

DATED 2nd September,

2024

(1) TENDRING DISTRICT COUNCIL

and

(2) ESSEX COUNTY COUNCIL

and

(3) LANSWOOD LIMITED

and

(4) JARWEN LIMITED

and

(5) HANDELSBANKEN PLC

AGREEMENT

Entered into pursuant to the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) and relating to land to the north and south of Clacton Road, Elmstead Market, Essex



THIS AGREEMENT is made on

2nd September

2024

BETWEEN:

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton-on-Sea, Essex, CO15 1SE ("**the District Council**"); and
- (2) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex, CM1 1QH ("**the County Council**"); and
- (3) **LANSWOOD LIMITED** (Co. Regn. No. 03786803) whose registered office is at Middleborough House, 16 Middleborough, Colchester, Essex, CO1 1QT ("**Lanswood**"); and
- (4) **JARWEN LIMITED** (incorporated in the Isle of Man on 17 June 2010 with the Co. Regn No. 005503V) care of John Fowlers LLP, Solicitors, of Town Hall Chambers, St Runwald Street, Colchester, CO1 1DS ("**Jarwen**"); and
- (5) **HANDELSBANKEN PLC** (Co. Regn. No. 11305395) of 3 Thomas More Square, London E1W 1WY and of 101 Barbirolli Square, Manchester M2 3BG ("**the Bank**").

BACKGROUND

- (A) For the purposes of the 1990 Act (as defined herein), the District Council and the County Council are the local planning authorities for the area within which the Site (as defined herein) is located and are the authorities who are entitled to enforce the obligations contained in this Agreement. The County Council is also the authority responsible for transportation (including the monitoring of travel plans) within the County of Essex.
- (B) The Owner (as defined herein) is the freehold owner of the majority of the Site (all except for the access into the southern part of the Site) and ownership is registered at HM Land Registry. The northern part of the Site (the land on the north side of Clacton Road, as shown on the Site Plan (as defined herein)) is within the Title Number AA10250. The southern part of the Site (the land on the south side of Clacton Road, as shown on the Site Plan, all except for the access into the southern part of the Site) is within the Title Numbers EX798816 and EX526712.

- (C) The Bank has a charge dated 16 June 2017 against part of the Site and which charge is recorded in the Charges Register for the Title Number EX798816. By virtue of its charge the Bank has an interest in the Site and has entered into this Agreement to consent to the part of the Site over which it has a charge being bound by the planning obligations herein.
- (D) The Planning Application (as defined herein) was submitted to the District Council for the Development (as defined herein) and the District Council has resolved to issue the Planning Permission (as defined herein) subject to the Owner first entering into this Agreement and providing the covenants herein.
- (E) The District Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating and facilitating the Development.
- (F) The District Council is satisfied that the planning obligations contained in this Agreement comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 in that they are:
- (i) necessary to make the Development acceptable in planning terms;
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably related in scale and kind to the Development.
- (G) The District Council the County Council and the Owner have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the District Council and the County Council (as appropriate) against the Owner and any successors in title to the Owner including the Bank in the event that the Bank takes possession of the part of the Site over which it has a charge.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Agreement, the following words and expressions have the following meanings:
- | | |
|----------------------------|--|
| “1990 Act” | means the Town and Country Planning Act 1990, as amended; |
| “Commencement Date” | means, subject to clause 3.2, the date on which the Development is Commenced by the carrying |

out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act;

**"Commencement of
Development"**

means, subject to clause 3.2, the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and the use in this Agreement of the terms **"Commence the Development"** and **"Commenced"** shall be construed accordingly;

**"County Council Monitoring
Fee"**

shall mean a fee of £700 (Seven Hundred Pounds) per obligation due to the County Council under this Agreement and for the avoidance of doubt this is a total of £1400 (one thousand four hundred pounds) (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Agreement;

"Development"

means the development set out in the Planning Application and permitted by the Planning Permission;

"Dwelling"

means a house constructed as part of the Development and the curtilage related thereto and the use in this Agreement of the term **"Dwellings"** shall be construed accordingly;

"Index"

means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as shall replace such index or as the District Council reasonably requires;

“Index Linked”

means in relation to (a) the RAMS Contribution (as defined in Schedule 2); and (b) the Healthcare Contribution (as defined in Schedule 4); and (c) the Post Review Contribution (as defined in Schedule 5), increased in respect of each contribution by applying the RPI All Items Index: Jan 1987 = 100 published by the Office for National Statistics using the formula $A = B \times C \text{ divided by } D$ - where A is the amount actually payable- B is the amount specified as payable – C is the RPI All Items Index two months before the date of payment – and D is the RPI All Items Index two months before the date of this Agreement;

“Notice of Commencement”

means notice in writing to advise of the proposed Commencement Date;

“Notice of Occupation”

means notice in writing to advise that the Dwelling to which the notice relates has been Occupied;

“NPPF”

means the National Planning Policy Framework first published in March 2012 and last updated on 19 December 2023 as amended from time to time;

“Occupation”

means beneficial occupation for the purposes permitted by the Planning Permission and shall not include occupation for the construction of the Development and shall not include daytime occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales or purposes for use as temporary

offices or for show homes or for the storage of plant and materials or in relation to security operations and the use in this Agreement of the terms **"Occupy"** and **"Occupied"** and **"Occupancy"** shall be construed accordingly;

"Owner"

means together Lanswood and Jarwen;

"Planning Application"

means the hybrid planning application which the District Council has given the reference **22/02076/FUL** requesting: (a) FULL planning permission to develop part of the site for 86 No. residential dwellings to the north of Clacton Road including new access, 40 No. residential dwellings to the south of Clacton Road using existing access. Construction of market field grows use Class E and Class F1(a) to include multi use building (337sqm), reception office (200sqm), workshop (222sqm), 65 space car park, ancillary landscaping and buildings.; and (b) OUTLINE planning permission (considering Access, Appearance, Layout and Scale) to develop part of the site for mixed use Class E commercial building (1596sqm) and 53 space public car park;

"Planning Permission"

means the planning permission granted in pursuance of the Planning Application;

"SONIA Rate"

means the Sterling Overnight Index Average an assessment of the rate of interest the District Council and the County Council can expect to earn on investments through the British sterling market, the rate used being the average interest rate at which banks are willing to borrow sterling overnight from other financial institutions and

other institutional investors and SONIA Rate shall be construed accordingly;

“Site”

means the land to the north and south of Clacton Road, Elmstead Market, Essex, and which land is shown for identification purposes only edged red on the Site Plan;

“Site Plan”

means the 'Proposed Site Block Plan' drawing numbered 5750 PA_10 Revision G and dated 30 November 2022, a copy of which drawing is annexed hereto;

“Use Classes Order”

means the Town and Country Planning (Use Classes) Order 1987 as amended from time to time and in particular by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (which came into force on 1 September 2020);

“Working Days”

means any day(s) upon which banks in the City of London are open to the general public.

