprises a roughly rectangular-shaped parcel of land located between residential properties on Chapel Park Road in Hastings, East Sussex. It measures approximately 0.3 ha in size and is centred at National Grid Reference TQ 80320 09673.

The site is a vacant brownfield plot, which was previously occupied by three detached residential dwellings which were then amalgamated and converted into a Care Home. The Care Home was demolished in the period between 2008 and 2009 but the foundations of previous buildings and redundant utility services remain under the site's surface. In the intervening period the site has become overgrown with self-seeded vegetation. The site is currently fenced off from the road with Heras fencing and hoardings, however this has been pushed over in places, resulting in fly tipping.

At the time of the survey, the site was dominated by dense introduced shrubs, comprising primarily of butterfly bush *Buddleja davidii*. Patches of scrub and trees were scattered throughout the survey area, with a large rubble pile noted to the south-west. An area of bare ground with encroaching dense scrub was located towards the site's western boundary, while a small strip of poor semi-improved grassland was present at the eastern site periphery.

The site is bordered by residential properties and gardens to the north, south, and west, with Chapel Park Road located to the east, while the wider landscape is dominated by residential and commercial development.

### 1.3 DOCUMENTATION PROVIDED

This assessment is based upon the information provided by the client in addition to information collected by Middlemarch Environmental Ltd during the desk study search. The documents and drawings considered are detailed within Table 1.1.

Document Name / Drawing Number	Author
Proposed Site Plan / AP21028 – L01	AP Architecture Limited
Proposed Floor Plans / AP21028 – L02 Rev A	AP Architecture Limited
Proposed Elevations / AP21028 – L03	AP Architecture Limited

**Table 1.1: Documentation Provided by Client**

## 2. ECOLOGICAL BASELINE AND SUMMARY OF IMPACTS

### 2.1 NATURE CONSERVATION SITES

#### Statutory and non-statutory sites

The desk study exercise identified one European statutory site within 5 km of the survey area, four UK statutory sites within 2 km, seven ancient woodland sites within 2 km, and one non-statutory site within 1 km. The site is not located within 10 km of a statutory site designated for bats.

Taking into account the distance between designated sites of ecological value and the application site, the built-up nature of intervening habitats and the absence of hydrological connectivity, there will be no significant impacts on nature conservation sites either during construction or operation of the development.

### 2.2 SUMMARY OF BASELINE ECOLOGY AND IMPACTS

Feature	Nature Conservation Importance	Justification
<b>Habitats</b>		
Bare ground	Local (Site)	<p>Bare ground habitat under the canopies of conifer trees. A commonplace habitat that is well represented locally and can be easily replaced. The habitat contributes to the overall mosaic of habitats within and surrounding the site.</p> <p>Bare ground - Translated to bare ground based on P1/UK conversion tool within Metric 3.0. The habitat is automatically classed as being of 'Low' distinctiveness. Assessed against the urban - nonpriority condition criteria, the habitat has been assigned a condition of 'Poor'.</p>
Dense and scattered scrub	Local (Site)	<p>A parcel of dense bramble scrub with scattered native scrub within the site interior. A commonplace habitat that is well represented locally and can be easily replaced. The habitat contributes to the overall mosaic of habitats within and surrounding the site.</p> <p>Translated to Heathland and Shrub – Bramble Scrub within Metric 3.0. The habitat is automatically classed as being of 'Medium' distinctiveness and 'Poor' condition.</p>
Fence	Negligible	The features provide no significant ecological value.
Introduced shrub	Local (Site)	<p>Introduced shrub was the dominant habitat within the site, comprising self-set butterfly bush shrubs. The species is invasive and generally considered undesirable, particularly within urban landscapes. A commonplace habitat that is well represented locally and can be easily replaced. The habitat contributes to the overall mosaic of habitats within and surrounding the site.</p> <p>Habitat is automatically classed as being of 'Low' distinctiveness and 'Poor' Condition within Metric 3.0.</p>
Poor Semi-improved grassland	Local (Site)	<p>Small areas of recently colonised grassland with frequent invasive and undesirable species. A commonplace habitat that is well represented locally and can be easily replaced. The habitat contributes to the overall mosaic of habitats within and surrounding the site.</p> <p>Poor Semi-improved Grassland - Translated to Modified Grassland based on P1/UK conversion tool within Metric 3.0. Habitat is automatically classed as being of 'Low' distinctiveness. Assessed against the low-quality grassland condition criteria, the habitat has been assigned a condition of 'Poor'.</p>
Scattered trees	Local (Site)	<p>The semi-mature and mature trees have intrinsic ecological value and cannot be easily replaced in the short to medium term.</p> <p>Habitat is automatically classed as being of 'Medium' distinctiveness within Metric 3.0. Assessed against the urban trees condition criteria the habitat has been assigned a condition of 'Moderate'.</p>

Table 2.1 Summary of Nature Conservation Value of Ecological Features (continues)

Feature	Nature Conservation Importance	Justification
Species-poor defunct hedge	Local (Site)	Non-native hedges along the western and southern site boundary. A commonplace habitat that is well represented locally and can be easily replaced. The habitat contributes to the overall mosaic of habitats within and surrounding the site.  Habitat is automatically classed as being of 'Very Low' distinctiveness and assessed as being in 'Poor' condition within Metric 3.0.
Wall	Negligible	The features provide no significant ecological value.
<b>Protected/Notable Species</b>		
Bats	Local (Site)	The site presents no suitable opportunities for roosting bats on site.  The trees and shrub habitats offer suitable foraging opportunities for bats, with links to alternative roosting and foraging habitat in the surrounding area. Potential impacts include loss of foraging and commuting habitat for bats and fragmentation of foraging and commuting habitat through artificial illumination of the site. The site is unlikely to constitute a significant foraging or commuting resource for local bat populations.
Badger	Local (Borough)	Details relating to badgers are confidential. Please refer to the Badger Mitigation Strategy (Report RT-MME-156684-06) for further information.
Hedgehog	Local (Site)	Hedgehog is a Species of Principal Importance and their presence cannot be ruled out due to their mobile nature, and the availability of suitable habitat and connectivity within the site. The site is bound by residential gardens to the west and south with good existing connectivity for hedgehogs.
Amphibians	Local (Site)	The site provides no breeding habitat for amphibians. The risk of encountering amphibian species, including great crested newt, is considered to be negligible; however, given the site provides some areas of suitable terrestrial habitat the presence of common amphibians, cannot be completely ruled out. Such populations are assessed as being of Local (Site) importance.
Reptiles	Local (Site)	The mosaic of habitats within the site provided suitable foraging, basking, refuge and hibernation opportunities for common reptiles; however, surveys carried out during 2020 did not identify the presence of any reptile species. Impacts on local reptile populations due to the development of the site is unlikely to be significant with respect to habitat loss.  There remains a low risk of direct harm/ injury due to the proximity of local desk study records for common species (slow worm).
Birds	Local (Site)	The site does provide suitable nesting habitat and foraging resources for a range of generalist bird species within the shrub, scrub, hedgerow and tree habitat. All nesting birds are protected under the Wildlife and Countryside Act 1981 (as amended) and so their presence within the site will be a material consideration for the proposed development.
Invertebrates	Local (Site)	The site provides suitable habitat for a range of common invertebrate species within the scrub and shrub habitat.
Invasive plant species	Local (Site)	Habitats on site include frequent pampas grass and winter heliotrope. The species are listed as invasive on the Sussex Non-Native Species (INNS).

Table 2.1 (continued). Summary of Nature Conservation Value of Ecological Features



### 2.3 CONSTRAINTS AND OPPORTUNITIES

The following constraints and opportunities were identified as part of the Preliminary Ecological Appraisal, Report RT-MME-156684-04.

Feature	Constraints	Opportunities
<b>Habitats</b>		
Bare Ground, Introduced Shrub, Poor semi-improved grassland.	<p>Habitat trading requirements within Metric 3.0 require provision of "Same distinctiveness or better habitat".</p> <p>It is anticipated that the habitats within the site interior will require clearance to develop the site resulting in a reduction of the structural diversity of the site.</p>	<p>Replacement of non-native invasive shrubs with native species which will be of value to a broader variety of native fauna.</p> <p>Proposals should be designed to incorporate features of low – high distinctiveness wherever feasible. Within the urban/ residential context, opportunities include the provision of green roofs, living walls, flowering lawns with native / wildlife attracting trees.</p> <p>Landscaping proposals should incorporate a mosaic of native scrub thickets and longer sward wildflower grassland to provide structural diversity.</p>
Dense and Scattered Scrub	<p>Habitat trading requirements within Metric 3.0 require provision of: "Same broad habitat or a higher distinctiveness habitat required".</p> <p>It is anticipated that the habitat will require clearance to facilitate site development.</p>	<p>Opportunities include the replacement of poor condition bramble scrub with more diverse (species and structure) mixed native scrub thickets.</p>
Scattered trees	<p>The development proposals should be designed (where feasible) to allow for the retention of mature trees along the site boundaries.</p> <p>Habitat trading requirements within Metric 3.0 require provision of: "Same broad habitat or a higher distinctiveness habitat required".</p>	<p>Significant opportunities for native and wildlife attracting tree planting within the site interior.</p>
Species-poor defunct hedge	<p>Hedgerow trading requirements within Metric 3.0 require provision of: "Same distinctiveness".</p> <p>Any losses of hedgerow habitat should be compensated.</p>	<p>Where feasible the existing hedgerow should be retained with gaps infilled.</p> <p>If this is not achievable then replacement native hedgerow planting should be provided within areas of landscaping. Hedgerows should be used as boundary features wherever feasible in place of fences and walls.</p>

**Table 3. Summary of Ecological Constraints and Opportunities (continues)**

Feature	Constraints	Opportunities
<b>Protected/Notable Species</b>		
Bats (foraging and commuting)	In accordance with best practice guidance relating to lighting and biodiversity (Miles et al, 2018; Gunnell et al, 2012), any new lighting should be carefully designed to minimise potential disturbance and fragmentation impacts on sensitive receptors, such as bat species.  Lighting along site boundaries should be sensitively controlled to prevent light spill onto the neighbouring residential gardens.	Bat boxes should be installed to provide roosting habitat for species such as pipistrelle. Wherever feasible these should be built into the proposed buildings on site.  The planting of species which attract night flying insects is encouraged as this will be of value to foraging bats.  Furthermore, the planting linear features such as native species-rich hedgerows will also be of value to foraging and commuting bats.
Badger	Details relating to badgers are confidential. Please refer to the Badger Mitigation Strategy (Report RT-MME-156684-06) for further information.	Details relating to badgers are confidential. Please refer to the Badger Mitigation Strategy (Report RT-MME-156684-06) for further information.
Hedgehogs	Reasonable Avoidance Measures during the construction period, to be detailed within a Construction Ecological Management Plan.  Proposals should be designed to allow free passage of hedgehogs.	Provision of flowering lawn habitat and linear hedgerows will improve foraging opportunities for species such as hedgehog.  Hedgehog passes should be provided through any boundary walls or fences required. Wherever feasible, hedgerows should be used preferentially in place of walls and fences.
Herpetofauna	Reasonable Avoidance Measures during the construction period, to be detailed within a Construction Ecological Management Plan.	Landscaping proposals should incorporate a mosaic of native scrub thickets and longer sward wildflower grassland to provide structural diversity for herpetofauna. Hibernacula (rubble and log piles) should be provided within areas of soft landscaping.
Birds	If site clearance works are to be undertaken during the bird nesting season then there is the potential for impact upon nesting birds.	Provision of nesting within the new development including house sparrow terraces, swift and starling boxes.  Provision of native scrub thickets for species such as song thrush.
Invertebrates	-	Wildflower grassland margins to provide larval food for caterpillars and to attract butterfly and moth species such as wall and small heath.
Invasive Species	The works must not cause pampas grass or winter heliotrope to spread in the wild. They must either be left in situ or removed with care during vegetation clearance and disposed of in an appropriate manner.	Replacement of non-native locally invasive species with native and wildlife attracting species mixes.

**Table 3 (continued). Summary of Ecological Constraints and Opportunities**

Chapter 3 details existing habitat that will be retained, protected and enhanced throughout the proposed development, and Chapter 4 details habitat creation proposals designed to enhance the biodiversity value of the site. An overall summary of habitat losses and gains, and a summary of how the development will contribute to national and local biodiversity targets, is provided in Chapter 5.

### 3. HABITAT RETENTION AND ENHANCEMENT PROPOSALS

Following a review of proposals, it was not considered feasible to retain and enhance the existing notable habitats on site including:

- Scattered Trees; and,
- Species-poor defunct hedgerow.

Where trees are felled timber arisings should be used to create log piles as a wildlife resource along site boundaries. The number and location of dead wood piles to be created will depend upon the quantity of felled wood available and will be determined by the ecologist on site.

The retention of dead wood as a wildlife resource will provide habitat for a variety of saproxylic invertebrate species and Species of Principal Importance such as stag beetles. Log piles also provide potential cover for terrestrial mammals such as hedgehog, and the invertebrate populations supported by log piles provide a foraging resource for a variety of bird and mammal species.

In accordance with the ecological mitigation hierarchy, appropriate replacement planting should be incorporated into the soft landscape scheme as set out within Chapter 4.

## 4. HABITAT CREATION PROPOSALS

This Chapter provides details regarding new habitats that will be created on site as a result of the proposed development. The locations of areas of new habitat are shown on Soft Landscaping Drawing MEL-522-001, provided within Section 8.

The following habitat creation has been proposed for the site:

- Creation of flowering lawn;
- Creation of native trees;
- Creation of native shrub thickets with herbaceous, perennial and bulb planting;
- Creation of ornamental shrubs;
- Creation of wildflower grassland;
- Native hedgerow planting; and,
- Mixed native hedgerow planting.

Detail regarding each of the habitat creation proposals for the site is provided in Sections 4.1 to 4.7.

### 4.1 FLOWERING LAWN

#### 4.1.1 Aims and Objectives

##### Aim

- Creation of an area of flowering lawn on site to increase the diversity and value of the amenity spaces.

##### Objectives

- Creation of a new habitat that will benefit biodiversity; and,
- Ensure the ongoing value of the habitat to biodiversity through appropriate management.

#### 4.1.2 Habitat Creation and Establishment

This habitat will be created within the amenity areas to provide both biodiversity and amenity value. A flowering lawn mix (outlined in Table 4.1) is to be established using standard methods. The advised sowing rate for seed mixture EL1 is 40 kg / hectare (16 kg / acre).

%	Latin Name	Common Name
<b>Grasses</b>		
8.0	<i>Agrostis capillaris</i>	Common bent
40.0	<i>Cynosurus cristatus</i>	Crested dog's-tail
28.0	<i>Festuca rubra</i>	Slender creeping red fescue
4.0	<i>Phleum bertolonii</i>	Smaller cat's-tail
<b>Wild Flowers</b>		
4.0	<i>Galium verum</i>	Lady's bedstraw
0.5	<i>Leontodon hispidus</i>	Rough hawkbit
1.0	<i>Leucanthemum vulgare</i>	Oxeye daisy
3.7	<i>Lotus corniculatus</i>	Bird's-foot trefoil
3.0	<i>Primula veris</i>	Cowslip
4.0	<i>Prunella vulgaris</i>	Selfheal
3.5	<i>Ranunculus acris</i>	Meadow buttercup
0.3	<i>Trifolium pratense</i>	Wild red clover

**Table 4.1: Emorsgate Mix EL1**

The wildflower and grass species in this mix are perennial; they will be slow to germinate and grow and will not usually flower in their first growing season. There will often be a flush of annual weeds from the soil in the first growing season, which is easily controlled by repeated mowing.

All cuttings should be collected and removed from the flowering lawns and composted elsewhere at a suitable location on site.

Soft Landscaping Drawing MEL-522-001 presents details regarding the establishment of the flowering lawn habitat with the intention of maximising both biodiversity and amenity value.

#### 4.1.3 Future Management

Cut to a height of 30-40mm throughout the growing season (March to October inclusive) to maintain a neat tidy appearance. Remove all arisings and reform edges as required. To permit flowering, mowing shall be relaxed from late June. Resume cutting when the sward gets untidy (after 4-8 weeks).

All cuttings should be collected and removed from the flowering lawns and composted elsewhere at a suitable location on site to reduce nutrient buildup.

#### 4.1.4 Biodiversity Benefits

The creation of a flowering lawn would provide a diverse grassland and foraging resource for a variety of invertebrates, birds and terrestrial mammals including hedgehog and badger.

### 4.2 CREATION OF SCATTERED TREES

#### 4.2.1 Aims and Objectives

##### Aim

- Ensure replacement and enhancement of standing trees habitat at a site level.

##### Objectives

- Provide suitable habitat for a range of invertebrate, small mammal and bird species.
- To provide foraging resources and pollinator interest.
- To add structural interest to the site.

#### 4.2.2 Habitat Creation and Establishment

The habitat will be created within both amenity areas of the site and along site boundaries to provide structural interest within the site interior and linear features along site boundaries. The following species are proposed:

Latin Name	Common Name
<i>Acer campestre</i>	Field Maple
<i>Betula pendula</i>	Silver Birch
<i>Carpinus betulus</i>	Hornbeam
<i>Malus 'Evereste'</i>	Flowering Crab
<i>Malus 'Rudolph'</i>	Flowering Crab
<i>Prunus avium</i>	Wild Cherry
<i>Sorbus aucuparia 'Cardinal Royal'</i>	Rowan
<i>Sorbus aria 'Majestica'</i>	Whitebeam
<i>Tilia cordata 'Greenspire'</i>	Lime
<i>Malus domestica 'Red Falstaff'</i>	Apple
<i>Pyrus communis 'Conference'</i>	Pear
<i>Prunus avium 'Stella'</i>	Wild Cherry

**Table 4.2: Proposed Tree Planting**

Tree planting shall be carried out in accordance with BS 8545: 2014 'Trees: from nursery to independence in the landscape - Recommendations'. All specified materials shall be installed in accordance with the manufacturer's recommendations and/or instructions.

Soft Landscaping Drawing MEL-522-001 presents details regarding the establishment of the scattered tree habitat.

#### 4.2.3 Future Management

The trees will be managed into perpetuity to retain its ecological value as set out within Soft Landscaping Drawing MEL-522-001.

#### 4.2.4 Biodiversity Benefits

The provision of trees will provide a foraging resource in later summer / autumn for a variety of invertebrates, mammals and birds.

### 4.3 NATIVE SHRUB THICKETS WITH HERBACEOUS, PERENNIAL AND BULB PLANTING

#### 4.3.1 Aims and Objectives

##### Aim

- To create and maintain ornamental habitat across the landscaped areas of the site, to be of value to a range of native wildlife.

**Objectives**

- To ensure the establishment of a diverse shrub / perennial habitats to provide structural diversity;
- To provide habitat for a range of fauna;
- To maintain shrubs for their aesthetic value, balancing biodiversity and amenity requirements; and,
- To avoid disturbance to nesting birds during habitat management.

**4.3.2 Habitat Creation and Establishment**

Species mixes have been chosen to replicate mixed native scrub habitat within the context of a “garden setting”. The resulting species mix will be flower-rich, provide annual pollinator interest, food resources and cover. The following species are proposed:

Native Shrub Mix 1	Native Shrubs Mix 2	Woodland Bulbs & Perennials
<i>Corylus avellana</i> (Hazel)	<i>Corylus avellana</i> (Hazel)	<i>Galanthus nivalis</i> (Snowdrop)
<i>Cornus sanguinea</i> (Dogwood)	<i>Cornus sanguinea</i> (Dogwood)	<i>Hyacinthoides non-scriptus</i> (Bluebell)
<i>Lonicera periclymenum</i> (Honeysuckle)	<i>Euonymus europaeus</i> (Spindle)	<i>Eranthis hyemalis</i> (Winter Aconite)
<i>Viburnum opulus</i> (Guelder Rose)	<i>Ligustrum vulgare</i> (Privet)	<i>Narcissus pseudonarcissus</i> (Wild Daffodil)
	<i>Lonicera periclymenum</i> (Honeysuckle)	<i>Ajuga reptans</i> (Bugloss)
	<i>Viburnum opulus</i> (Guelder Rose)	<i>Anemone nemerosa</i> (Wood Anemone)
		<i>Geranium pratense</i> (Cranesbill)
		<i>Primula vulgaris</i> (Primrose)

**Table 4.3: Proposed Native Shrubs with Herbaceous, Perennial and Bulb Planting**

Native shrubs shall be planted in groups of 3-7 plants of the same species, at 1m centres for quick dense cover, with groups evenly distributed throughout the plot. Lonicera shall be planted individually, scattered evenly throughout the plot to create more open areas in the shrub layer.

Native beds shall be undersown with a shade tolerant grass mixture, Emorsgate EG9 Grass Mixture for Hedgerows & Woodlands and planted with woodland bulbs and perennials to create a rich ground layer. The species mix for EG9 is presented within Table 4.4.

%	Latin Name	Common Name
<b>Grasses</b>		
6	<i>Agrostis capillaris</i>	Common Bent (w)
5	<i>Anthoxanthum odoratum</i>	Sweet Vernal-grass (w)
59	<i>Cynosurus cristatus</i>	Crested Dogtail
6	<i>Deschampsia cespitosa</i>	Tufted Hair-grass (w)
12	<i>Festuca rubra ssp litoralis</i>	Red Fescue (w)
12	<i>Poa nemoralis</i>	Wood Meadow-grass

**Table 4.4: Emorsgate Mix EG9**

Soft Landscaping Drawing MEL-522-001 presents details regarding the establishment of the native shrubs with herbaceous, perennial and bulb planting.

**4.3.3 Future Management**

Firm and prune all newly planted shrubs and hedges in accordance with good horticultural practice to promote healthy, bushy growth and to ensure individual plants establish dense cover as rapidly as possible. Any damaged shoots or branches shall be pruned back to healthy wood. Ground flora, including grassland within the native shrub plots shall be left uncut to provide cover for fauna. Any necessary cutting of shrubs or scrub areas should be carried out over winter to prevent disturbance to nesting birds.

Soft Landscaping Drawing MEL-522-001 presents details regarding the management of the native shrubs with herbaceous, perennial and bulb planting.

#### 4.3.4 Biodiversity Benefits

Creation and maintenance of a diverse native scrub/thicket structure will provide nesting habitat for bird species, including dunnock a Species of Principal Importance, shelter and foraging habitat for hedgehog and create habitat for a variety of invertebrate species, which will indirectly enhance the site for insectivorous birds and mammals.

Timed cutting with ensure winter food resources are maximised and avoid adverse impacts to nesting birds.

#### 4.4 ORNAMENTAL SHRUBS

##### 4.4.1 Aims and Objectives

###### Aim

- Shrubs do not meet any national or local biodiversity criteria, however they provide valuable habitat for nesting birds and pollinating insects, in addition to providing cover for mammals.

###### Objectives

- Maintain the biodiversity of planted shrub areas.
- Manage shrub species to provide suitable bird, mammal and invertebrate habitat.

##### 4.4.2 Habitat Creation and Establishment

Flower-rich and wildlife attracting planting will be created on site around a seating area. The following species are proposed:

Large Specimen Shrubs	Wildlife-friendly Ornamental Shrubs
<i>Amelanchier x grandiflora</i> 'Ballerina'	<i>Cotinus coggygria</i> 'Royal Purple'
<i>Corylus avellana</i> 'Aurea'	<i>Deutzia x elegantissima</i> 'Rosealind'
<i>Corylus avellana</i> 'Zellernus'	<i>Hydrangea macrophylla</i> 'Hamburg'
<i>Magnolia stellata</i> 'Waterlily'	<i>Skimmia japonica</i> 'Rubella'
	<i>Spirea japonica</i> 'Anthony Waterer'
	<i>Viburnum x davidii</i>
	<i>Weigela florida</i> 'Folliis Purpureis'

**Table 4.1: Proposed Large Specimen Shrubs and Ornamental Shrubs**

Soft Landscaping Drawing MEL-522-001 presents details regarding the establishment of the ornamental shrubs habitat.

##### 4.4.3 Future Management

Firm and prune all newly planted shrubs and hedges in accordance with good horticultural practice to promote healthy, bushy growth and to ensure individual plants establish dense cover as rapidly as possible. Any damaged shoots or branches shall be pruned back to healthy wood. Any necessary cutting of shrubs or scrub areas should be carried out over winter to prevent disturbance to nesting birds.

Soft Landscaping Drawing MEL-522-001 presents details regarding the management of the ornamental shrubs.

##### 4.4.4 Biodiversity Benefits

Whilst shrub planting is not in itself a Priority Habitat, it is important to recognise the incredible value of shrubs in all gardens. Formal landscaping areas can have wildlife value, these are areas where the flora may be almost entirely non-native, but the habitat is still valuable for birds, bats, butterflies etc. The proposed species mix will provide annual biodiversity interest.

#### 4.5 CREATION OF WILDFLOWER GRASSLAND

##### 4.5.1 Aims and Objectives

###### Aim

- To provide a diverse sward of grassland of value to wildlife along site boundaries.

###### Objectives

- Ensure the ongoing value of the habitat to biodiversity through appropriate management.

##### 4.5.2 Habitat Creation and Establishment

Native species wildflower grassland will be created on site by stripping existing topsoil, preparing the subsoil and sowing with an appropriate native species mix.

The grassland will be sown with a natural, native grassland seed mix. Emorsgate EM2 (Standard General Purpose Meadow Mixture) is proposed for shaded areas of the site whilst Emorsgate EH1 (Shade Tolerant Hedgerow Mixture) is proposed within shaded areas. The advised sowing rate for the seed mixtures is 40 kg / hectare (16 kg / acre).

The species composition of Emorsgate Mix EM2 and EH1 are detailed in Table 4.8 and 4.9 respectively.

%	Latin Name	Common Name
<b>Grasses</b>		
8	<i>Agrostis capillaris</i>	Common bent
40	<i>Cynosurus cristatus</i>	Crested dogstail
28	<i>Festuca rubra</i>	Red Fescue
4	<i>Phleum bertolonii</i>	Smaller cat's-tail
<b>Wild Flowers</b>		
0.5	<i>Achillea millefolium</i>	Yarrow
2.5	<i>Centaurea nigra</i>	Common knapweed
0.8	<i>Daucus carota</i>	Wild carrot
2.2	<i>Galium verum</i>	Lady's bedstraw
1	<i>Knautia arvensis</i>	Field scabious
1.5	<i>Leucanthemum vulgare</i>	Oxeye daisy
1.5	<i>Lotus corniculatus</i>	Common bird's-foot trefoil
0.5	<i>Plantago lanceolata</i>	Ribwort plantain
1.5	<i>Primula veris</i>	Cowslip
2.5	<i>Prunella vulgaris</i>	Selfheal
2.5	<i>Ranunculus acris</i>	Meadow buttercup
1	<i>Ranunculus bulbosus</i>	Bulbous buttercup
1.5	<i>Rhinanthus minor</i>	Yellow rattle
0.5	<i>Rumex acetosa</i>	Common sorrel

Table 4.8: Emorsgate Mix EM2



%	Latin Name	Common Name
<b>Grasses</b>		
10	<i>Agrostis capillaris</i>	Common Bent
2	<i>Anthoxanthum odoratum</i>	Sweet Vernal-grass (w)
2	<i>Brachypodium sylvaticum</i>	False Brome (w)
25	<i>Cynosurus cristatus</i>	Crested Dogtail
1	<i>Deschampsia cespitosa</i>	Tufted Hair-grass (w)
28	<i>Festuca rubra</i>	Red Fescue
12	<i>Poa nemoralis</i>	Wood Meadow-grass
<b>Wild Flowers</b>		
0.1	<i>Achillea millefolium</i>	Yarrow
0.1	<i>Alliaria petiolata</i>	Garlic Mustard
0.1	<i>Angelica sylvestris</i>	Wild Angelica
1	<i>Arctium minus</i>	Lesser Burdock
0.2	<i>Centaurea nigra</i>	Common Knapweed
0.5	<i>Chaerophyllum temulum</i>	Rough Chervil
1	<i>Daucus carota</i>	Wild Carrot
3	<i>Dipsacus fullonum</i>	Wild Teasel
0.5	<i>Filipendula ulmaria</i>	Meadowsweet
3	<i>Galium album - (Galium mollugo)</i>	Hedge Bedstraw
0.1	<i>Geranium pratense</i>	Meadow Crane's-bill
3.9	<i>Heracleum sphondylium</i>	Hogweed
0.5	<i>Hyacinthoides non-scripta</i>	Bluebell
1	<i>Leucanthemum vulgare</i>	Oxeye Daisy - (Moon Daisy)
4	<i>Malva moschata</i>	Musk Mallow
0.1	<i>Plantago lanceolata</i>	Ribwort Plantain
0.2	<i>Rumex acetosa</i>	Common Sorrel
0.1	<i>Saponaria officinalis</i>	Soapwort
0.5	<i>Silene latifolia</i>	White Campion
0.1	<i>Silene vulgaris</i>	Bladder Campion

**Table 4.9: Emorsgate Mix EH1**

The majority of species included in the proposed seed mix are perennials and will take at least a year to become established. During the first year it is likely that the vegetation will be dominated by grass species and annual weeds arising from any remnant seed in the subsoil. This annual growth will be controlled by mowing throughout the first year to minimise competition and weed seed production. After the first year the site will be brought into hay meadow management.

Soft Landscaping Drawing MEL-522-001 presents details regarding the establishment of the wildflower grassland habitat.

#### 4.5.3 Future Management

Meadow Grass shall be managed under a hay meadow regime to maximise floristic diversity. Cut annually after flowering of desirable species in July or August to a height c.50mm. Cuttings shall be left to dry and shed seed for 1-7 days before removal from site. In more open areas along grass verges mow any re-growth through to late autumn/winter, and again in spring if needed, to maintain a more managed appearance.

Soft Landscaping Drawing MEL-522-001 presents details regarding the management of the ornamental shrubs.

#### 4.5.4 Biodiversity Benefits

Wildflower grassland has a variety of biodiversity benefits. It is of intrinsic value as it supports a variety of uncommon grass and wildflower species, and it will also support a diverse invertebrate fauna including Species of Principal Importance and will contribute to the National Pollinator Strategy. This in turn will provide a valuable foraging resource for a range of species groups including terrestrial mammals, birds, bats, reptiles and amphibians.