1.2 In this Agreement:

1.2.1 the clause or Schedule headings do not affect its interpretation;

1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

1.2.3 references to any statute or statutory provision include references to:

1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;

- 1.2.4 references to the Site include any part of it;
- 1.2.5 references to any party in this Agreement shall include the successors in title of that party. In addition, references to the District Council shall include any successor local planning authority exercising planning powers under the 1990 Act and references to the County Council shall include any successor to its functions;
- 1.2.6 "including" means "including, without limitation";
- 1.2.7 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 words importing the singular meaning where the context so admits shall include the plural meaning and vice versa;
- 1.2.9 words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner;
- 1.2.10 words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to cause permit or allow infringement of the restriction;
- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and any such rights that arise under that Act are hereby excluded.

2. EFFECT OF THIS AGREEMENT

- 2.1 This Agreement is made pursuant to Section 106 of the 1990 Act and is binding on the Owner and their successors in title. To the extent that they fall within the terms of Section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the District Council and the County Council (as appropriate).
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the District Council or the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 The obligations in this Agreement will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker.
- 2.5 Nothing in this Agreement prohibits or limits the right to develop any part or the whole of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.
- 2.6 A mortgagee of all or any of the Site will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under a security.
- 2.7 The obligations in this Agreement will not be enforceable against the individual owners, lessees or occupiers of any Dwellings constructed on the Site pursuant to the Planning Permission or any mortgagee or chargee of such owner, lessee or occupier nor any receiver appointed by a mortgagee or chargee or any person deriving title from them.

3. COMMENCEMENT DATE

- 3.1. Save in respect of Clause 7 and this clause 3.1 (which will become operative on the date of this Agreement) and in respect of obligations expressly in this Agreement requiring compliance prior to the Commencement Date and which will become operative on the issue of the Planning Permission this Agreement will come into effect on the Commencement Date.
- 3.2 The Commencement Date and Commencement of Development will not be triggered by any of the following operations:
- 3.2.1 archaeological or site investigations or surveys;
 - 3.2.2 site or soil surveys or site decontamination;
 - 3.2.3 the clearance or demolition of the Site;
 - 3.2.4 works connected with groundworks;

3.2.5 works for the provision of drainage or mains services to prepare the Site for development;

3.2.6 erection of fencing or boarding;

3.2.7 erection of boards advertising the Development (including the erection of advertising hoardings);

3.2.8 the construction of a temporary site compound or temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a temporary marketing suite; and

3.2.9 works to the existing public highways and the provision of site access and temporary internal roads; and

3.2.10 the laying out and construction of internal estate roads.

4. OBLIGATIONS OF THE PARTIES

- 4.1 The Owner so as to bind the Site covenants with the District Council and the County Council to comply with the obligations set out in this Agreement as well as the Schedules to this Agreement.
- 4.2 The Owner covenants with the District Council and the County Council to provide a Notice of Commencement to the District Council and the County Council not less than ten (10) Working Days prior to the expected Commencement Date.
- 4.3 The Owner covenants with the District Council and the County Council to provide a Notice of Occupation to the District Council and the County Council not more than ten (10) Working Days after the first (1st) Dwelling has been Occupied and the sixty-third (63rd) Dwelling has been Occupied and any further notices as stipulated in the Schedules to this Agreement.
- 4.4 The District Council covenants with the Owner to comply with its obligations set out in the Schedules to this Agreement.
- 4.5 The County Council covenants with the Owner to comply with its obligations set out in the Schedules to this Agreement.
- 4.6 The District Council and the County Council covenant with the Owner to act reasonably, properly and diligently in exercising their discretion and discharging their

functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the District Council and where appropriate the County Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation Provided Always that such notice, consent, approval, authorisation, agreement or other similar affirmation may only be given in writing and only prior to the act or event to which it applies (unless agreed otherwise by the District Council and/or the County Council, as applicable)

- 4.7 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 4.8 Any obligation that prohibits the Owner from allowing or limiting Occupation of the Site until certain events occur shall also be an obligation on the Owner to positively carry out those certain events by no later than the number of occupations set out therein unless the context otherwise requires.
- 4.9 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of this Agreement occurring before that date. For the further avoidance of doubt neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site or part of the Site in any transfer of the Site will constitute an interest for the purposes of this Clause 4.9.
- 4.10 No compensation shall be payable by the District Council or the County Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the District Council or the County Council.
- 4.11 Representatives of the District Council and the County Council may enter upon the Site at any reasonable time on reasonable prior written notice giving at least three (3) clear days before such entry is required (unless otherwise agreed with the Owner) (and immediately in the event of an emergency provided that the District Council and

County Council will give as much notice as they reasonably can) to ascertain whether the terms of this Agreement are or have been complied with subject to complying with all health and safety and security requirements required by the Owner provided that this right shall cease in relation to any Dwelling on first Occupation of that Dwelling.

- 4.12 Any agreement obligation covenant or Agreement contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or Agreement is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.13 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.
- 4.14 No variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent, seal, signature, execution or approval of the owner, lessee or occupier of any Dwelling or their mortgagees or chargees or any receiver appointed by a mortgagee or chargee or any person deriving title from them shall not be required to vary any part of this Agreement.
- 4.15 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 4.16 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 4.17 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the District Council as such and the District Council covenants with

the Owner that following the performance of all of the obligations contained in the Agreement the District Council shall at the District Council's expense forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

- 4.18 In the event that the Owner fails to serve any of the notices that they are required by the provisions of this Agreement to serve then the District Council and/or the County Council shall be entitled to payment of the various financial contributions contained in this Agreement at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of a contribution and the time period for the return of a contribution shall be extended accordingly.
- 4.19 In the event that a financial contribution or part thereof which is due to be paid to the District Council in accordance with this Agreement is paid later than the date payment is due under the terms of this Agreement then the amount of the financial contribution or part thereof payable by the Owner to the District Council shall in addition include interest at 4% above the Bank of England base lending rate or such other rate as the District Council deems appropriate and shall accrue on a daily basis from the date payment is due until the date payment of the amount due is received by the District Council.
- 4.20 In addition to the requirement in clause 4.19 above in the event that any sum due to be paid to the District Council by the Owner pursuant to this Agreement shall not be received by the District Council by the date that the sum is due then the Owner hereby covenants to pay to the District Council within ten (10) Working Days of receiving a written request all reasonable costs that the District Council has incurred as a result of or in pursuance of such late payment including but not limited to District Council Officer time and any legal costs.