A hay meadow management regime will allow the grasses and wildflowers to grow tall, which will create favourable habitat for reptile species which may now colonise the site and provide a linear semi-natural buffer between the development site and adjacent residential gardens.

#### 4.6 CREATION OF NATIVE HEDGEROW

##### 4.6.1 Aims and Objectives

###### Aim

- Creation of native hedgerow habitat to provide natural boundary features with value to wildlife and residents.

###### Objectives

- Ensure the ongoing value of the habitat to biodiversity through appropriate management.

##### 4.6.2 Habitat Creation and Establishment

- **Ground Preparation:** Prior to planting, the ground should be prepared to remove weeds, e.g. by repeated cultivation, and large stones. Do not plant if the soil is waterlogged or frozen.
- **Hedge Mix:** It is proposed to use native hornbeam hedging to provide year-round cover.

During dry periods in the first year after planting, the newly planted hedgerows should be watered. The base of the hedgerows should be kept mulched for a few years after planting to suppress weeds which would compete with the hedges.

Soft Landscaping Drawing MEL-522-001 presents details regarding the establishment of the native hedgerows.

##### 4.6.3 Future Management

Once established, hedgerows should be managed to maintain a neat bushy habitat. Hedgerow maintenance works to be timed to avoid nesting bird season.

Soft Landscaping Drawing MEL-522-001 presents details regarding the management of the native hedgerows.

##### 4.6.4 Biodiversity Benefits

Native hedgerows are listed as a Habitat of Principle Importance in England. The establishment of native hedgerows will provide nesting, refuge and foraging habitat for a wide range of wildlife, including birds, small mammals and invertebrates.

#### 4.7 CREATION OF MIXED NATIVE HEDGEROW

##### 4.7.1 Aims and Objectives

###### Aim

- The creation of a mixed native hedgerow habitat along the site margins.

###### Objectives

- Ensure the ongoing value of the habitat to biodiversity through appropriate management.

##### 4.7.2 Habitat Creation and Establishment

Hedgerows will be created on site by the following methods:

- **Ground Preparation:** Prior to planting, the ground should be prepared to remove weeds, e.g. by repeated cultivation, and large stones. Do not plant if the soil is waterlogged or frozen.
- **Hedge Mix:** Species to be included within these hedgerows will include a range of native woody species as set out in Table 4.10.
- **Establishment:** During dry periods in the first year after planting, the newly planted hedgerows should be watered. The base of the hedgerows should be kept mulched for a few years after planting to suppress weeds which would compete with the hedges.
- **Undersow:** Once established the hedgerow is to be undersown /planted with shade tolerant wildflowers (e.g. Emorsgate EH1) which are to increase the value of the hedgerows for biodiversity.

- **Hedgerow Margins:** The majority of proposed mixed native hedgerow habitat will be fringed by willflower grassland or native planting to maximise the biodiversity value of the hedgerows as a wildlife corridor. A linear band of evening primrose *Oenothera macrocarpa* and golden rod *Solidago 'Goldenmosa'* will be planted along the margin of the northern hedgerow to attract night flying insects and improve the value of the hedgerow for foraging and commuting bats.

Latin Name	Common Name
<i>Acer campestre</i>	Field Maple
<i>Cornus sanguinea</i>	Dogwood
<i>Corylus avellana</i>	Hazel
<i>Crataegus monogyna</i>	Hawthorn
<i>Ilex aquifolium</i>	Holly
<i>Rosa canina</i>	Dog Rose
<i>Viburnum opulus</i>	Guelder Rose

Table 4.2: Mixed Native Hedgerow Species Mix.

#### 4.7.3 Future Management

Once established, it is proposed to trim hedges on a two-year rotation so that no more than one half of the hedge is cut in any one year to ensure there are always flowers for pollinators in spring and berries for birds in winter. Trimming shall be carried out during the dormant season but outside the bird nesting season which generally extends from March to September inclusive. Where possible, cutting shall be delayed until January/February as hedgerow berries provide an important source of food for birds in autumn/winter.

Soft Landscaping Drawing MEL-522-001 presents details regarding the management of the mixed native hedgerows.

#### 4.7.4 Biodiversity Benefits

Native hedgerows are listed as a Habitat of Principle Importance in England. Hedgerows provide valuable wildlife corridors for a range of wildlife, including foraging and commuting habitat for species such as bats and terrestrial mammals, notably hedgehog. If the hedgerows are subject to appropriate management, they can also provide an abundance of suitable nesting habitat for birds and support a variety of invertebrates, such as butterflies. Allowing the ground flora at the base of the hedgerow to develop further provides habitat for small mammals, bats, birds and invertebrates.

## 5. SPECIES CONSERVATION MEASURES

This Chapter provides details regarding new habitats that will be created to benefit birds, bats and hedgehogs. The exact locations should be determined by a suitably qualified ecologist when the features are installed.

### 5.1 BAT BOXES

#### 5.1.1 Aims and Objectives

To replace and enhance potential bat roosting features across the site.

#### 5.1.2 Habitat Creation and Establishment

It is recommended that bat boxes are installed integral to the new buildings.

The following boxes are proposed:

- 2 no. Bird Brick Houses bat boxes installed integral to the western elevation gable end (Fig. 1).
- 2 no. Bird Brick Houses bat boxes installed integral to the southern elevation gable end (Fig. 2).

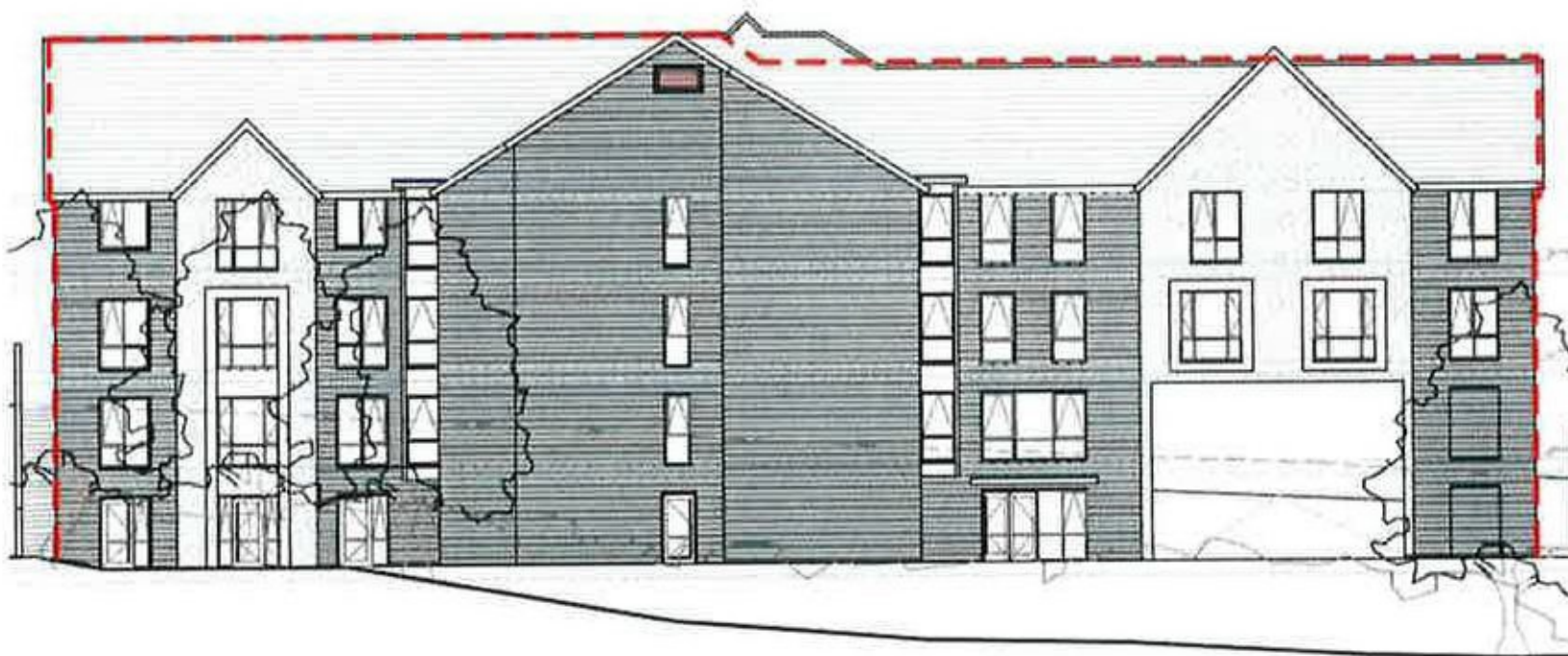


Figure 1. Proposed Bat Boxes – Western Elevation.

Key:

■ - 2 no. bat boxes



Figure 2. Proposed Bat Boxes – Southern Elevation.


Key:

■ 2 no. bat boxes

The hard-wearing nature of the materials used in Bird Brick Houses will ensure that the boxes do not require the yearly treatment to protect them from the weather. The boxes are to be installed near the

apexes of the gables to ensure they are not impacted by external lighting occupation. The location of boxes on both the southern and western elevations will provide variety in roosting conditions.

Specifications are presented within Table 5.1.

Bat Box	Notes	Bat Box Image
<p><b>Bat Box (Brand: 'Bird Brick Houses')</b></p>	<p>It is proposed that bat boxes, brand 'Bird Brick Houses', are installed integral to building elevations. The Main body is 100% recycled polypropylene, real brick slips (brick supplied by customer or from our stock) bonded to the removable front with a mix of wall-tie adhesive and tile adhesive. Screws retaining the front are stainless steel. The base has two drainage holes. The main baffle and the internal lining is timber.</p> <p>This product is designed to provide a roost for most of the UK's bat species, including Pipistrelles, who will use it for roosting, hibernating and maternity roosts bringing up their young.</p> <p>The box is self-cleaning thanks to an internal tilt board at the base; this works by diverting droppings out of the entrance hole. The back of each box is lined with wood; in front of this sits a removable untreated sawn timber baffle board which divides the main area into two, giving extra roosting space and providing variety in brightness and temperature.</p>	
<p>Notes: Images obtained from <a href="http://www.birdbrickhouses.co.uk">www.birdbrickhouses.co.uk</a></p>		

**Table 5.1: Details of Proposed Bat Boxes**

#### Effect of Lighting

Floodlighting has been shown to disrupt the normal 24-hour pattern of light and dark which can affect the normal behavior of bats. Bright lights may reduce bat's social flight activity and cause bats to move away from the lighted area to an alternative dark area. To mitigate for the potential impact of lighting on foraging bats the following guidelines (Jones, 2000) will be taken into consideration when the detailed lighting design is completed.

- Low pressure sodium lamps should be used in preference to high pressure sodium or mercury lamps;
- If mercury lights are used they should be fitted with UV filters;
- The brightness of the lights should be as low as legally possible;
- The times during which the lighting can be used should be limited to provide some dark periods; and,
- Lighting should be directed to avoid light spillage and limited in height where possible. Any upward lighting should be minimal to avoid light pollution. Light can be restricted to selected areas by fitting hoods that direct the light below the horizontal plane, at an angle preferably less than 70 degrees.

#### **5.1.3 Future Management**

The bat boxes will be retained and maintained for perpetuity and will not be converted or used for any other purpose. Droppings will naturally fall from the base of the box, therefore no annual cleaning is required.

A long-term monitoring program is not generally required. Please note that bat boxes should only be checked by a suitably qualified ecologist. If bats are found to have inhabited a roost site, subsequent checks will need to be undertaken by a licensed bat surveyor.

#### **5.1.4 Biodiversity Benefits**

A range of bat species will be able to utilize these roosting features and will therefore ensure that the favorable status of bats within the local area is maintained. The development will encourage the provision of artificial roost sites through the use of bat boxes. This will help to achieve the BAP target

to increase the number of and enhance the quality of roosting sites and feeding habitat (through any soft landscaping described above) with the aim of increasing bat population levels within London.

## 5.2 BIRD BOXES

### 5.2.1 Aims and Objectives

To provide nesting birds with additional suitable nesting locations within the site.

### 5.2.2 Habitat Creation and Establishment

It is recommended that bird boxes are installed integral to the new building elevations. The following bird boxes are proposed:

- 2 no. Bird Brick Houses Swift Boxes installed integral to the northern elevation gable end (Fig. 3).
- 2 no. Bird Brick Houses House Sparrow boxes installed integral to the northern elevation gable end (Fig 3).





Figure 3. Proposed Bird Boxes – Northern Elevation.

Key:

- 2 no. swift boxes
- 2 no house sparrow boxes

Specifications are presented within Table 5.2.

Bird Box	Notes	Bird Box Image
<p><b>Bird Brick Houses Sparrow Terrace</b></p>	<p>Nesting accommodation for house sparrows built in to buildings is preferable to accommodation retrofitted onto the outside. The Bird Brick Houses Sparrow Terrace is suitable for most buildings. The main body is 100% recycled polypropylene, real brick slips bonded to the removable front with a mix of wall-tie adhesive and tile adhesive. Screws retaining the front are stainless steel.</p> <p>The terraces should be erected at least 3 m above ground level on the buildings, and can either be fixed directly to the wall or by installing as a block within brick or concrete. Boxes should face away from the midday sun (south) to avoid overheating and have a clear flight path. The boxes should ideally be incorporated into the northern elevation of buildings.</p>	
<p><b>Bird Brick Houses Swift Box</b></p>	<p>Nesting accommodation for swifts built in to buildings is preferable to accommodation retrofitted onto the outside. The Bird Brick Houses Swift Box is suitable for most buildings in brick. The Main body is 100% recycled polypropylene, real brick slips bonded to the removable front with a mix of wall-tie adhesive and tile adhesive. Screws retaining the front are stainless steel. Two drainage holes are located in the base of the box and a internal nest cup is pre-fitted.</p> <p>Swift boxes should be installed 6 to 7m upwards above the ground level on buildings and positioned towards the top of the structures. Bricks should be located away from windows, ideally tight under the eaves, or at the top of a vertical wall in areas with minimal or no lighting. Boxes should face away from the midday sun (south) to avoid overheating. Boxes should be positioned to have a clear drop beneath with no obstruction by trees, cables, creepers, aerials or other buildings.</p>	

Notes: Images obtained from [www.birdbrickhouses.co.uk](http://www.birdbrickhouses.co.uk)

**Table 5.2: Proposed Bird Nest Boxes for Installation**

### 5.2.3 Future Management

All bird boxes within the site should be checked annually during the construction and 5-year aftercare period and repaired or replaced as required. Boxes should be emptied of remnant nesting material each winter.

### 5.2.4 Biodiversity Benefits

The provision of integrated bird boxes would enable a range of nesting birds to utilise the site. Mitigation has been targeted for birds of conservation concern, which include red-listed species (those of highest conservation concern) such as house sparrow and amber-listed species such as swift.

## 5.3 CREATION OF HEDGEHOG PASSES

### 5.3.1 Aims and Objectives

To allow hedgehogs access to, and movement between, valuable garden habitat by creating gaps in impenetrable boundaries to allow hedgehog movement.

### 5.3.2 Creation and Establishment

150 mm gaps will be left in any impenetrable boundary by:

- Removing a brick from the bottom of a wall;
- Cutting a small hole in a fence;
- Leaving a gap beneath gates; and/or
- Digging a channel underneath walls, fences or gates.

### 5.3.3 Future Management

No specific future management is required.