5. TERMINATION OF THIS AGREEMENT

- 5.1 This Agreement will come to an end if: (a) the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Commencement Date; or (b) the Planning Permission expires.
- 5.2 Where the Agreement comes to an end under clause 5.1 the District Council shall at the District Council's expense, on the written request of the Owner, vacate or cancel

the entry made in the Local Land Charges register in relation to this Agreement or otherwise record the fact that it has come to an end and no longer affects the Site.

6. NOTICES

6.1 Any notice, demand or any other communication served under this Agreement will be effective only if in writing and delivered by mail by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following or to such other address as one party may notify in writing to the others at any time as its address for service:

6.1.1 for the Owner at Ground Floor, 1 Lanswoodpark, Broomfield Road, Elmstead Market, Essex, CO7 7FD and marked for the attention of Mr Darin Shaikly;

6.1.2 for the District Council at their address set out above and marked: (a) for the attention of the Head of Planning and Building Control and by email to obligations@tendringdc.gov.uk marked for the attention of the S106 Officer; and (b) with the reference for the Planning Permission;

6.1.3 for the County Council to development.enquiry@essex.gov.uk and marked: (a) for the attention of the s106 Officer Planning Service Place and Public Health County Hall Chelmsford CM1 1QH; and (b) with the reference for the Planning Permission;

6.1.4 for the Bank to their offices at The Octagon, 27 Middleborough, Colchester, CO1 1TG and marked for the attention of Steve Lincoln, Corporate Manager.

6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

6.2.1 if delivered by hand, at the time of delivery;

6.2.2 if sent by post, on the second Working Day after posting; or

6.2.3 if sent by recorded delivery, at the time delivery was signed for.

6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

- 6.4 Otherwise than in relation to individual purchasers, occupiers and mortgagees of Dwellings and their successors in title the Owner shall give to the District Council and the County Council within one month of the Owner disposing of any part of the Site written notice of the name and address of the person or persons to whom the Site or part thereof has been transferred provided that this obligation shall cease and determine on the first Occupation of the last Dwelling at the Site.

7. COSTS OF THIS AGREEMENT

- 7.1 Upon completion of this Agreement, the Owner covenants to pay:

- 7.1.1 to the District Council its reasonable and proper legal costs in a sum not to exceed £2500.00 (no VAT) in connection with the negotiation and completion of this Agreement; and
- 7.1.2 to the County Council its reasonable and proper legal costs in connection with the negotiation and completion of this Agreement; and
- 7.1.3 to the County Council prior to Commencement of Development the County Council Monitoring Fee.

8. DETERMINATION OF DISPUTES

- 8.1 Subject to clause 8.7, if any dispute arises relating to or arising out of the terms of this Agreement (except for any dispute between Lanswood and Jarwen), either party may give to the other written notice requiring the dispute to be determined under this clause 8. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 8.2 For the purposes of this clause 8 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may

require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.4.

8.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute).

8.5 The Specialist is to act as an independent expert and:

8.5.1 each party may make written representations within twenty (20) Working Days of his appointment and will copy the written representations to the other party;

8.5.2 each party is to have a further fifteen (15) Working Days to make written comments on the other's representations and will copy the written comments to the other party;

8.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

8.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

8.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within twenty (20) Working Days from the last submission of evidence.

8.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs will be decided by the Specialist.

8.7 This clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts of England.

9. COMMUNITY INFRASTRUCTURE LEVY

9.1 In the event that the District Council adopts a charging schedule for the purposes of the Community Infrastructure Levy Regulations 2010 and such charging schedule takes effect prior to the date of Planning Permission (or following the grant of Planning Permission a related planning permission is granted pursuant to section 73 of the 1990 Act) the obligations contained in this Agreement which relate to Infrastructure covered by the charging schedule shall cease and no longer be of any effect where Community Infrastructure Levy is paid in relation to that Infrastructure.

10. JURISDICTION

10.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales; and the courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

11. SECTION 73

11.1 In the event that any new planning permission is granted by the District Council pursuant to Section 73 of the 1990 Act and unless otherwise agreed between the parties:

11.1.1 The obligations in this Deed shall relate to and bind any subsequent planning permission in respect of the Site granted pursuant to Section 73 of the 1990 Act and the Site itself; and

11.1.2 The definitions of Planning Application, Development and Planning Permission in this Agreement shall be construed to include reference to any application under Section 73 of the 1990 Act, the planning permission granted thereunder and the development permitted by such subsequent planning permission; and

- 11.1.3 This Agreement shall be endorsed with the following words in respect of any future Section 73 application:

"The obligations in this Agreement relate to and bind the Site in respect of which a new planning permission referenced has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

PROVIDED THAT nothing in this clause shall fetter the discretion of the District Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are different to those contained in this Agreement and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new Agreement or supplemental deed pursuant to Section 106 or Section 106A of the 1990 Act.

12. DATA PROTECTION

- 12.1 The signatories to this Agreement acknowledge and agree that information as to compliance with obligations pursuant to this Agreement (including as to whether or not contributions have been paid) may be passed to:

12.1.1 persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it is acknowledged that the recipients of such information may then disseminate it further;

12.1.2 any person when so required in order to comply with statutory requirements including but not limited to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

13. BANK'S ACKNOWLEDGEMENT AND CONSENT

- 13.1 The Bank hereby consents to the part of the Site over which it has a charge (that part of the Site being part of the land registered with the Title Number EX798816) being bound by the planning obligations herein and acknowledges that it shall be the party responsible to observe and/or perform any of the planning obligations that affect the

part of the Site over which it has a charge in the event that the Bank takes possession of that part of the Site over which it has a charge.

14. EXECUTION

- 14.1 The parties have executed this Agreement as a Deed and it is delivered on the date set out above.

SCHEDULE 1

MARKET FIELD GROWS FACILITY

1. In this Schedule 1 unless the context requires otherwise the following words and expressions shall have the following meanings:

“the Charity”	means: (a) Market Field Farm (charity number 1190911) of Market Field School, School Road, Elmstead, Colchester, CO7 7ET; or (b) another charity with similar aims as Market Field Farm;
“Market Field Grows Facility (MFG)”	means the part of the Site identified as the MARKET FIELD GROWS on the Site Plan and more particularly identified and detailed on the Market Field Grows Site Plan;
“Market Field Grows Site Plan” or “MFGP”	means the drawing numbered 5750 PA_11 Revision B, a copy of which drawing is annexed hereto;
“MFG Purposes”	means the operation of the Market Field Grows Facility as an educational facility for children and young adults with learning difficulties;
“MFG Works”	means the works to provide the MFG as shown on the MFGP in full in accordance with the Planning Permission including: a) the construction of all buildings within the MFG (i.e. the 4 bay cart lodge/barn/storage the 3 x workshop spaces the multi-use building - bakery/shop/café/display/library the reception building - office/meeting/boot room the covered drop-off the public WC's) as shown on approved drawings: Proposed Market Field Grows Site Plan 1:500 – Drawing Nr PA 11 Rev B (the