#### **5.3.4 Biodiversity Benefits**

The creation of gaps in impenetrable boundaries will allow hedgehogs to move freely between valuable garden habitats.

### **5.4 LOG PILES**

#### **5.4.1 Aims and Objectives**

To provide a valuable habitat for invertebrates. This will involve creating and managing log piles within the development to provide suitable invertebrate habitat.

#### **5.4.2 Habitat Creation and Establishment**

The log piles should be created using wood from trees that are to be removed to facilitate the development, or UK native tree species with bark still attached. Partially bury these vertically in the soil or stack them in the shade and allow plants to grow over to retain the moisture. Logs should vary in size between 100 mm, 500 mm and 1000 mm in length.

The number and location of dead wood piles to be created will depend upon the quantity of felled wood available and will be determined by the ecologist on site.

#### **5.4.3 Management and Maintenance**

Features should be subject to annual monitoring and maintenance, including removal of overgrowing vegetation, litter and debris, and the addition of extra logs as the logs rot, to ensure that features remain fit for purpose and continue to provide suitable habitat.

#### **5.4.4 Biodiversity Benefits**

Dead and decaying wood provides a valuable resource for a variety of invertebrate species, and can support interesting lower plant fauna (mosses, liverworts, lichens and fungi). This in turn creates a valuable foraging resource for bat, bird and small mammal species. Log piles also provide potential cover for terrestrial mammals such as hedgehog (a Species of Principal Importance), and the invertebrate populations supported by log piles provide a foraging resource for a variety of bird and mammal species.

### **5.5 GENERAL PRINCIPLES**

#### **5.5.1 Pollinators**

The planting mix on site has been designed to ensure that opportunities exist for pollinators all year round.

#### **5.5.2 Horticultural Practice**

It is important to implement good horticultural practice in any landscaping scheme, including the use of peat-free composts, mulches and soil conditioners. The use of pesticides (herbicides, insecticides, fungicides and slug pellets) should be discouraged to prevent fatal effects on the food chain particularly invertebrates, birds and/or mammals. Any pesticides used as part of site maintenance should be non-residual.

#### **5.5.3 Invasive Species**

Vigilance should be used throughout the course of the site preparation to ensure that the works are not causing invasive plant species to spread in the wild.



## 6. IMPLEMENTATION AND MONITORING

### 6.1 RESPONSIBILITY FOR IMPLEMENTATION OF THE PLAN

Landscape and Ecological Management works will be carried out by the following parties:

- The landowner will be responsible for ensuring the landscape and ecological management works are undertaken.
- Practical habitat management works will be carried out by a contractor to be appointed at a later date.
- Ecological supervision of habitat management works and revisions to the Biodiversity Enhancement and Management Plan will be carried out by Middlemarch Environmental Ltd, Triumph House, Birmingham Road, Allesley, Coventry, West Midlands, CV5 9AZ. Tel: 01676 525880.

Should any of the organisations highlighted above no longer be involved in the project, the landowner will be required to identify an alternative organisation with suitable competence and experience to fulfil the necessary role. Any new bodies taking over responsibility will need to agree to implement the BEMP.

### 6.2 MONITORING

Monitoring is required to check whether habitats are establishing correctly and to provide input into future amendments to site management. Table 6.1 outlines the recommended monitoring for a 30 year period.

Feature	Monitoring	Timing	Year											
			1	2	3	4	5	6	7	8	9	10		
All habitats	Fixed Point Photography on a seasonal basis during the first five years if the development of the provided habitats is to be tracked.	Seasonal	x	x	x	x	x							
	Fixed Point Photography every 5 year during subsequent years	Summer							x					10 15 20 25 30
Condition Assessment	A Phase 1 botanical survey will be required to inform monitoring. This will also incorporate a condition assessment methodology.	Summer	x	x	x	x	x							10 15 20 25 30
Trees	To be monitored on an annual basis to check tree health and identify any potentially dangerous trees to be felled.	n/a	x	x	x	x	x	x	x	x	x	x	x	
Bird boxes	Annual inspection of the bird boxes should be undertaken and any necessary repairs carried out.	November to February	x	x	x	x	x							
Bat boxes	Annual inspection of the bat boxes should be undertaken and any necessary repairs carried out by a licensed bat worker.	October	x	x	x	x	x							
Deadwood piles	Monitor condition of deadwood piles and add extra logs as the logs rot.	March to October	x	x	x	x	x	x	x	x	x	x	x	

Table 6.1: Proposed Landscape and Ecological Monitoring

## 7. SUMMARY OF HABITAT LOSSES/GAINS AND BIODIVERSITY CONTRIBUTION

This Chapter provides an overall summary of the extent of habitat loss and gain as a result of the proposed development, and outlines the biodiversity benefits that are predicted as a result of the proposed habitat retention, creation and enhancement measures detailed in Chapters 3, 4 and 5.

### 7.1 PROTECTION OF ECOLOGICAL RECEPTORS

Proposals include the re-development of a site. The development site is considered to be of limited ecological value and is overgrown with non-native invasive shrubs and a number of species listed on the Sussex Invasive non-native species (INNS) Inventory. The site does, however, does contain notable habitats in the form of scattered trees and defunct species-poor hedgerows and provide habitat for notable / protected species such as bats (foraging and commuting), badger, hedgehog, herpetofauna, birds and invertebrates.

### 7.2 HABITAT LOSSES AND GAINS

The proposed development will result in the loss of 9 no. trees from the site boundaries and removal of the existing species-poor defunct hedgerow from the south-west corner of the site. Deadwood from the tree clearance will be retained on site as deadwood piles.

The following new habitats will be created and managed as per the previous chapters:

- Creation of flowering lawn;
- Creation of native trees;
- Creation of native shrub thickets with herbaceous, perennial and bulb planting;
- Creation of ornamental shrubs;
- Creation of wildflower grassland;
- Native hedgerow planting; and,
- Mixed native hedgerow planting.

In addition, the Biodiversity Enhancement Strategy has included for the incorporation of species specific wildlife features as follows:

- 2 no. Bird Brick Houses bat boxes incorporated into the fabric of structures;
- 2 no Bird Brick Houses swift boxes; and,
- 2 no Bird Brick Houses sparrow boxes;
- Deadwood Piles.
- All fences are to be fitted with hedgehog passes.
- Targeted planting to provide annual pollinator interest.

### 7.2 Biodiversity Net Gain

A Biodiversity Net Gain Assessment (BNG) has been undertaken for the proposed development, detailed within Report RT-MME-156684-08.

Notwithstanding the Council's "Validation Requirements" checklist which includes completion of Natural England Biodiversity Metric 3.0 and calculation of Biodiversity Net Gain, submission of this information is not mandatory at this time so is submitted by the applicant on a voluntary basis for illustrative purposes. The adopted Local Plan does not require the submission of this information. The Biodiversity Metric is only a proxy for biodiversity and it should be noted at the outset that the development proposals include biodiversity enhancements to the site which are not captured in the formal Biodiversity Net Gain Assessment.

The BNG Assessment identifies that the proposed development could result in a net loss of **-0.26 BU** a **-30.03%** decrease of the baseline habitat value.

The proposals (habitat loss and retention), could deliver a net gain of **+0.79 BU** a **+1158.23%** increase of the baseline hedgerow value.

Area and hedgerow units are considered separately and are not interchangeable within the metric. Consequently, it is considered unlikely that the proposed development will deliver net-gain within the context of the Biodiversity Metric 3.0 calculator tool.

It should be noted that the metric is only a proxy for biodiversity and that any proposed mitigation or compensation on site has been designed using appropriate ecological expertise to maximise opportunities for biodiversity. The proposed development layout has been informed by an Ecological Opportunities and Constraints Plan (Report RT-MME-156684-04) following the Ecological Mitigation Hierarchy. The soft landscaping strategy has been informed by a Biodiversity Enhancement Strategy (RT-MME-156684-08) aimed at maximising the value of habitats within context of the proposed development, providing connectivity between the site and wider ecological network of residential gardens.

The proposed development will see a net gain in notable habitat provision including significant additional native tree and hedgerow planting on site. The hedgerow planting, while not considered as an area-based habitat within the Biodiversity Metric 3.0 calculator tool will functionally serve as such within the context of a smaller urban site.

The development site has previously benefitted from a planning permission for a 90-bed care home. The proposed development includes a series of enhancements from the original scheme, including native shrub thickets and wildlife attracting shrubs which will provide shelter, foraging resources and pollinator interest all year round, the provision of species-rich wildflower grassland along the site margins and additional tree and hedgerow planting.

This habitat provision will replace existing predominantly low distinctiveness habitats including non-native introduced shrub and poor-quality grassland habitat throughout which non-native and locally invasive species are abundant. Additional site enhancements will be provided in the form of hedgehog passes, deadwood piles and integrated bat and bird boxes targeting habitat provision for priority species.

### 7.3 SUMMARY OF CONTRIBUTION OF DEVELOPMENT TO BIODIVERSITY TARGETS

The proposed development will make the following contributions to national and local biodiversity targets:

- The proposed development will include replacement of species-poor grassland with associated non-native invasives, with native species-rich wildflower grassland which, once established, will support a variety of uncommon grass and wildflower species. It will also support a diverse invertebrate fauna including Species of Principal Importance and will contribute to the National Pollinator Strategy. This in turn will provide a valuable foraging resource for a range of species groups including terrestrial mammals, birds, bats, reptiles and amphibians. The habitat will provide a linear semi-natural buffer between the development site and adjacent residential gardens.
- The proposed development will result in a net increase in tree cover on a site scale.
- The development will result in a net increase in native hedgerow habitat, a Habitat of Principal Importance in England. Hedgerows provide valuable wildlife corridors for a range of wildlife, including foraging and commuting habitat for species such as bats and terrestrial mammals, notably hedgehog. If the hedgerows are subject to appropriate management, they can also provide an abundance of suitable nesting habitat for birds and support a variety of invertebrates, such as butterflies. Allowing the ground flora at the base of the hedgerow to develop further provides habitat for small mammals, bats, birds and invertebrates.
- The development will be designed and managed to maximise its benefit to biodiversity, for example through the use of native shrub thickets and wildlife attracting shrubs which will provide shelter, foraging resources and pollinator interest all year round.
- The proposed development will create habitat for bats and birds through the installation of boxes;
- The proposed development will create habitat for crevice dwelling bat species such as common pipistrelle, which are Species of Principal Importance in England and are listed as priority species on the local BAP;
- The proposed development will create habitat for a variety of invertebrate species. This will indirectly enhance the site for insectivorous birds and mammals;
- The proposed development will create habitat for hedgehog, which are Species of Principal Importance in England and are listed as priority species on the local BAP. The development will also be designed to ensure that this area remains accessible to hedgehogs.

## **8. DRAWINGS AND FIGURES**

Drawing C156684-04-01 – Phase 1 Habitat Map

Drawing MEL-522-001 – Proposed Soft Landscaping

C156684-04-01

**Legend**

- - Site boundary
- X Scattered scrub
- Scattered tree
- ++++ Fence
- Species-poor defunct hedgerow
- Bare ground
- Dense scrub
- Introduced shrub
- SI Poor semi-improved grassland
- Tail ruderal
- Target note

- 1 Large rubble pile
- 2 Clearing resulting from historic fire
- 3 Fallen wooden hoarding at southern site boundary and large amounts of litter
- 4 Rubble pile

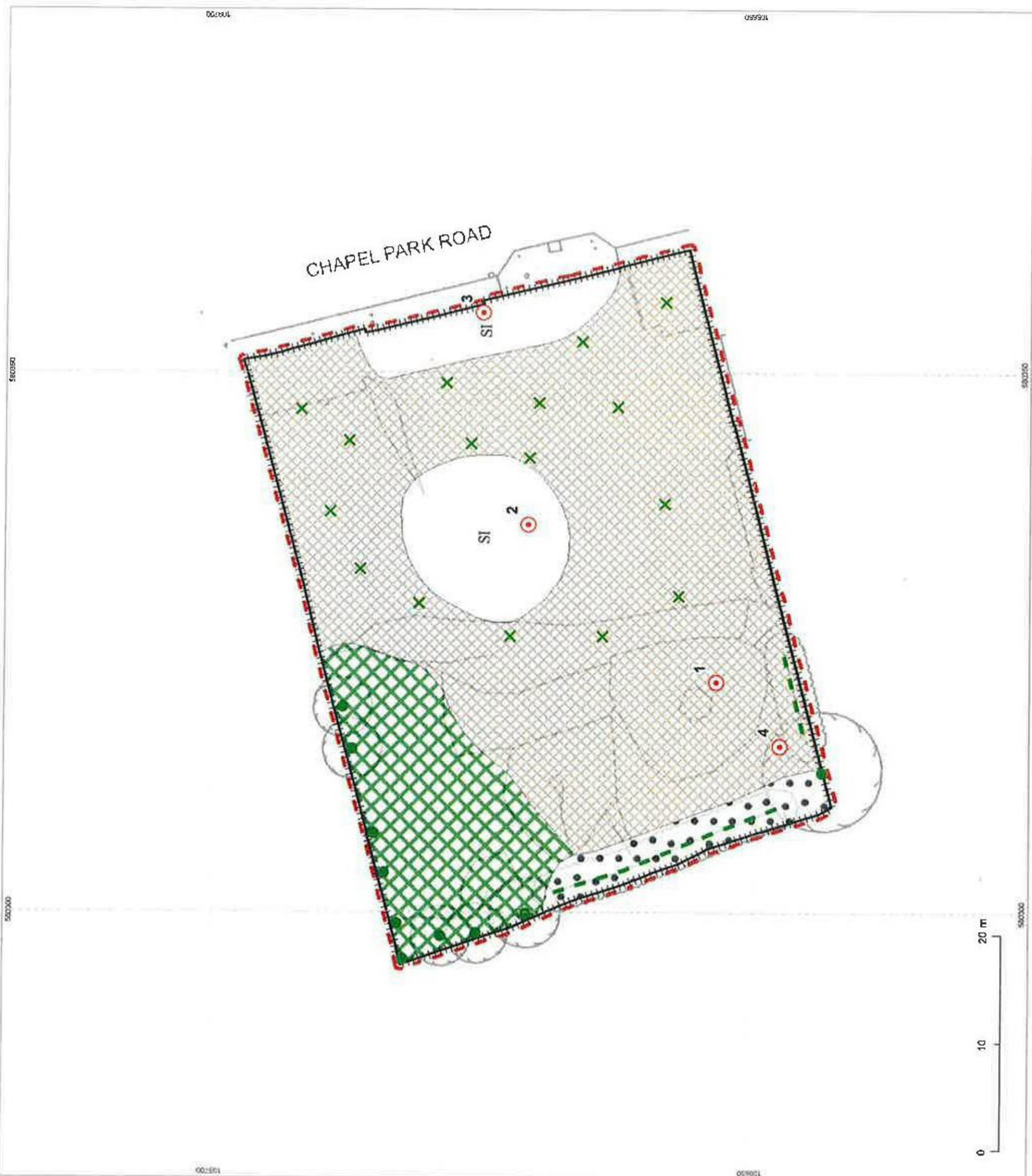


Project	32-36 Chapel Park Road, Hastings, East Sussex		
Client	Urban Village Ltd		
Drawing Number	C156684-04-01	Revision	00
Scale @ A4	1:500	Date	January 2022
Author	BS	Drawn by	CD



Triumph House, Birmingham Road, Aulseley, Coventry CV5 9AZ  
 T: 01676 525880  
 E: [Eradmin@middlemarch-environmental.com](mailto:Eradmin@middlemarch-environmental.com)

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**SPECIFICATION**

- General Landscaping**
  - Existing trees shall be preserved unless retained trees and vegetation
  - Existing trees and vegetation shall be maintained in accordance with BS 5823: 2012 during all construction operations.
  - All landscape works shall be undertaken by competent contractors, with appropriate training and equipment.
  - All areas that are removed from site at Contractor's expense under alternative remediation.
- Services**
  - The Contractor must ascertain the location of underground services before commencing work.