MFGP); Proposed Detailed Market Field Grows Plan 1:200 – Drawing Nr PA 12 Rev B; Proposed Multi-Use Building Plan 1:100 – Drawing Nr PA 13 Rev ; Proposed Multi-Use Building Elevations 1:100 – Drawing Nr PA 14; Proposed Reception Building Plan 1:100 – Drawing Nr PA 15; Proposed Reception Building Elevations 1:100 – Drawing Nr PA 16; Proposed Animal Pens 1:100 – Drawing Nr PA 17; Proposed Cart Lodge 1:100 – Drawing Nr PA 18; and Proposed Bins and Composting 1:100 – Drawing Nr PA 19 submitted as part of the Planning Application and to be secured by condition; and

- b) the installation (as appropriate) of all utility facilities (water/gas (if applicable)/electricity to the buildings referred to in a) above; and
- c) the installation of internet connections to the buildings referred to in a) above, as appropriate; and
- d) internal plastering and decoration to the buildings referred to in a) above, as appropriate;
- e) the laying out of all hard surfaces within the MFG (i.e. the entrance, car park, internal roads, multi-use area, external seating, cycle parking, PTW space); and
- f) the laying out of all other areas identified on the drawing numbered PA_11 Revision B (the MFGP) (i.e. the small

animals & chickens area;
manure/bins/compost area, play areas,
horticulture beds and plant nursery,
wildflower meadow and orchard, kitchen
garden;

“Publicly Accessible Areas”

means those areas within the MFG that are available to members of the public and which areas are more particularly: (a) the external seating (numbered 3 on the MFGP); (b) the multi-use building comprising the bakery/shop/café/display/library (numbered 4 on the MFGP), (c) the covered drop-off area (numbered 6 on the MFGP); (d) the public WC's (numbered 7 on the MFGP); (e) the play area (numbered 10 on the MFGP); (f) 10 of the car parking spaces, including 2 disabled parking bays; (g) the 18 cycle parking spaces (numbered 17 on the MFGP); and (h) the 4 PTW parking spaces (numbered 18 on the MFGP).

2. The Owner hereby covenants with the District Council as follows:

- 2.1 That the MFG when constructed in accordance with the Planning Permission shall be used exclusively for purposes permitted by Class E (i.e. commercial, business and service) and Class F1(a) (i.e. provision of education) of the Use Classes Order in accordance with the Planning Permission AND FURTHER that the skills training centre element of the MFG shall only be used for the purposes permitted by Class F1(a) of the Use Classes Order in perpetuity.
- 2.2 That the library which is within the multi-use building numbered 4 on the MFGP shall be made accessible to members of the public in perpetuity with detailed arrangements for the library to be submitted to and agreed in writing by the District Council prior to construction of the multi-use building in the MFG.
- 2.3 Not to Commence (or allow, cause or permit the Commencement of) the MFG Works until details of the finish level of the MFG have been submitted to and approved in writing by the District Council.

2.4 Not to Occupy (or allow, cause or permit the Occupation of) any more than sixty three (63) Dwellings unless and until:

2.4.1 the MFG Works have been carried out and completed and the District Council has been provided with written evidence that each component of the MFG Works has been completed and the MFG is functionally available for the use permitted by the Planning Permission and this Schedule 1; and

2.4.2 the freehold interest in the MFG has been transferred to the Charity subject to the written confirmation to the District Council in accordance with paragraph 2.4.1 of this Schedule 1, for the nominal consideration of One Pound (£1.00) PROVIDED THAT the transfer of the MFG to the Charity must contain covenants that: (a) the Charity will use the MFG exclusively for the MFG Purposes and comply with paragraphs 2.1 and 2.2 of this Schedule 1; and (b) the Charity will comply with paragraph 2.6 of this Schedule 1 to enable public access to the Publicly Accessible Areas; and (c) the Charity will maintain the MFG to ensure its continued use in accordance with the Planning Permission and the covenants in this Schedule 1.

2.5 To carry out the MFG Works to completion before any more than sixty three (63) of the Dwellings have been Occupied and to provide the District Council with written evidence that each component of the MFG Works have been completed.

2.6 That all members of the public may use the Publicly Accessible Areas without cost (except for the cost of anything purchased within the multi-use building as identified on the MFGP) during the hours of 9am to 4pm from Monday to Friday each week excluding public holidays or when the Publicly Accessible Areas are closed for reasons of maintenance or safety.

SCHEDULE 2

RAMS

1. In this Schedule 2 unless the context requires otherwise the following words and expressions shall have the following meanings:

"Natura 2000"	has the meaning ascribed to it in section 3(1) of the Conservation and Habitats and Species Regulations 2017;
"RAMS"	means the Essex Coast Recreation Disturbance Avoidance and Mitigation Strategy (RAMS) in relation to Essex Coast Natura 2000 European Designations Supplementary Planning Document adopted by the Council;
"RAMS Contribution"	means the sum of One Hundred and Sixty Three Pounds and Eighty Six Pence (£163.86) per Dwelling, and which sum shall be Index Linked which for 126 Dwellings is Twenty Thousand Six Hundred and Forty Six Pounds and Thirty Six Pence (£20,646.36) Index Linked as set out in the RAMS towards the RAMS Contribution Purposes;
"RAMS Contribution Purposes"	means the use of the RAMS Contribution towards the funding of strategic off-site measures identified by the RAMS to mitigate any increased use as a result of the Development in particular the Colne Estuary SPA.

2. The Owner hereby covenants with the District Council as follows:

- 2.1 To notify the District Council prior to the Commencement of the Development to allow the calculation of the RAMS Contribution.
- 2.2 Not to Commence the Development or cause or permit the Commencement of the Development unless and until the RAMS Contribution has been paid to the District Council.

2.3

Payments shall be marked for the attention of the Section.106 Officer, Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE or via email at obligations@tendringdc.gov.uk.

SCHEDULE 3

OPEN SPACE

1. In this Schedule 3 the following words and expressions shall have the following meanings:

"LEAP"	means a Locally Equipped Area for Play;
"Locally Equipped Area for Play"	means an area of land within the Open Space Land which is designed and laid out with features including equipment for children who are beginning to play independently;
"Open Space"	means all of the Open Space Land within the Site to which members of the public will have access for the purposes of amenity and recreational activities in perpetuity, but for the avoidance of any doubt this does not include: (a) the Dwellings and parking areas and garden space associated with those Dwellings; (b) the estate roads; and (c) any land to be used for highway purposes including highway verges;
"Open Space Completion Certificate"	means a certificate or certificates in writing issued by a Chartered Landscape Architect that confirms that the Open Space Land has been laid out in accordance with the Open Space Plan and Open Space Specification;
"Open Space Land"	means areas of land not to be less than 10% of the Site as shown on the Open Space Plan (including a LEAP) to be used for no purposes other than as public open space to provide a recreational and amenity facility for members of the public in perpetuity and shall not include any sustainable drainage systems for the Development;

“Open Management Company”	Space	means a company or body as may be established or nominated by the Owner whose purpose is or includes the provision of the management and maintenance of the Open Space Land (including the LEAP) and other facilities located within the Open Space Land (including dog waste bins) to be approved in writing by the District Council;
“Open Management Plan”	Space	means a management plan prepared by the Owner to include the identity of the Open Space Management Company; and the levels of maintenance and details of funding for the maintenance of the Open Space Land (including the LEAP and dog waste bins), such plan to be approved in writing by the District Council for the ongoing management and maintenance of the Open Space Land (including the LEAP and dog waste bins) in perpetuity;
“Open Space Plan”		means a plan approved by the District Council identifying the Open Space Land;
“Open Specification”	Space	means the specification, layout plan and timing for and including: (a) the clearing, decontamination (if necessary), levelling/profiling (as appropriate), planting and seeding of the Open Space Land and generally for ensuring that the said land is fit for its intended purpose; (b) the provision of and detailed specification for the LEAP; and (c) the provision of and detailed specification for dog waste bins; so as to enable the Open Space to be used by all members of the public for recreational activities and amenity at all times without cost, exclusion or hindrance in perpetuity as such, as approved by the District Council in writing.

2. The Owner hereby covenants with the District Council, as follows:

2.1 Not to Commence the Development unless and until the Open Space Plan, the Open Space Specification, and the Open Space Management Plan has been provided to the District Council for the District Council's approval.

- 2.2 Not to Commence the Development or allow, cause or permit the Commencement of the Developments unless and until:
- 2.2.1 the District Council has approved the Open Space Plan, the Open Space Specification, and the Open Space Management Plan in writing; and
- 2.2.2 the Open Space Management Company is in place and the District Council has been provided with evidence in writing of its existence.
- 2.3 Not to Occupy (or allow, cause or permit the Occupation of) any more than sixty three (63) Dwellings unless and until:
- 2.3.1 the Open Space Land has been physically laid out entirely in accordance with the Open Space Specification (including the provision of the LEAP and dog waste bins) and the District Council has received the Open Space Completion Certificate and confirmed in writing that it is satisfied that the Open Space Land has been laid out in accordance with the Open Space Specification;
- 2.3.2 the Open Space Land (including the LEAP and dog waste bins) has been made available to members of the public for the purposes of amenity and recreational activities entirely in accordance with the Open Space Specification; and
- 2.3.3 the Open Space Land (including the LEAP and dog waste bins) has been transferred to the Open Space Management Company for the nominal consideration of One Pound (£1.00) free of any encumbrances that may materially affect use of the Open Space Land as providing recreation and amenity facilities for members of the public with all necessary easements and with vacant possession who from the date of transfer shall manage and maintain the Open Space Land for the purpose of providing recreation and amenity facilities for members of the public in perpetuity in accordance with the approved Open Space Management Plan.
- 2.4 Where the Open Space Land does not comply with the Open Space Specification the District Council will notify the Owner in writing of its requirements and the District Council will confirm in writing once it is satisfied that the Open Space Land has been laid out in accordance with

the Open Space Specification for the purposes of paragraph 2.3.1 of this Schedule 3.

- 2.5 The Owner shall provide a copy of the transfer(s) referred to in paragraph 2.3.3 of this Schedule 3 to the District Council within Two (2) months of completion of the transfer to the Open Space Management Company.
- 2.6. The Owner shall include the following in any transfer of the Open Space Land pursuant to this Schedule 3:
 - 2.6.1 a covenant to only permit the Open Space Land to be used as recreation and amenity land by members of the public (including the LEAP) in perpetuity;
 - 2.6.2 a covenant to maintain the Open Space Land (including the LEAP and dog waste bins) in perpetuity and maintained in accordance with the approved Open Space Management Plan; and
 - 2.6.3 a covenant not to transfer the Open Space Land into the individual ownership of an owner or owners or occupiers of any of the Dwellings.
- 2.7. To maintain the Open Space Land in accordance with the approved Open Space Management Plan for one (1) year following the issue of the Open Space Completion Certificate and acceptance in writing by the Council in accordance with paragraph 2.3.1 of this Schedule 3 or until such time as any transfer described in this Schedule 3 has been completed.
- 2.8. In the event that the Open Space Land is transferred to the Open Space Management Company to be funded through contributions from owners and occupiers of Dwellings the Owner shall include in the transfer or lease to the owners and occupiers of Dwellings an obligation to contribute an annual amount to the Management Company which together with fair contributions from other owners and occupiers of Dwellings shall be sufficient to enable the Open Space Management Company to discharge its obligations under any transfer of the Open Space Land.

SCHEDULE 4

HEALTHCARE

1. In this Schedule 4 unless the context requires otherwise the following words and expressions shall have the following meanings:

“Healthcare Contribution”	means the sum of Seventy Seven Thousand Pounds (£77,000.00), which sum shall be Index Linked to be used towards the Healthcare Contribution Purpose;
“Healthcare Contribution Purposes”	means the use of the Healthcare Contribution towards capital funding to increase capacity within the local GP Catchment Area of the Development;
“NHS England”	means the national commissioning authority for health services in England (or its successor body from time to time).
2. The Owner hereby covenants with the District Council, as follows:
 - 2.1 Not to Commence the Development unless and until the Healthcare Contribution has been paid to the District Council.
 - 2.2 To pay the Healthcare Contribution to the District Council before Commencement of Development.
3. The District Council hereby covenants with the Owner, as follows:
 - 3.1 To provide a written form of receipt for payment of the Healthcare Contribution;
 - 3.2 To pay the Healthcare Contribution to NHS England upon receipt of a document from NHS England confirming that they will:
 - 3.2.1 apply the Healthcare Contribution exclusively towards the Healthcare Contribution Purposes;
 - 3.2.2 provide full details of the expenditure of the Healthcare Contribution on demand to the District Council or the Owner;

3.2.3 return any unspent part of the Healthcare Contribution together with interest accrued to the District Council after the expiry of ten (10) years from the date of receipt by the District Council of the Healthcare Contribution.

3.3 To keep an up-to-date record of all payments from the Healthcare Contribution transferred by the District Council to NHS England.