- GROUND PREPARATION**
- Soil Remediation**
    - The soil shall be tested to determine if soil is suitable for planting. If not, it will be possible to assess the value of the soil in terms of its ability to support plant life.
    - Soil shall be tested to determine if soil is suitable for planting. If not, it will be possible to assess the value of the soil in terms of its ability to support plant life.
  - Subsoil**
    - Where there is insufficient depth available and/or nature of material beneath the formation and make-up, additional subsoil is to be applied to ensure that the soil is suitable for planting.

- Soil Handling Operations**
- Soil handling operations shall be carried out when the soil is reasonably dry and non-toxic. Shallowly in consistency of at least 300mm below the ground level. Topsoil shall not be used as a substitute for topsoil or as a substitute for the soil in any other area.
  - Soil handling operations shall be carried out when the soil is reasonably dry and non-toxic. Shallowly in consistency of at least 300mm below the ground level. Topsoil shall not be used as a substitute for topsoil or as a substitute for the soil in any other area.

- Soil Handling Operations**
- Any areas of topsoil that are contaminated with asbestos shall be replaced. Any asbestos, brick, concrete, tarmac and other deleterious material shall be removed. Topsoil areas shall be in an uncompacted and uncontaminated state prior to final subsoil.

- Soil Depth & Clearances**
- Clearance to 450mm below ground level
  - Clearance to 450mm below ground level
  - Clearance to 450mm below ground level
  - Clearance to 450mm below ground level
  - Clearance to 450mm below ground level

- New Tree Planting Adjacent to Services & Structures**
- All trees shall be planted in accordance with BS 5823: 2012.
  - All trees shall be planted in accordance with BS 5823: 2012.
  - All trees shall be planted in accordance with BS 5823: 2012.
  - All trees shall be planted in accordance with BS 5823: 2012.

- Root Barriers**
- Root barriers shall be installed in accordance with BS 5823: 2012.
  - Root barriers shall be installed in accordance with BS 5823: 2012.
  - Root barriers shall be installed in accordance with BS 5823: 2012.
  - Root barriers shall be installed in accordance with BS 5823: 2012.

- Landscaping Contractor shall be responsible for acquiring all materials and services prior to commencing work on site.**

- CULTIVATION & PLANTING**
- General Planting Notes**
    - All plants supplied shall comply with the National Plant Society's standards.
    - All plants shall be planted in accordance with BS 5823: 2012.
    - All plants shall be planted in accordance with BS 5823: 2012.

- Plant Handling & Establishment**
- Plant handling shall be in accordance with BS 5823: 2012.
  - Plant handling shall be in accordance with BS 5823: 2012.
  - Plant handling shall be in accordance with BS 5823: 2012.
  - Plant handling shall be in accordance with BS 5823: 2012.

- Watering**
- During the first two years after planting, a regular watering regime shall be implemented, commencing from the end of March/April to the end of October, depending on weather conditions. Apply water when there has been no appreciable rain for 7 days or when there has been heavy rain or very high temperatures.

- Replacement of Failed or Defective Plants**
- Following the initial 12 months defect period any new or old plants which within a period of 5 years from the completion of the development are missing, found dead, or non-vigorously developed or diseased shall be replaced in the next planting season.

- GRASSLAND ESTABLISHMENT & MANAGEMENT**
- Grassland shall be established in accordance with BS 5823: 2012.
  - Grassland shall be established in accordance with BS 5823: 2012.
  - Grassland shall be established in accordance with BS 5823: 2012.
  - Grassland shall be established in accordance with BS 5823: 2012.

- Management once established**
- Mowing shall be carried out in accordance with BS 5823: 2012.
  - Mowing shall be carried out in accordance with BS 5823: 2012.
  - Mowing shall be carried out in accordance with BS 5823: 2012.
  - Mowing shall be carried out in accordance with BS 5823: 2012.

- Plant Dimensions**
- | Form           | Depth (cm) | Rootball Diameter | Depth | Top Pt. Dimensions |
|----------------|------------|-------------------|-------|--------------------|
| Standard       | 10-15cm    | 200mm             | 100mm | 100mm x 100mm      |
| Heavy Standard | 15-20cm    | 300mm             | 150mm | 150mm x 150mm      |
| Heavy Standard | 20-25cm    | 400mm             | 200mm | 200mm x 200mm      |

- Plant Dimensions**
- Plant dimensions shall be in accordance with BS 5823: 2012.
  - Plant dimensions shall be in accordance with BS 5823: 2012.
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**PLANT SCHEDULE**

**SPECIMEN TREES**

Ref	Species	Depth (cm)	Form	Height	Root Condition	Qty
A1	Acer campestre (Field Maple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
B1	Delonix regia (Flame Tree)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
C1	Carpinus betulus (Hornbeam)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
D1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
E1	Prunus avium (Sweet Cherry)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
F1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
G1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
H1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
I1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
J1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
K1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
L1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
M1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
N1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
O1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
P1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
Q1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
R1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
S1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1
T1	Malus domestica (Domestic Apple)	10-15cm	1-1 bare root transplant	1.5-2.0m	1	1

**LARGE SPECIMEN SHRUBS**

Ref	Species	Form	Height	Root Condition	Qty
A1	Amelanchier canadensis (Witch Hazel)	Multi-Stem	200-250cm	10 litre pot	1
B1	Corylus avellana (Hazel)	Multi-Stem	200-250cm	10 litre pot	1
C1	Prunus avium (Sweet Cherry)	Multi-Stem	200-250cm	10 litre pot	1
D1	Prunus avium (Sweet Cherry)	Multi-Stem	200-250cm	10 litre pot	1

**NATIVE MIXED HEDGE**

Height	A	B
1.5m	1	1
2.0m	1	1
2.5m	1	1
3.0m	1	1
3.5m	1	1
4.0m	1	1
4.5m	1	1
5.0m	1	1
5.5m	1	1
6.0m	1	1
6.5m	1	1
7.0m	1	1
7.5m	1	1
8.0m	1	1
8.5m	1	1
9.0m	1	1
9.5m	1	1
10.0m	1	1
10.5m	1	1
11.0m	1	1
11.5m	1	1
12.0m	1	1
12.5m	1	1
13.0m	1	1
13.5m	1	1
14.0m	1	1
14.5m	1	1
15.0m	1	1
15.5m	1	1
16.0m	1	1
16.5m	1	1
17.0m	1	1
17.5m	1	1
18.0m	1	1
18.5m	1	1
19.0m	1	1
19.5m	1	1
20.0m	1	1
20.5m	1	1
21.0m	1	1
21.5m	1	1
22.0m	1	1
22.5m	1	1
23.0m	1	1
23.5m	1	1
24.0m	1	1
24.5m	1	1
25.0m	1	1
25.5m	1	1
26.0m	1	1
26.5m	1	1
27.0m	1	1
27.5m	1	1
28.0m	1	1
28.5m	1	1
29.0m	1	1
29.5m	1	1
30.0m	1	1
30.5m	1	1
31.0m	1	1
31.5m	1	1
32.0m	1	1
32.5m	1	1
33.0m	1	1
33.5m	1	1
34.0m	1	1
34.5m	1	1
35.0m	1	1
35.5m	1	1
36.0m	1	1
36.5m	1	1
37.0m	1	1
37.5m	1	1
38.0m	1	1
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39.0m	1	1
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40.0m	1	1
40.5m	1	1
41.0m	1	1
41.5m	1	1
42.0m	1	1
42.5m	1	1
43.0m	1	1
43.5m	1	1
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44.5m	1	1
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45.5m	1	1
46.0m	1	1
46.5m	1	1
47.0m	1	1
47.5m	1	1
48.0m	1	1
48.5m	1	1
49.0m	1	1
49.5m	1	1
50.0m	1	1
50.5m	1	1
51.0m	1	1
51.5m	1	1
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61.0m	1	1
61.5m	1	1
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63.0m	1	1
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64.0m	1	1
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69.5m	1	1
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70.5m	1	1
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74.5m	1	1
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75.5m	1	1
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76.5m	1	1
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77.5m	1	1
78.0m	1	1
78.5m	1	1
79.0m	1	1
79.5m	1	1
80.0m	1	1
80.5m	1	1
81.0m	1	1
81.5m	1	1
82.0m	1	1
82.5m	1	1
83.0m	1	1
83.5m	1	1
84.0m	1	1
84.5m	1	1
85.0m	1	1
85.5m	1	1
86.0m	1	1
86.5m	1	1
87.0m	1	1
87.5m	1	1
88.0m	1	1
88.5m	1	1
89.0m	1	1
89.5m	1	1
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90.5m	1	1
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93.5m	1	1
94.0m	1	1
94.5m	1	1
95.0m	1	1
95.5m	1	1
96.0m	1	1
96.5m	1	1
97.0m	1	1
97.5m	1	1
98.0m	1	1
98.5m	1	1
99.0m	1	1
99.5m	1	1
100.0m	1	1

**NATIVE MIXED HEDGE**

Species	%	Height	Root Condition	Qty
Acer campestre (Field Maple)	30	2-3m	1-1 bare root transplant	15
Cornus sanguinea (Dogwood)	15	2-3m	1-1 bare root transplant	8
Cornus avellana (Hornbeam)	20	2-3m	1-1 bare root transplant	10
Crataegus monogyna (Hawthorn)	25	2-3m	1-1 bare root transplant	12
Ilex aquifolium (Holly)	10	2-3m	1-1 bare root transplant	5
Rosa canina (Dog Rose)	10	2-3m	1-1 bare root transplant	5
Viburnum opulus (Guelder Rose)	10	2-3m	1-1 bare root transplant	5
<b>Total</b>				<b>100</b>

**NATIVE HORNBEAM HEDGE**

Species	%	Height	Root Condition	Qty
Carpinus betulus (Hornbeam)	100	2-3m	1-	

**APPENDIX 3**

**Form of s.278 Agreement**

**EAST SUSSEX COUNTY COUNCIL**

and

[ ]

and

[ ]

**A G R E E M E N T**

**under Section 278 of the  
Highways Act 1980**

**relating to Land at 32-36 Chapel Park Road, St Leonards-on-Sea East Sussex  
TN37 6HU**

**East Sussex County Council  
County Hall  
St. Anne's Crescent  
Lewes  
East Sussex BN7 1UE**

ref. PE/[ ]/



**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20[ ]

**BETWEEN**

(1) **EAST SUSSEX COUNTY COUNCIL** of County Hall, St. Anne's Crescent, Lewes, East Sussex BN7 1SW (hereinafter called "the County Council") of the first part and

(2) [ ] (Company Number [ ]) of/whose registered office is situate at [ ] (hereinafter called "the Developer") of the second part [and]

(3) [ ] (Company Number [ ]) of/whose registered office is situate at [ ] (hereinafter called "the Surety") of the third part

**RECITALS**

**WHEREAS:**

(1) The Developer has applied for and been granted planning permission ("the Planning Permission") by Hastings Borough Council (under reference HS/FA/22/00409 ) for development comprising the erection of an 80 Bedroom Care Home with associated access, parking, open space and landscaping ("the Proposed Development") on land shown for the purposes of identification only edged red on the plan annexed hereto ("the Land").

(2) The County Council considers that before the Proposed Development is Commenced it will be necessary for certain Highway Works (as hereinafter defined) to be agreed to be carried out before the Proposed Development is

occupied in order that the traffic which will be generated by the Proposed Development can be accommodated satisfactorily on the surrounding highway network.

- (3) For the area within which the Proposed Development is to be situated the County Council is for the purposes of the Highways Act 1980 ("the 1980 Act") and Section 111 of the Local Government Act 1972 ("the 1972 Act") respectively the Highway Authority and a local authority.
- (4) Section 278 of the 1980 Act provides that a highway authority may if satisfied it will be of benefit to the public enter into an agreement with any person for the execution by the authority of any works which the authority may be authorised to execute on terms that the person pays the whole or part of the cost of the works.
- (5) The County Council is authorised to execute the Highway Works contemplated by this Agreement and is satisfied that they will be of benefit to the public but is desirous that the Developer undertakes the said works on its behalf on the terms hereinafter contained and accordingly proposes to invoke its further powers under Section 111 of the 1972 Act and Section 1 of the Localism Act 2011 ("the 2011 Act") to be used in conjunction with its said powers under Section 278 of the 1980 Act in order to enter into this Agreement in the following terms.



**"Commencement of Development"**

Management) Regulations 2015 and any successor legislation

shall refer to the Proposed Development and shall have the same meaning as ascribed to a "material operation" by Section 56(4) of the Town and Country Planning Act 1990 and "Commence" and "Commenced" shall be construed accordingly

**"Competent Person in Health and Safety"**

means an employee/contractor/consultant with health and safety training experience and qualifications

**"Director"**

means the Director of Communities, Economy and Transport for the time being of the County Council and shall include his duly authorised agents and representatives and any successor of his

**"Exception Report"**

means the report from the Developer to the Director on each recommendation of any Safety Audit that the Developer proposes should be implemented

**"Highway Drawing"**

means the drawing(s) numbered [       ] annexed hereto which have incorporated the findings of a Stage Two Safety Audit and which may be subject to amendments as agreed by the Director

<b>"Highway Works"</b>	means the highway works described in the Schedule and the Highway Drawing
<b>"Land"</b>	means the freehold land as described in Recital (1)
<b>"Occupation"</b>	means first beneficial occupation for any use permitted by the Planning Permission but not including occupation for the purposes of construction fitting out marketing security or repair and "Occupy" and "Occupied" shall be construed accordingly
<b>"Proposed Development"</b>	has the meaning assigned to it in Recital (1)
<b>"Review Date"</b>	means the anniversary of the date hereof and each subsequent anniversary thereof
<b>"RP Index"</b>	means the Index of Retail Prices prepared by the Office for National Statistics or any successor Ministry or department and published by the Office for National Statistics or in the event that the reference base used to compile the Index changes after the date of this Agreement the figure taken to be shown in the Index after the change is to be the figure that would have been shown in the Index if the reference base current at the date of this Agreement had been retained or if the RP Index shall cease to exist then there shall be

substituted such other index as may replace the same or the County Council shall determine in consultation with the Developer.