3.4 Following receipt of a written request (such request not to be made prior to the expiration of ten (10) years from the date of receipt by the District Council of the Healthcare Contribution) to repay to the party who paid the Healthcare Contribution any unspent monies of the Healthcare Contribution held by the District Council or received by the District Council pursuant to paragraph 3.2.3 of this Schedule 4 together with interest accrued within twenty (20) Working Days of receipt of the aforementioned written request.

3.5 In the event that the document in the form required by paragraph 3.2 of this Schedule 4 is not received following the expiry of ten (10) years from the date of receipt of the Healthcare Contribution by the District Council then the District Council's obligation to pay the Healthcare Contribution to NHS England shall cease absolutely and the District Council shall refund to the party who paid the Healthcare Contribution the unexpended contribution within twenty (20) Working Days of receipt of a written request from the Owner to do so.

3.6 The Owner hereby acknowledges that the District Council shall not be responsible for how the Healthcare Contribution is utilised or in the event that NHS England does not comply with paragraph 3.2.3 of this Schedule 4 for its return above once it has transferred the Healthcare Contribution to NHS England but without prejudice to the rights of the Owner to seek to enforce the obligations in paragraph 3.2 directly against NHS England and in which case the District Council shall provide to the Owner such assistance as it reasonably can to enforce those obligations.

SCHEDULE 5

VIABILITY

1. In this Schedule 5 unless the context requires otherwise the following words and expressions shall have the following meaning:

“Contribution Cap”	means the sum of £5,286,750 (five million two hundred and eighty six thousand one hundred and seventy four pounds), which sum shall be Index Linked;
“Benchmark Land Value”	means the sum of £5,732,174 (five million seven hundred and thirty two thousand one hundred and seventy four pounds), which sum shall be Index Linked;
“Existing Viability Assessment”	means the assessment of the viability of the Development carried out by Fenn Wright and dated July 2022, a copy of which is attached at Annex A;
“Notice of Payment”	means notice in writing that either: (a) states that the conclusion from the Revised Viability Assessment is that no Post Review Contribution is payable; or (b) states that the conclusion from the Revised Viability Assessment is that the viability of the Development has improved such that a Post Review Contribution is payable;
“Post Review Contribution”	means fifty percent (50%) of any Surplus up to a maximum of the Contribution Cap;
“Post Review Contribution Purposes”	means the use of the Post Review Contribution towards the investment of Affordable Housing (as

defined in the Glossary to the NPPF) in the District of Tendring;

“Residual Land Value”

means the aggregate of the actual net sales values of the completed parts of the Development at the time that the Revised Viability Assessment is carried out and the estimate of the sales values of the remainder of the Development less the usual costs of development (actual and estimated) including (but not limited to) construction costs, professional fees, acquisition costs, planning costs, cost of works in the public highway, Section 106 contributions, marketing and sales costs, finance costs and including normal developer profit of eighteen point five percent (18.5%) on the gross development value of the Development;

“Surplus”

means any positive figure resulting from the following formula:

$$A - B$$

Where:

A = the Residual Land Value arising from the Revised Viability Assessment; and

B = the Benchmark Land Value;

**“Revised
Assessment”**

Viability means an up-to-date assessment of actual expenditure, costs, income of the Development where available and evidenced and justified forecast of expenditure, costs, income where actual figures are not available and which must:

- a) use a formula that is identical (or very similar) to that used in the Existing Viability Assessment;
- b) provide full written evidence for all figures changed from those contained in the Existing Viability Assessment including receipted invoices and certified costs and certified copies of sale contracts and best estimates of costs yet to be incurred or best estimate of value of unsold units and any other evidence reasonably required by the Council.

2. The Owner hereby covenants with the District Council not to Occupy (or allow cause or permit the Occupation of) more than seventy five percent (75%) of the Dwellings unless and until the owner has submitted a Revised Viability Assessment to the District Council for approval in accordance with paragraph 3 of this Schedule 5 and shall not Occupy (or allow cause or permit the occupation of) more than eighty five percent (85%) of the Dwellings before such approval is granted either by the District Council in accordance with paragraph 3 or by the expert determination of a Specialist in accordance with paragraph 4 of this Schedule 5. And the Owner further covenants that any actions proposed within the approved Revised Viability Assessment shall be carried out in the timeframes as may be set out in that document.
3. The District Council covenants with the Owner to analyse the Revised Viability Assessment within forty (40) Working Days of receipt of the Revised Viability Assessment; and
 - 3.1. either confirm in writing that the Revised Viability Assessment submitted accords with the definition of Revised Viability Assessment herein; or
 - 3.2. in the event that the District Council does not propose to provide such confirmation then it shall within that same period of forty (40) Working Days referred to in paragraph 3.1 above provide the Owner with a written statement of reasons as to why the Revised Viability Assessment submitted does not accord with the definition of Revised Viability Assessment.

4. In the event the provisions of paragraph 3.2 above apply the Owner shall either:
 - 4.1. amend the Revised Viability Assessment in accordance with the District Council's statement of reasons and resubmit the Revised Viability Assessment to the District Council and the provisions of paragraph 3 shall apply from the District Council's receipt of the resubmitted Revised Viability Assessment; or
 - 4.2. refer the matter to a Specialist in accordance with Clause 8 of this Agreement for determination of the Revised Viability Assessment and any Surplus and whether a Post Review Contribution is payable.
5. In the event that the Revised Viability Assessment (which is confirmed to be in accordance with the definition as per paragraph 3.1 of this Schedule 5) demonstrates that there is a Surplus then the District Council shall serve a Notice of Payment either confirming that no Post Review Contribution is payable or requesting the amount of the Post Review Contribution identified in the Revised Viability Assessment on the Owner within forty (40) Working Days of receipt of the Revised Viability Assessment.
6. Where the Notice of Payment (or the expert determination of a Specialist) confirms that a Post Review Contribution is to be paid the Owner covenants with the District Council to pay the Post Review Contribution to the District Council within twenty (20) Working Days and further covenants not to Occupy (or allow cause or permit the Occupation of) more ninety percent (90%) of the Dwellings unless and until the relevant Post Review Contribution (as set out in the Notice of Payment or the determination of the Specialist) has been paid to the District Council.
7. The District Council hereby covenants with the Owner as follows:
 - 7.1. that it will only use a Post Review Contribution (if payable and paid) towards the Post Review Contribution Purposes; and
 - 7.2. upon receipt of a request in writing to do so to be received by the District Council no sooner than the fifth (5th) anniversary of the date of payment of a Post Review Contribution to return to the party who deposited the Post Review Contribution the whole or as the case may be the unexpended part of the Post Review Contribution together with interest on the whole or unexpended part (as the case may be) calculated at the SONIA Rate from the date of payment until the date the whole or the unexpended part (as the case may be) is actually repaid;
 - 7.3. Where at the fifth (5th) anniversary of the date of payment of the Post Review Contribution a legally binding contract has been entered into by the District Council in respect of the Post Review Contribution Purposes the District Council shall be

entitled to utilise the Post Review Contribution to make payment under such a contract provided always that where the Post Review Contribution has not been used to make such payment by the seventh (7th) anniversary of the date of payment the whole or the unexpended part of the Post Review Contribution (as the case may be) shall be returned to the party who deposited the Post Review Contribution together with interest on the whole or the unexpended part (as the case may be) calculated at the SONIA Rate from the date of payment until the date the whole or unexpended part is actually repaid.

SCHEDULE 6

COMMERCIAL UNITS

1. In this Schedule 6 unless the context requires otherwise the following words and expressions shall have the following meanings:

"Completion Certificate"

means a certificate or certificates in writing issued by a Chartered Landscape Architect that confirms that the Public Open Space has been laid out in accordance with the Public Open Space Layout Plan and Scheme;

"Commercial Units"

means the two commercial units on the northern part of the Site (to the east of the MFG (as defined in Schedule 1)) and which two commercial units are for the avoidance of any doubt coloured in pink and labelled 'Commercial' on the Site Plan;

"Commercial Unit A"

means the most northerly of the Commercial Units;

"Commercial Unit B"

means the most southerly of the Commercial Units;

"Functional Use"

means occupied and in use (in full or in part) exclusively for the purposes permitted by Class E of the Use Classes Order in accordance with the Planning Permission for a continuous period of at least 2 (two) years;

"Management Company"

means a company or body as may be established or nominated by the Owner whose purpose is or includes the provision of the management and maintenance of the Public Open Space

to be approved in writing by the District Council;

"Notice of Functional Use"

means notice in writing to confirm that the Commercial Unit A and/or the Commercial Unit B is in Functional Use and which notice shall include copies of any relevant tenancy agreement;

"Public Open Space"

means the land occupied by or allocated for Commercial Unit A and/or Commercial Unit B to be used for no purposes other than to provide recreational and amenity facilities for use by members of the public in perpetuity as detailed in the Public Open Space Layout Plan and Scheme;

"Public Open Space Layout Plan and Scheme"

means a plan and scheme to be submitted to the District Council for approval which shall include (a) the plans for the removal of any buildings and/or structures located within the land occupied by Commercial Unit A and/or Commercial Unit B (as the case may be); (b) the full extent of the land to be reverted to Public Open Space (to include a Land Registry compliant plan defining that land); (c) full details of how the Public Open Space will be laid out including a specification, for use by members of the public; (d) the timings for the laying out of the Public Open Space; (e) full details of how the Public Open Space will be managed and maintained; and (f) details of the Management Company.

2. The Owner hereby covenants with the District Council, as follows:

- 2.1 That the Commercial Units when constructed in accordance with the Planning Permission shall be used exclusively for purposes permitted by Class E of the Use Classes Order (i.e. commercial, business and service).
- 2.2 If on the tenth (10th) anniversary of the date of the Planning Permission the Commercial Unit A is not in Functional Use (in full or in part) or has not been in Functional Use (in full or in part) at any time prior to that tenth (10th) anniversary, then the land allocated for the Commercial Unit A shall no longer be used for the purposes of Class E of the Use Classes Order but will instead be dedicated as Public Open Space and the following provisions shall apply:
- 2.2.1 the Owner shall submit a Public Open Space Layout Plan and Scheme to the District Council within three (3) months of that tenth (10th) anniversary of the date of the Planning Permission; and
- 2.2.2 once the District Council has approved the Public Open Space Layout Plan and Scheme in writing the Owner shall within six (6) months of the date of that written approval layout the Public Open Space in accordance with the approved Public Open Space Layout Plan and Scheme and provide the District Council with the Completion Certificate for confirmation in writing that it is satisfied that the Public Open Space has been laid out in accordance with the Public Open Space Layout Plan and Scheme; and
- 2.2.3 once the Public Open Space has been provided in accordance with paragraph 2.2.2 of this Schedule 6 then the Owner shall offer to transfer the Public Open Space to Elmstead Parish Council for the nominal sum of One Pound (£1.00) and in the event that Elmstead Parish Council accepts the offer of the transfer of the Public Open Space then the Owner shall transfer the Public Open Space to Elmstead Parish Council without delay PROVIDED THAT in the event that Elmstead Parish Council declines the offer of the transfer of the Public Open Space or fails to respond to the offer within eight (8) weeks of the offer then the Owner shall transfer the Public Open Space to the Management Company.

PROVIDED THAT in the event that the Commercial Unit A achieves a Functional Use at any time prior to the tenth (10th) anniversary of the date of the Planning Permission then the following provisions shall apply:

- (a) the Owner shall serve on the District Council a Notice of Functional Use;

(b) from the date of receipt of the Notice of Functional Use the District Council shall have four (4) weeks to challenge whether or not the Commercial Unit A is in a Functional Use;

(c) if the District Council confirms in writing that it accepts that the Commercial Unit A is in a Functional Use or the District Council does not challenge that the Commercial Unit A is in a Functional Use within the four (4) weeks referred to above then the provisions within this Schedule 6 requiring the relevant land to be used as Public Open Space shall no longer apply and no longer be of any effect.

2.3 If on the tenth (10th) anniversary of the date of the Planning Permission the Commercial Unit B is not in Functional Use (in full or in part) or has not been in Functional Use (in full or in part) at any time prior to that tenth (10th) anniversary, then the land allocated for the Commercial Unit B shall no longer be used for the purposes of Class E of the Use Classes Order but will instead be dedicated as Public Open Space and the following provisions shall apply:

2.3.1 the Owner shall submit a Public Open Space Layout Plan and Scheme to the District Council within three (3) months of that tenth (10th) anniversary of the date of the Planning Permission; and

2.3.2 once the District Council has approved the Public Open Space Layout Plan and Scheme in writing the Owner shall within six (6) months of the date of that written approval layout the Public Open Space in accordance with the approved Public Open Space Layout Plan and Scheme and provide the District Council with the Completion Certificate for confirmation in writing that it is satisfied that the Public Open Space has been laid out in accordance with the Public Open Space Layout Plan and Scheme; and

2.3.3 once the Public Open Space has been provided in accordance with paragraph 2.3.2 of this Schedule 6 then the Owner shall offer to transfer the Public Open Space to Elmstead Parish Council for the nominal sum of One Pound (£1.00) and in the event that Elmstead Parish Council accepts the offer of the transfer of the Public Open Space then the Owner shall transfer the Public Open Space to Elmstead Parish Council without delay PROVIDED THAT in the event that Elmstead Parish Council declines the offer of the transfer of the Public Open Space or fails to respond to the offer within eight (8) weeks of the offer then the Owner shall transfer the Public Open Space to the Management Company; and

PROVIDED THAT in the event that the Commercial Unit B achieves a Functional Use at any time prior to the tenth (10th) anniversary of the date of the Planning Permission then the following provisions shall apply:

- (a) the Owner shall serve on the District Council a Notice of Functional Use;
- (b) from the date of receipt of the Notice of Functional Use the District Council shall have four (4) weeks to challenge whether or not the Commercial Unit B is in a Functional Use;
- (c) if the District Council confirms in writing that it accepts that the Commercial Unit B is in a Functional Use or the District Council does not challenge that the Commercial Unit B is in a Functional Use within the four (4) weeks referred to above then the provisions within this Schedule 6 requiring the relevant land to be used as Public Open Space shall no longer apply and no longer be of any effect.