**"Safety Audit"**

means a safety audit (which shall include a site visit) and which has been approved by the Director in writing and carried out at the Developer's expense by a consultant independent of the Highway Works design consultant and reference herein to a Stage One Stage Two Stage Three or Stage Four Safety Audit shall be construed accordingly and the results of which shall be submitted together with the appropriate Exception Report to the Director on receipt of such by the Developer

**"Specified Date"**

means the date upon which an obligation arising under this Agreement is due to be performed or payment is to be made

**"Statutory Undertaker"**

shall have the meaning ascribed to it by Section 329 of the 1980 Act and shall include persons authorised under any enactment to carry on an undertaking for the supply of electricity gas or water and any sewerage undertaking and shall also include the Environment Agency the holder of a licence to operate telecommunication systems the Civil

Aviation Authority and the holder of a licence to supply cable television

**"Statutory Undertakers' Works"**

shall mean all works required by any Statutory Undertaker to be carried out in connection with the Highway Works

- 1.2 Unless the context requires otherwise references in this Agreement to a clause schedule or paragraph are references respectively to a clause or paragraph of or schedule to this Agreement.
- 1.3 Where any party to this Agreement comprises two or more persons any obligations and covenants on the part of that party contained or implied in this Agreement shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include references to each or any of those persons.
- 1.4 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment modification or re-enactment of it for the time being in force.
- 1.5 The headings to this Agreement do not and will not by implication form any part of this Agreement and shall have no legal force whatsoever.

1.6 The expression "the County Council" shall include any statutory successor authority of it and the expression "the Developer " shall include all persons deriving title to the Land under it and shall include (if appropriate) two or more owners of the legal estate.

1.7 A reference to one gender shall include other genders and a reference to the singular shall include the plural and vice versa.

## 2. **PRELIMINARY**

### 2.1 **Enforceability**

2.1.1 This Agreement is entered into pursuant to Section 278 and Section 38 of the 1980 Act Section 111 of the 1972 Act and Section 1 of the 2011 Act and all other powers enabling for the purposes of securing the construction of the Highway Works at no cost to the County Council.

2.1.2 In the event of a breach by the Developer (or its successors in title as described in Clause 1.6) of Clause 3.2 the County Council shall have full power pursuant to Section 278 (5) and (6) of the 1980 Act and Section 111 of the 1972 Act to execute such works as are necessary to carry out its obligations under this Agreement and may for that purpose enter the Land.

### 2.2 **Expiry**

If the Planning Permission shall expire or shall have been revoked before either the Proposed Development or the Highway Works have been



commenced this Agreement shall forthwith determine and cease to have effect.

**2.3 Commencement**

The obligations and covenants contained in this Agreement shall take effect on the date hereof.

**2.4 Fettering of discretion**

Nothing in this Agreement shall fetter or restrict the discretion of the County Council in the exercise of its powers under any statutory enactment or other enabling power for the time being in force.

**2.5 Service of Notices**

Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by prepaid registered or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for the purpose by notice in writing.

**2.6 Requirements to be Reasonable**

Subject to Clause 2.4:-

2.6.1 where any agreement certificate consent permission expression of satisfaction or other approval is to be given by any party or any

person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed and

2.6.2 where any requirements or decisions are to be made by the Director under the terms of this Agreement they shall be made or imposed upon reasonable grounds and

2.6.3 where any payment is required to be made by the Developer under the terms of this Agreement (other than those required under Clauses 4.2 4.3 4.4 and 4.5) the Developer shall be entitled to require the County Council to first produce to it a statement of account in that respect.

## 2.7 **Covenants**

The Developer hereby covenants with the County Council as specified in Clauses 3 to 9 and the County Council hereby covenants with the Developer as specified in Clauses 4.1.5 and 10.

## 2.8 **Contracts ( Rights of Third Parties ) Act 1999**

Nothing in this Agreement confers or purports to confer on any third party any benefit or rights to enforce any terms of this Agreement.

## 2.9 **Assignment**

This Agreement may not be assigned by the Developer and/or the Surety without the consent of the County Council which consent shall not be unreasonably withheld.

**2.10 Jurisdiction**

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

**3 PRE-COMMENCEMENT MATTERS**

3.1 The Highway Works shall not be commenced until:-

3.1.1 The Director has given his written approval to:-

3.1.1.1 all drawings and specifications for the Highway Works (which drawings and specifications shall incorporate the findings of a Stage Two Safety Audit of the Highway Works and which specifications shall comply with the East Sussex County Council Highway Construction Specification for Developers, supplemented by the Specification for Highway Works published by stationary office for National Highways) ("the Contract Documents") such approval to be given before invitations to tender are sought

3.1.1.2 the acceptance of the contractor and any subcontractor of his (which contractor and subcontractor shall be accredited for the purposes of the New Roads and Street Works Act 1991) whose tender for the Highway Works the Developer proposes to accept together with satisfactory documentary evidence of the total cost of the construction of the Highway Works ("the Construction Costs") and the total cost of the Statutory Undertakers' Works ("the Statutory Undertakers' Costs) such acceptance to be given before the contract for the Highway Works is awarded

3.1.1.3 a preliminary programme of work for the Highway Works ("the Programme") and a detailed programme of works incorporating the principles of the Programme ("the Final Programme")

3.1.1.4 detailed proposals and drawings showing the traffic management measures to be implemented throughout the duration of the Highway Works (including any temporary signing and routing of construction and haulage traffic) ("the Approved

Traffic Measures") together with satisfactory documentary evidence of the estimated total costs thereof ("the Approved Traffic Measures Costs")

3.1.1.5 detailed proposals and drawings showing all signs road markings and permanent street lighting and traffic signal installations (both vehicular and pedestrian)

3.1.1.6 detailed proposals of alterations to Statutory Undertakers' plant apparatus or other equipment and the submitted details shall include all drawings (if any) received from any Statutory Undertaker showing existing and proposed services

3.1.1.7 a schedule of the condition of the Approach Road to include an admission of liability in respect of construction traffic that will use the Approach Road for the purpose of Section 59(3) of the 1980 Act

3.1.2 the Notice pursuant to Clause 5.1 has been delivered to the County Council

3.1.3 all land required for or in connection with the Highway Works is owned by or under the control of the Developer or the County Council

3.1.4 the Developer shall have publicised the Highway Works in such a way and to such an extent as the Director considers necessary in order to advise properly members of the public as to the nature timing duration and progress of the Highway Works.

3.2 The Highway Works shall not be brought into use and the Proposed Development under the Planning Permission or any other subsequent permission shall not be Occupied or brought into use until the Director shall have issued the Certificate referred to in Clause 7.1 and the County Council agrees to use its reasonable endeavours to expedite the issuing of consents after service of the Notice by the Developer upon the County Council pursuant to Clause 5.1.

#### **4 FINANCIAL PROVISIONS**

##### **4.1 Bond**

4.1.1 If the Developer at any time fails to perform or observe any of the conditions stipulations or obligations on its part contained in this Agreement and the Director determines that failure does not adversely affect safety (the decision of the Director in this respect being final) the Director may without prejudice to any statutory rights or powers or any other right claim or remedy under this

Agreement send to the Developer and to the Surety notice in writing (hereinafter referred to as the "Default Notice"):-

4.1.1.1 Specifying the work (hereinafter referred to as the "Default Work") to be carried out in order that the Highway Works may be executed or completed as the case may be in accordance with this Agreement and

4.1.1.2 Containing an estimate by the Director of:-

4.1.1.2.1 the cost of carrying out the Default Work; and

4.1.1.2.2 the cost of maintaining the Highway Works for the Maintenance Period

4.1.1.2.3 all sums due to the County Council pursuant to this Agreement together with interest thereon (if any)

4.1.1.2.4 such sums as will in the opinion of the Director cover the County Council's necessary proper administrative and legal expenses

(together hereinafter referred to as the "Default Cost") which cost:-

(i) shall not exceed the Bond Sum and

(ii) shall not exceed 25% of the Bond Sum should the Default Notice be served after the issue of the Preliminary Certificate.

4.1.2 Provided that the Director has determined that the breach does not adversely affect safety (thereby enabling the service of the Default Notice) the County Council shall take no further action until twenty-eight (28) days (or such other period as may be agreed in writing by the County Council and the Developer) from the date of the Default Notice.

- 4.1.3 On the happening of any one of the events referred to in Clause 4.1.4 the Surety shall forthwith pay the Default Cost to the County Council.
- 4.1.4 The events referred to in Clause 4.1.3 are:-
- 4.1.4.1. The Director determines at his absolute discretion (with such a decision being final) that the breach **does** affect safety
- 4.1.4.2 Any failure by the Developer to complete the Highway Works within the time period referred to in Clause 4.1.2 and in accordance with the Contract Documents and the Highway Drawing and all other requirements of this Agreement.
- 4.1.4.3A receiving order in bankruptcy is made in respect of the Developer's estate or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation)
- 4.1.5 THE County Council HEREBY COVENANTS with the Developer and with the Surety:-
- 4.1.5.1 To use its best endeavours in consultation with the Surety to mitigate any loss or damage sustained by reason of any default by the Developer by taking such reasonable steps as the County Council shall think fit.
- 4.1.5.2 To apply all monies received from the Surety as hereinbefore mentioned toward the expenditure involved in executing or completing the Highway



Works and maintaining and making good all defects for the Maintenance Period and defraying the County Council's administrative and legal expenses incurred in respect thereof.

4.1.5.3 In the event of the sum paid by the Surety to the County Council exceeding the cost of executing or completing the Highway Works and maintaining and making good all defects as aforesaid together with the amount of the County Council's usual establishment charges to repay to the Surety within twenty-eight days after the date of the Certificate of Final Completion the amount of such excess with interest calculated at half-yearly rests on the unexpended balance for the time being of the sum paid by the Surety to the County Council at the rate of interest prevailing from time to time on monies held in a deposit account with the County Council's bankers.

4.1.6 The liability of the Surety shall be reduced to twenty-five per centum (25%) of the Bond Sum upon the issue of the Preliminary Certificate.

4.1.7 The liability of the Surety shall cease and determine absolutely on the issue of the Certificate of Final Completion.

#### 4.2 **Design Check and Inspection Fee**

4.2.1 Upon execution of this Agreement the Developer shall pay to the County Council the sum of [ POUNDS] (£ ) equal to ten per centum (10%) of the total of the Construction Costs and the Approved Traffic

Measures Costs such sum being the charge for the Director's design checks and inspection of the Highway Works ("the Design Check and Inspection Fee")

4.2.2 If the County Council shall grant to the Developer an extension of time in accordance with Clause 6.2 then the Developer shall pay such further Design Check and Inspection Fee as is determined by the Director in his absolute discretion as necessary to reimburse to the County Council the additional cost (if any) incurred in inspecting the Highway Works by reason of the grant of such extension of time and such further Design Check and Inspection Fee will be payable to the County Council forthwith on demand and be due to the County Council as a debt

4.2.3 Receipt by the County Council of the sum referred to in Clauses 4.2.1 and 4.2.2 shall not create any contractual relationship between the County Council and the Developer as to the inspection of the Highway Works nor absolve the Developer from any liability or obligation imposed upon him by the terms of this Agreement or by statute or at common law and the County Council will not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty check of the engineering design or inspection of the Highway Works by the County Council.

#### 4.3 **Traffic Signs Fee**

Upon execution of this Agreement the Developer shall pay to the County Council the sum of THREE HUNDRED AND FIFTEEN POUNDS (£315.00)

such sum being the cost of the supply erection and removal of signs to Diagram 7014 under the Traffic Signs Regulations & General Directions 2002.]

#### **4.4 Construction Traffic Management Fee**

Upon execution of this Agreement the Developer shall pay to the County Council the sum of FIVE HUNDRED AND TWENTY FIVE POUNDS (£525.00) being the cost to the County Council of ensuring compliance with the Approved Traffic Measures.

#### **4.5 Indemnity**

4.5.1 The Developer shall fully and completely release and indemnify and keep indemnified the County Council from and against

4.5.1.1 any claims under Section 10 of the Compulsory Purchase Act 1965 and under Part I and Part II of the Land Compensation Act 1973 (or any other enactment or provision replacing or re-enacting the same) arising out of or in connection with or incidental to the carrying out of the Highway Works and/or use of the Highway Works or any part thereof and

4.5.1.2 all actions claims charges costs damages demands expenses and proceedings (including claims relating to the infringement or disturbance or destruction of any right easement or privilege) arising out of or in connection with or incidental to the carrying out of the Highway Works and their subsequent use (unless caused directly by or through the negligence or other tortious action of the County Council).

4.5.2 For the avoidance of doubt such indemnification referred to in this Clause 4.5 shall include all fees reasonably incurred by claimants and those of the County Council or its agent or contractor in negotiating any claims (together with Value Added Tax payable upon the claimants' professional advisors' fees) and statutory interest payments to claimants and their professional advisors together with the County Council's reasonable legal costs in making such payments of compensation fees and interest.

4.5.3 the County Council shall notify the Developer as soon as reasonably practicable upon receipt of any claim.

4.5.3.1 the County Council shall not accept any claim without first having given the Developer details of such claim and having given the Developer the opportunity to make representations to the County Council as to the validity and quantum of such claim.

4.5.3.2 the County Council shall in settling any such claim give full and due regard to any representations made by the Developer in respect thereof.

4.5.3.3. the County Council shall following the acceptance of any claim notify the quantum thereof to the Developer in writing and the Developer shall within 28 days of the receipt of such notification pay to the County Council the amount specified as the quantum of such claim.

4

4.5.4 The Developer shall have the County Council's interest endorsed on an existing policy of insurance to cover the indemnity in Clause 4.5.2 and the certificate of

insurance shall be produced to the Director prior to the commencement of the Highway Works.

4.5.5 The policy referred to in Clause 4.5.4 shall have a minimum third party public liability cover of £ 10 million ("the Cover") and the Developer hereby undertakes to maintain the Cover until the issue of the Final Certificate and on notice from the Director the Developer shall increase the Cover to such additional amount of cover as specified in the notice.

#### 4.6 **Costs**

The reasonable and proper professional and administrative costs of the County Council of preparing this Agreement shall be paid by the Developer on the execution hereof.

#### 4.7 **Payment of Sums Due**

4.7.1 The Developer agrees with the County Council that where this Agreement imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date:-

4.7.1.1 notice of the Specified Date shall be given to the County Council as appropriate not more than seven days after such Specified Date

4.7.1.2 if the notice of a Specified Date is not given the County Council as appropriate shall be entitled to determine the Specified Date and shall give notice to the Developer of its determination

4.7.1.3 the Developer shall make any and all payments due under this Agreement to the County Council as appropriate

4.7.2 All sums payable under this Agreement shall (unless otherwise stated in this Agreement) become due fourteen days after the Specified Date ("the Due Date") and shall henceforth be debts due to the County Council recoverable by action as a simple contract debt and may be deducted from any monies due to the Developer from the County Council under any contract agreement or arrangement whatsoever.

4.7.3 If any such sums are not paid by the Due Date then the Developer shall thereafter be liable to pay to the County Council interest on the same calculated on a daily basis at a daily rate of 1/365th of the annual rate of interest of 4% per annum greater than the National Westminster Bank PLC base rate in force from time to time from the Specified Date to the date of payment thereof.

## **5 EXECUTION OF HIGHWAY WORKS**

### **5.1 Notice of Commencement**

To give the County Council fourteen days prior written notice ("the Notice") of the date on which the Highway Works are to commence ("the Start Date").

### **5.2 Time for completion**

To execute forthwith and complete the Highway Works in accordance with the Highway Drawing and the Contract Documents to the reasonable requirements

and reasonable satisfaction of the Director for no charge whatsoever to the County Council within [ ] of the Start Date ("the Completion Date") PROVIDED ALWAYS that there shall be excluded from any calculation of the period of [ ] any time during which the Highway Works or the part thereof for the time being remaining to be executed cannot be carried out on account of any act of God fire explosion flood war industrial action sabotage national emergency government direction or direction of a statutory authority.

5.3 **Supervision**

To ensure throughout the duration of the Highway Works that they are supervised by an Accredited Supervisor as necessary for the proper superintendence of the Highway Works.

5.4 **Statutory Undertakers Requirements**

To comply at its own expense at all times with the special requirements of any Statutory Undertakers and to pay (if in any case a Statutory Undertaker requires that the County Council shall be responsible for the cost of any removal protection or alteration of its apparatus) on the Specified Date the costs incurred or to be incurred by the County Council due to the removal protection or alteration of Statutory Undertakers' apparatus necessitated by the Highway Works.

5.5 **Approved Traffic Measures and Final Programme**

To ensure that the Approved Traffic Measures and Final Programme are implemented retained and adhered to as far as reasonably practicable throughout the duration of the Highway Works.

5.6 **Testing of Materials**

Throughout the duration of the Highway Works and the Maintenance Period as defined in Clause 8.1 to undertake routine testing of materials used in and workmanship in connection with the construction of the Highway Works when required and to a standard agreed by the Director and shall forthwith send a copy of the results of such testing (free of charge) to the County Council.

5.7 **Notice of Cessation and Recommencement**

5.7.1 To notify the Director in writing if before completion of the construction of the Highway Works the Highway Works shall cease for a period of more than one week and any such notice shall specify the dates of the cessation and re-commencement of the Highway Works.

5.7.2 In the event of any failure by the Developer to notify the Director of the dates of any cessation or re-commencement of the Highway Works in accordance with the provisions of Clause 5.7.1 the amount of any Design Check and Inspection Fee pursuant to Clause 4.2 shall be increased by such amount as specified by the Director to reimburse the County Council with the additional costs incurred in inspecting the Highway Works by reason of any such failure as aforesaid such additional cost to be paid to the County Council on request.



5.8 **Noise Insulation**

To carry out such works and investigations as may be deemed appropriate and notified as necessary by the County Council to be carried out under the Noise Insulation Regulations 1975 (as amended) as a result of the Highway Works and reimburse by the Due Date the County Council's actual costs of carrying out statutory functions under the aforesaid Regulations.

5.9 **NRSWA Notices/TMA Roadspace**

To ensure that the necessary notices are served under the New Roads and Street Works Act 1991 and that the necessary road space is booked under the Traffic Management Act 2004.

5.10 **Health and Safety**

5.10.1 To comply with the Health and Safety at Work Act etc. 1974 and all other current relevant legislation approved codes of practice British-European Harmonised Standards and relevant industry best guidance applicable to the safe undertaking of the Highway Works.

5.10.2 To have suitable and sufficient safe working systems in place for ensuring that all contractors engaged on the Highway Works are competent to fulfil their relevant functions pursuant to the CDM and any other applicable legislation and subsequent amending legislation and evidence of the existence of such systems shall be provided to the satisfaction of the Director at the Director's request.

- 5.10.3 To ensure that a Competent Person in Health and Safety is employed until the issue of the Certificate of Final Completion.
- 5.10.4 The Developer hereby confirms that it has the competence to perform the duties imposed on a client by the CDM.
- 5.10.5 The Developer is hereby appointed pursuant to regulation 4 of the CDM to act as the only client in respect of the Highway Works.

## **6 COUNTY COUNCIL'S POWERS**

### **6.1 Testing of Workmanship and Materials**

The Director shall have full power to:

- 6.1.1 Check and test all materials and workmanship and the costs actually incurred by the Director in undertaking such testing shall be paid by the Developer on the Specified Date.
- 6.1.2 Reject any materials or workmanship which he may reasonably and properly consider not to be in accordance with the Contract Documents and/or the Highway Drawing or which show faults or signs of weakness or damage by frost or other weather condition or any other cause or any other defect whatsoever of any kind and to order their removal from the Highway Works and to require other proper materials or workmanship to be substituted for them whether the works have been carried out or the materials supplied or procured by the Developer or otherwise and such

work shall forthwith at the Developer's own cost be re-executed made good or replaced with proper materials and workmanship as the case may require and the Director's directions on such subjects are to be final and binding on the Developer and shall be promptly attended to by the Developer.

## 6.2 **Works in default**

6.2.1 If any works to be carried out by the Developer under this Agreement are not carried out and completed in accordance with the Developer's obligations and covenants contained in this Agreement and to the satisfaction of the Director by the Completion Date or within such further time as the Director may in his discretion by notice in writing to the Developer allow then without prejudice to its other rights or remedies and powers against the Developer for such non-performance or non-observance after the Director has first given twenty-eight (28) days notice in writing (except in the case of emergency when no notice shall be necessary) to the Developer and the Surety of his intentions in that regard the County Council may enter the Land and carry out and complete the said works and the Developer or in default the Surety shall upon demand pay to the County Council all the cost it has incurred including the necessary cost of preparation and service of such notices the outstanding works and all the associated supervision and administration.

6.2.2 That should the Developer become bankrupt or enter into any composition with its creditors or if the Developer being a company shall

enter into liquidation whether compulsory or voluntary (not being merely a voluntary liquidation for the purpose of amalgamation or reconstruction) then in any such case the County Council shall be entitled to exercise its rights under the provisions of this Clause and recover any loss from the Surety.

### 6.3 **Access for County Council**

The Developer shall at all times:

6.3.1 permit the County Council to enter onto and upon and remain upon with or without workmen plant and machinery so much of the land in the ownership of or under the control of the Developer as shall be necessary for the County Council to carry out its obligations under this Agreement but so that the County Council shall not obstruct or delay the carrying out of the Highway Works; and

6.3.2 give the County Council free and unrestricted access to every part of the Highway Works during their construction upon reasonable prior notice except in the event of emergencies and at any time during the Maintenance Period.

### 6.4 **Determination by the County Council**

If the Developer fails to perform or observe any of the conditions stipulations or obligations on its part contained herein or if a receiving order in bankruptcy is made against the Developer or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangements (otherwise

than for the purpose of amalgamation or reconstruction) the County Council may without prejudice to any of its rights claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clauses 4.1 and 6.2 and such other Clauses as may be necessary for their interpretation) by notice in writing signed by the Director and delivered to the Developer or sent by post to the address stated in this Agreement.

**7. PRELIMINARY CERTIFICATE**

7.1 When the carrying out of the Highway Works shall have been executed and completed (including the payment of all charges levied by any Statutory Undertaker in connection with the Highway Works) to the reasonable satisfaction of the Director in accordance with the Contract Documents and the Highway Drawing and any sewer constructed as part of the Highway Works in connection with an Agreement under Section 104 of the Water Industry Act 1991 has been certified by the appropriate sewerage undertaker as being or having been on maintenance the Director shall forthwith issue a preliminary certificate (or letter in lieu thereof) to that effect ("the Preliminary Certificate") and the Developer hereby agrees and declares that on the issue of the Preliminary Certificate the Highway Works (insofar as they are not already public highway) shall become public highway open for use by the public at large.

7.2 Before the issue of the Preliminary Certificate the Developer shall:

- 7.2.1 provide in accordance with the detailed design approved pursuant to Clause 3.1.1.5 to the satisfaction of the Director all such signs road markings signal installations (both vehicular and pedestrian) street lighting and sources of illumination electrical cables and apparatus for the supply of electrical power for such signs street lighting and signals
- 7.2.2 make payment of all sums due under this Agreement to the County Council together with interest thereon (if any) and including (but not by way of limitation)
- 7.2.2.1 the costs of providing all or any of such things as aforesaid as the County Council may at the request of the Developer agree to provide
- 7.2.2.2 the costs of the service and posting of notices and the making and bringing into effect of any road traffic regulation orders or other orders that may be necessary in the Director's opinion as a result of the Highway Works
- 7.2.3 make payment of all charges levied by any Statutory Undertaker in connection with the Highway Works
- 7.2.4 deliver to the County Council the results of a Stage Three Safety Audit which has been carried out to the satisfaction of the Director by a professional and independent Safety Auditor whose identity has been approved by the Director

- 7.2.5 undertake and have completed such remedial works as have been identified by the Stage Three Safety Audit in Clause 7.2.4 as being necessary to the satisfaction of the Director
- 7.2.6 undertake and have completed such works to the Approach Road as have been identified by the Director as being necessary to reinstate the Approach Road in accordance with the schedule of condition provided under Clause 3.1.1.7
- 7.3 After the execution hereof should further legal advice need to be given including attendance at meetings in connection with this Agreement called at the request of the Developer and all costs associated with any action taken pursuant to the provisions of Clause 4.1 the Developer agrees to pay all such additional costs so incurred by the County Council.

## **8 POST-COMPLETION MATTERS**

### **8.1 Maintenance Period**

The Developer shall:-

- 8.1.1 maintain the Highway Works (including all grassed and planted areas) and to include all such routine maintenance and repair as may be necessary to facilitate the use of the Highway Works by vehicles and members of the public generally (as appropriate) to the satisfaction of the Director at its own expense for a period of twelve months or in the event of construction vehicles continuing to use the Highway Works in

connection with the construction of the Proposed Development such longer period as the Director may stipulate ("the Maintenance Period") from the date that the Preliminary Certificate is issued

8.1.2 pay to the County Council any costs incurred by it during the Maintenance Period in respect of the maintenance and/or replacement of damaged equipment and the supply of electricity to the street lighting signs traffic signals and other apparatus provided in accordance with Clause 7.2.1

8.1.3 at the discretion of the Director deliver to the County Council the results of a Stage Four Safety Audit which has been carried out to the satisfaction of the Director by a professional and independent Safety Auditor whose identity has been approved by the Director and undertake and complete such remedial works as have been identified by the Stage Four Safety Audit as being necessary to the satisfaction of the Director.

## 8.2 Certificate of Final Completion

At such time as:-

8.2.1 all works of maintenance notified to the Developer by the Director within the Maintenance Period in respect of the Highway Works have been executed and completed to the Director's satisfaction in all respects; and



- 8.2.2 all sums due under this Agreement to the County Council have been duly paid; and
- 8.2.3 the Director has confirmed in writing that the Stage Four Safety Audit has been acted upon to his satisfaction; and
- 8.2.4 the Developer has without cost to the County Council executed or procured the execution by all necessary parties of such deeds as are in the opinion of the County Council necessary to secure to the County Council full drainage rights in respect of such parts of the surface water drainage system of the highway as are situate outside the limits of the Highway Works and the County Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds; and
- 8.2.5 the Developer has delivered to the County Council two complete sets of "as built" drawings showing the Highway Works as actually constructed; and
- 8.2.6 the Developer has delivered the Health & Safety file for the Highway Works as required by CDM the information content of which shall be as defined by the Approved Code of Practice and Guidance to the CDM and as specified by the Director

the Director shall forthwith issue a certificate (or letter in lieu thereof) ("the Certificate of Final Completion") which shall confirm that the Maintenance Period is then deemed to have been duly completed and shall release the Surety from all liability hereunder.

**9 DECLARATION UNDER SECTION 38 OF THE 1980 ACT**

The County Council and the Developer hereby agree and declare in pursuance of Section 38 of the 1980 Act that upon the issue of the Certificate of Final Completion the Highway Works insofar as they are not already highway maintainable at the public expense will become highway maintainable at the public expense.

**10 COUNTY COUNCIL'S COVENANTS**

**10.1 Access for Highway Works**

The County Council will permit the Developer to enter onto and upon and remain upon with or without workmen plant and machinery so much of the land in the ownership of the County Council or under its control (including public highway) as shall be reasonably necessary for the Developer to carry out its obligations under this Agreement and it is hereby agreed and declared that such permission extends (upon reasonable notice and compliance with the provisions of Chapter Eight of the Traffic Signs Manual 2006 as from time to time revised and published by the Department of Transport) to breaking open the said land (subject where appropriate to making good its surface) and without limitation to the foregoing carrying out works in on or under the said land PROVIDED that the appropriate licence for existing publicly maintained highway



EXECUTED as a DEED by affixing hereto )  
the COMMON SEAL of EAST SUSSEX )  
COUNTY COUNCIL In the presence of:- )

.....  
Authorised Signatory

EXECUTED as a DEED by affixing hereto )  
the COMMON SEAL of [ Developer ] )  
was affixed hereto in the presence of:- )

.....  
Director

.....  
Director/Secretary

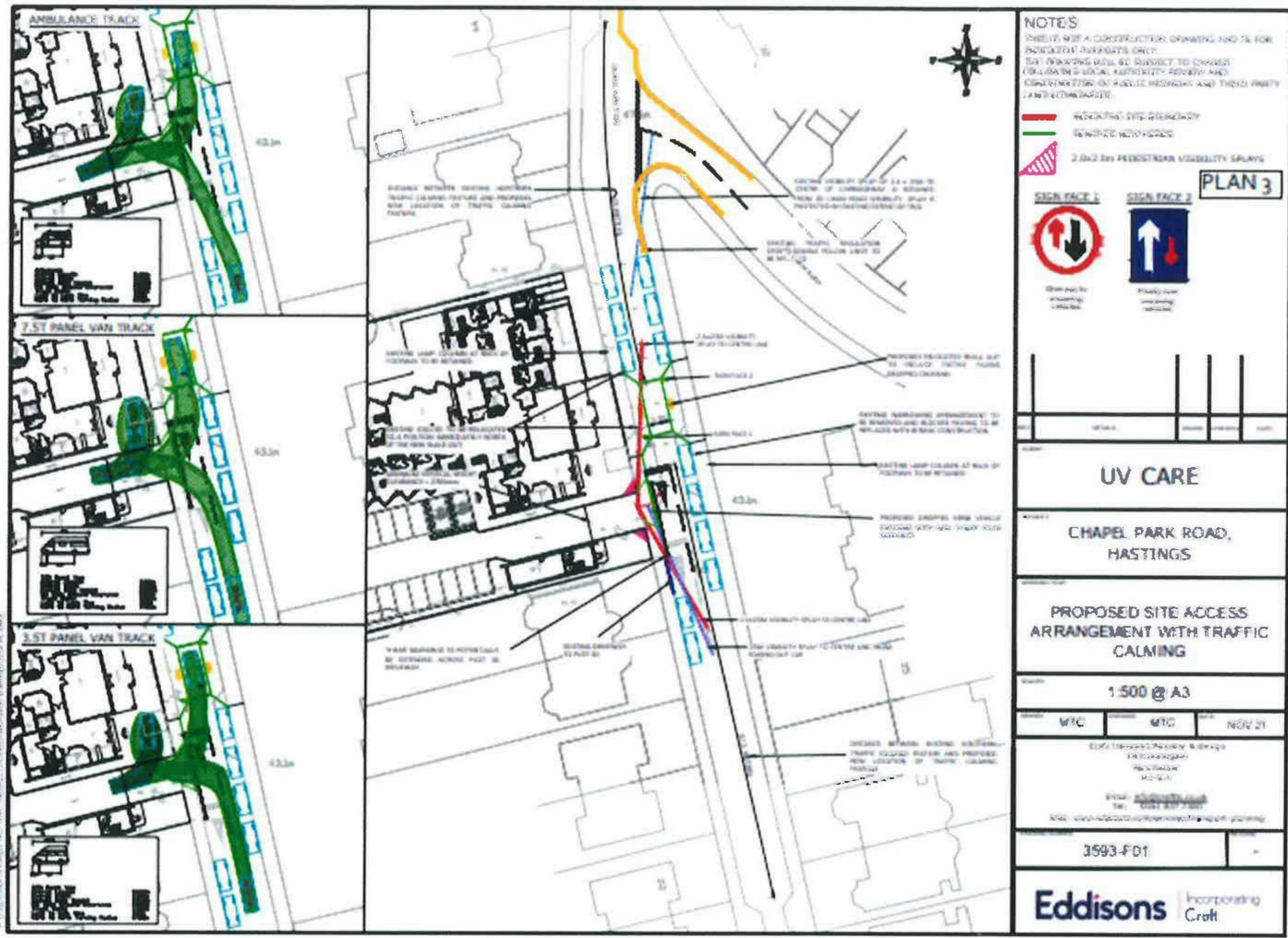
EXECUTED as a DEED by affixing hereto )  
the COMMON SEAL of [ Surety ] )  
was affixed hereto in the presence of:- )

.....  
Director

.....  
Director/Secretary

**APPENDIX 4**

**Highway Drawing**



**APPENDIX 5**

**Draft Planning Permission**

**Grant Full Planning Permission subject to the following conditions:**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:  
AP21028-L00; 1386-100; 1386-110; 1386-200; 0500 P02; 0501 P01; 0502 P01; 0503 P01; 0504 P02; 0505 P01; 0700 P02; and MEL-522-001 P2
3. Work which is audible at the site boundary and deliveries too and from the premises, during construction, shall not take place before 08:00 and after 18:00 hours Monday-Friday or before 08:00 and after 13:00 on Saturdays and at no time on Sundays or Bank Holidays.
4. All ecological measures and/or works shall be carried out in accordance with the details contained in Badger Mitigation Strategy, February 2022 (revised September 2022) and Biodiversity Enhancement Strategy dated March 2022, for 32-36 Chapel Park Rd Hastings by Middlemarch as already submitted with the planning application and agreed in principle with the Local Planning Authority prior to determination.
5. No works which include the creation of trenches or culverts or the presence of pipes shall commence until measures to protect badgers from being trapped in open excavations and/or pipe and culverts are submitted to and approved in writing by the Local Planning Authority. The measures may include:
  - a) creation of sloping escape ramps for badgers, which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and
  - b) open pipework greater than 150 mm outside diameter being blanked off at the end of each working day.
6. No development shall commence until the role and responsibilities and operations to be overseen by an appropriately competence person such as an ecological clerk of works or on-site ecologist have been submitted to and approved in writing by the Local Planning Authority. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.
7. When creating semi-natural habitats, all species used in the planting proposals as detailed in Biodiversity Enhancement Strategy dated March 2022, for 32-36 Chapel Park Rd Hastings by Middlemarch shall be locally native species of local provenance.



8. No development, demolition, earth moving shall take place or material or machinery brought onto the site until protective fencing and warning signs have been erected on site in accordance with the approved Badger Mitigation Strategy, February 2022 (revised September 2022) and Biodiversity Enhancement Strategy dated March 2022, for 32-36 Chapel Park Rd Hastings by Middlemarch. All protective fencing and warning signs will be maintained during the construction period in accordance with the approved details.
9. The new access shall be in the position shown on the submitted plan [1386-100] and laid out and constructed in accordance with details to be secured within a s278 agreement with the Highway Authority.
10. No development shall commence until such time as a technically accepted highway scheme [layout of the new access, relocation of carriageway narrowing feature, access protection lines, reposition of designated parking bays, street lighting and signage] and details incorporating the recommendations given in a Stage 2 Road Safety Audit and accepted in the Designers Response have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The approved highway scheme shall be carried out in accordance with the approved details and completed prior to first occupation of the development hereby permitted.
11. No development shall take place, including any ground works or works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to in full throughout the entire construction period. The Plan shall provide details as appropriate but not be restricted to the following matters;
  - the anticipated number, frequency and types of vehicles used during construction,
  - the method of access and egress and routeing of vehicles during construction,
  - the parking of vehicles by site operatives and visitors,
  - the loading and unloading of plant, materials and waste,
  - the storage of plant and materials used in construction of the development,
  - the erection and maintenance of security hoarding,
  - the provision and utilisation of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
  - details of public engagement both prior to and during construction works.
12. The development shall not be occupied until a turning space for vehicles has been provided and constructed in accordance with the details shown on

drawing (1386-100) and the turning space shall thereafter be retained for that use and shall not be obstructed.

13. No deliveries by vehicles of 7.5 tonnes and over shall be taken at or despatched from the site at any time.
14. Prior to occupation of development a Servicing Management Plan shall be submitted to and approved by the Local Planning Authority in consultation with the Highway Authority which will indicate how deliveries are to be undertaken. The Servicing Management Plan shall be implemented as approved and adhered to on site thereafter.
15. The development shall not be occupied until car and cycle parking areas have been provided in accordance with approved plans. The proposed car parking spaces shall measure at least 2.5m by 5m and where located adjacent to a wall an additional 50cm shall be provided to the relevant dimension. The areas shall thereafter be retained for those uses.
16. Prior to the commencement of development, a detailed surface water drainage system shall be submitted to and approved in writing by the Local Planning Authority.

The surface water drainage system shall incorporate the following:

- a) Detailed drawings, control measures and constructions details for all the features of drainage system.
- b) Written evidence from Southern Water confirming agreement to proposed surface water discharge rates.
- c) Hydraulic calculations which demonstrate that the drainage system has enough capacity to accommodate runoff generated by rainfall events with a 1 in 100 (plus 40% for climate change) annual probability of occurrence while discharging at a rate agreed by Southern Water.
- d) Evidence that opportunities to use a gravity connection to the public sewer have been considered.

The development shall be carried out in accordance with the approved details, which shall remain in place for the lifetime of the development.

17. A maintenance and management plan for the entire drainage system shall be submitted to the planning authority before any construction commences on site to ensure the designed system takes into account design standards of those responsible for maintenance.

The management plan shall cover the following:

- a) This plan should clearly state who will be responsible for managing all aspects of the surface water drainage system, including piped drains.
- b) Evidence of how these responsibility arrangements will remain in place throughout the lifetime of the development.

These details shall be submitted to and approved in writing by Local Planning Authority. Once approved, the development shall be carried out in accordance with the approved details, which shall thereafter remain in place for the lifetime of the development.

18. No development shall take place above ground until details of the materials to be used in the construction of the external surfaces (and associated hard landscaped areas and all retaining and boundary walls) of the care home hereby permitted, have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details, which should remain in place for the lifetime of the development, unless otherwise agreed in writing.
19. No development shall take place above ground until full details of all boundary enclosures (including walls, fences and railings) have been submitted to and approved in writing by the Local Planning Authority. All such boundary enclosures shall be erected in accordance with the approved details before the building to which it relates is occupied and shall remain in place for the lifetime of the development, unless otherwise agreed in writing.
20. No flood lighting or other means of external illumination of the building or site shall be provided, installed or operated except in accordance with a detailed scheme which shall have been submitted to and approved in writing by the Local Planning Authority. Any such report should detail the provisions for the avoidance of 'spill light' - light that obtrudes beyond the area it was intended to light into surrounding areas or properties. Measures to avoid spill light must be installed on any approved external lighting prior to its erection and thereafter be retained and maintained.
21. In the event that contamination is found at any time when carrying out proposed development, that was not previously identified (such as asbestos containing material), it must be reported in writing immediately to the Local Planning Authority with proposed remediation measures. In the event that contamination is found to be present, upon completion of the works the developer shall provide written confirmation (verification report) that all works were completed in accordance with the agreed remediation details, this to be approved by the Local Planning Authority.
22. Prior to commencement of development above slab level, details, including acoustic specifications, of all fixed plant machinery and equipment associated with air moving equipment (including fans, ducting and external openings) installed within the site, which has the potential to cause noise disturbance to any noise sensitive receptors, shall be submitted to and approved by the Local Planning Authority. If there is the potential for noise disturbance, then we would expect a Noise Assessment to be completed using BS 4142 in order to ensure any adverse noise impacts are appropriately mitigated. A noise impact assessment is required which characterises the prevailing noise environment and identifies any potentially

significant sources of noise. The survey methodology should include times, duration and a justification of the location chosen for monitoring.

23. Prior to the first operation of the premises, a scheme and maintenance schedule for the extraction and treatment of fumes and odours generated from cooking or any other activity undertaken on the premises, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be designed in accordance with EMAQ+ Control of Odour and Noise from Commercial Kitchen Extraction Systems 2018. Any equipment, plant or process provided or undertaken in pursuance of this condition shall be installed prior to the first operation of the premises and these shall thereafter be operated and retained in compliance with the approved scheme.
24. Prior to the commencement of construction, details of the climate change mitigation and adaptation measures to be used in the development hereby approved shall be submitted to, and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details, which shall thereafter be retained and maintained for the lifetime of the development.
25. All planting seeding or turfing comprised in the approved soft landscaping scheme shall be carried out prior to the occupation of any part of the development, or with the written agreement of the Local Planning Authority, in the first planting and seeding seasons following the occupation of any buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
26. No development shall take place until temporary protective fences to safeguard the trees and/or hedges to be retained on the site have been erected in accordance with the current BSI 5837 standards and to the satisfaction of the Local Planning Authority. All such fences shall be kept in a sound, upright and complete condition until the development has been completed and/or the Local Planning Authority confirm in writing that the works have been sufficiently completed for the fencing to be removed. All arboricultural measures and/or works shall be carried out in accordance with the details contained in the arboricultural document submitted with the planning application and agreed in principle with the Local Planning Authority prior to determination. All trees produced abroad but purchased for transplanting shall spend at least one full growing season on a UK nursery and be subjected to a pest and disease control programme. Evidence of this control programme, together with an audit trail of when imported trees were needed and their origin and how long they have been in the nursery will be supplied to the Local Planning Authority prior to the commencement of any tree planting.

## **Reasons:**

1. This condition is imposed in accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. For the avoidance of doubt and in the interests of proper planning.
3. To safeguard the amenity of adjoining residents.
4. To ensure that the measures considered necessary as part of the ecological impact assessment are carried out as specified.
5. To ensure badgers are not trapped and harmed on site and to prevent delays to site operation.
6. To ensure adequate professional ecological expertise is available on site during construction to assist those implementing the development to comply with statutory requirements, planning conditions and any relevant protected species licences.
7. To conserve and enhance biodiversity by protecting the local floristic gene pool that has evolved within the local landscape, and to prevent the spread of non-native species and those of no local provenance.
8. Irreparable damage can be done to biodiversity features on construction sites in a very short space of time, it is necessary to ensure that features to be retained are adequately identified and physically protected from accidental damage by development operations, eg by earth moving machinery.
9. To ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway.
10. In the interests of road safety.
11. In the interests of highway safety and the amenities of the area.
12. To ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway.
13. To ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway.
14. To ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway.

15. To ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway.
16. To prevent increased risk of flooding.
17. To prevent increased risk of flooding.
18. In the interests of the visual amenity of the area.
19. To ensure a satisfactory form of development in the interests of the character and amenity of the area.
20. To safeguard the amenity of adjoining and future residents.
21. To safeguard the amenity of adjoining residents.
22. To ensure a satisfactory form of development in the interests of residential amenity.
23. To ensure a satisfactory form of development in the interests of residential amenity.
24. In accordance with Policies SC3 and SC4 of the Development Management Plan 2015.
25. To ensure a satisfactory form of development in the interests of visual amenity.
26. In the interest of protecting trees and as biosecurity is important to minimise the risks of pests and diseases being imported into the UK and introduced into the environment.

#### **Notes to the Applicant**

1. Failure to comply with any condition imposed on this permission may result in enforcement action without further warning.
2. Statement of positive engagement: In dealing with this application Hastings Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.
3. Formal applications for connection to the public foul sewerage system, and the water supply, is required in order to service this development, please contact Southern Water: Developer Services, Southern Water, Southern House, Sparrowgrove, Otterbourne, Hampshire, SO21 2SW. Tel: 0330 303 0119. E-mail: [developerservices@southernwater.co.uk](mailto:developerservices@southernwater.co.uk).

4. The applicant is strongly advised to contact the Environmental Health Division before services, fixtures and fittings etc. are installed to the kitchen and other food rooms/areas, for advice on satisfying the requirements of food safety law.
5. The Food Business Operator will be required to register the food establishment with the Local Council 28 days prior to opening. The registration form can be found online at [http://www.hastings.gov.uk/environmentalhealth/food\\_safety/businesses/foodpacks/caterers/](http://www.hastings.gov.uk/environmentalhealth/food_safety/businesses/foodpacks/caterers/)
6. Installation of a sprinkler system is required in the finished building.
7. The applicant is reminded that, under the Conservation of Habitats and Species Regulations 2017 (as amended) and the Wildlife and Countryside Act 1981 (as amended), it is an offence to (amongst other things): deliberately capture, disturb, injure or kill great crested newts; damage or destroy a breeding or resting place; deliberately obstruct access to a resting or sheltering place. Planning approval for a development does not provide a defence against prosecution under these acts. Should great crested newts be found at any stages of the development works, then all works should cease, and Natural England should be contacted for advice.
8. This permission is the subject of an obligation under Section 106 of the Town and Country Planning Act 1990 (as amended).

N WITNESS whereof the parties have duly executed this Agreement as a Deed on the date first written above

The Common Seal of

**HASTINGS BOROUGH COUNCIL**

was hereunto

affixed in the presence of:



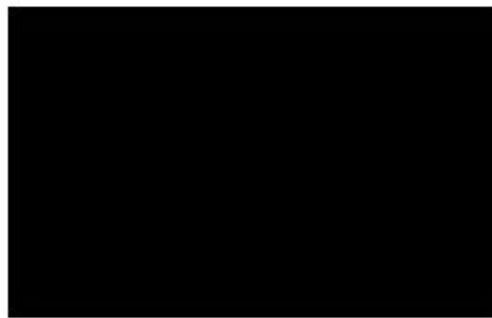
*for the Chief Legal Officer.*

The Common Seal of

**EAST SUSSEX COUNTY COUNCIL**

was hereunto

affixed in the presence of:



*1028665*

**EXECUTED AS A DEED BY BIRCHPARK LIMITED**

a company incorporated in the Isle of Man

By Gethin Taylor being a person who, in

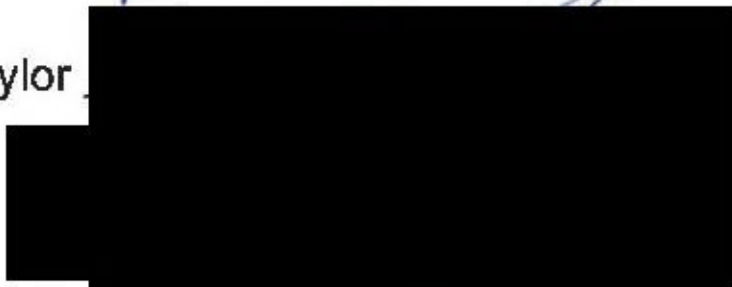
accordance with the laws of the territory, is

acting under the authority of the Company:

Signature in the name of the company

Birchpark Limited: *Birchpark Limited*

Signature of Gethin Taylor



Authorised signatory