2.4 Any transfer of the Public Open Space in accordance with this Schedule 6 shall be on the following terms (unless otherwise agreed in writing between the parties):

2.4.1 shall contain a covenant by the transferee not to use or suffer or permit to be used the land transferred otherwise than for the purpose of providing recreation and amenity facilities for members of the public and for the management and maintenance of the Public Open Space in perpetuity;

2.4.2 free of all financial charges and other encumbrances that may materially affect use of the Public Open Space for such purposes;

2.4.3 with all necessary easements and with vacant possession;

2.4.4 where the land is transferred to the Management Company a covenant to manage and maintain the Public Open Space in accordance with the approved Public Open Space Layout Plan and Scheme; and

2.4.5 a covenant not to transfer the Public Open Space into the individual ownership of an owner or owners or occupiers of any of the Dwellings.

2.5 The Owner shall provide a copy of the transfer(s) under this Schedule 6 to the District Council within Two (2) months of completion of the transfer to Elmstead Parish Council or the Management Company as the case may be.

2.6 To maintain the Public Open Space in accordance with the approved Public Open Space Layout Plan and Scheme for one (1) year following the issue of the Completion Certificate and acceptance in writing by the District Council in accordance with paragraphs 2.2.2 or 2.2.3 (as the case may be) of this Schedule 6 or until such time as any transfer described in this Schedule 6 has been completed.

2.7 In the event that the Public Open Space is transferred to the Management Company to be funded through contributions from owners and occupiers of Dwellings the Owner shall include in the transfer or lease to the owners and occupiers of Dwellings an obligation to contribute an annual amount to the Management Company which together with fair contributions from other owners and occupiers of Dwellings shall be sufficient to enable the Management Company to discharge its obligations under any transfer of the Public Open Space.

SCHEDULE 7

HIGHWAY PROVISIONS

1. In this Schedule 7 the following expressions shall have the following meanings:

“Highway Works” means:

- a. The reduction in the speed limit along Clacton Road in front of the site (currently 60mph) to a lower speed limit, possibly 40mph (subject to a safety audit). This obligation is subject to a series of safety audits that apply to developer delivered schemes to the satisfaction of the County Council.
- b. The existing 40-mph speed limit that terminates approximately 480 metres to the west of the application site to be extended eastwards to incorporate the entire development site fronting Clacton Road, and to include the provision of a gateway feature at the new location (to be agreed with the County Council) for the terminal signs.
- c. The provision of a signalised ‘Puffin or Toucan’ crossing to serve the existing and proposed Developments together with the nearest bus stops either side of Clacton Road in the vicinity of the Site.

and including any necessary alterations to and reinstatements of existing highways and statutory undertakers equipment to the provision of or alteration to street lighting road signs drainage structures traffic signals related accommodation and any other works normally associated with the construction of a highway or required as a result of the County Council's inspections

“Highway Works Agreement” means an agreement entered into pursuant to all powers enabling the parties to regulate the carrying out of the Highway Works (in particular Sections 38 and 72 and 278 of the 1980 Act and Section 33 of the 1982 Act) and shall include but not be limited to the following matters:

- (a) securing of a bond to ensure that third party funds are available to complete the Highway Works to the satisfaction of the County Council;

- (b) payment of the County- Council's works inspection fees maintenance fees special orders fees supervision fees and any other such fees as the County Council shall require;
- (c) payment of the County Council's legal administrative and other fees and disbursements associated with the drafting negotiating and completion of the Highway Works Agreement;
- (d) preparation and advance approval of works drawings and traffic management measures;
- (e) certification and maintenance of the Highway Works;
- (f) regulating of the issue of the Works Licence to enable the Highway Works to be carried out;
- (g) the securing of an indemnity relating to both Land Compensation Act 1973 matters and Noise Insulation Regulations 1975 as amended and any other indemnity and bonds for liability issues as the County Council shall require;
- (h) the dedication of land as public highway;
- (i) the standards and procedures for carrying out the Highway Works; and
- (j) traffic regulation orders and statutory processes.

"Highway Works Scheme" means a detailed scheme of Highway Works submitted by the Owner to the County Council for the written approval of the County Council, prior to Commencement of any Development detailing the works proposed to be completed and timetable for completion of such works to ensure that the public highway is to an acceptable standard to support the Development. The scheme shall be submitted to the Council for review and approval in writing.

2. The Owner hereby covenants with the County Council so as to bind their interest in the Site:

2.1 to submit the Highway Works Scheme to the County Council for review and approval in writing by the County Council prior to Commencement of any Development;

2.2 to implement Highway Works Scheme in full before the MFG facility hereby approved is first brought into use OR prior to the occupation of the 50th dwelling whichever is earliest;

2.3 to enter into a Highway Works Agreement for the Highway Works prior to Commencement of such works or such other timescale as shall be agreed in writing with the

County Council PROVIDED ALWAYS THAT the Owner shall enter into the Highway Works Agreement for the Highway Works prior to first Occupation on the Development; and

2.4 to undertake and complete the Highway Works prior to first Occupation on the Development and in accordance with the Highway Works Agreement; and

2.5 not to Occupy allow cause or permit to be Occupied the Development until the Highway Works have been properly completed in accordance with the Highway Works Agreement and the relevant certificate confirming such completion has been issued under the provisions of the Highway Works Agreement.

SCHEDULE 8

Travel Plan Monitoring Fee

1. In this Schedule 8 unless the context requires otherwise the following words, expressions and terms shall have the following meanings:

“Relevant Sustainable Travel Indexation” means the amount that the Owner shall pay with and in addition to each part of the Residential Travel Plan Monitoring Fee paid that shall in each case equal a sum calculated by taking the amount of the Residential Travel Plan Monitoring Fee being paid and multiplying this amount by the percentage change shown in the Sustainable Travel Index between the Index Point pertaining to April 2024 and the date payment is made to the County Council;

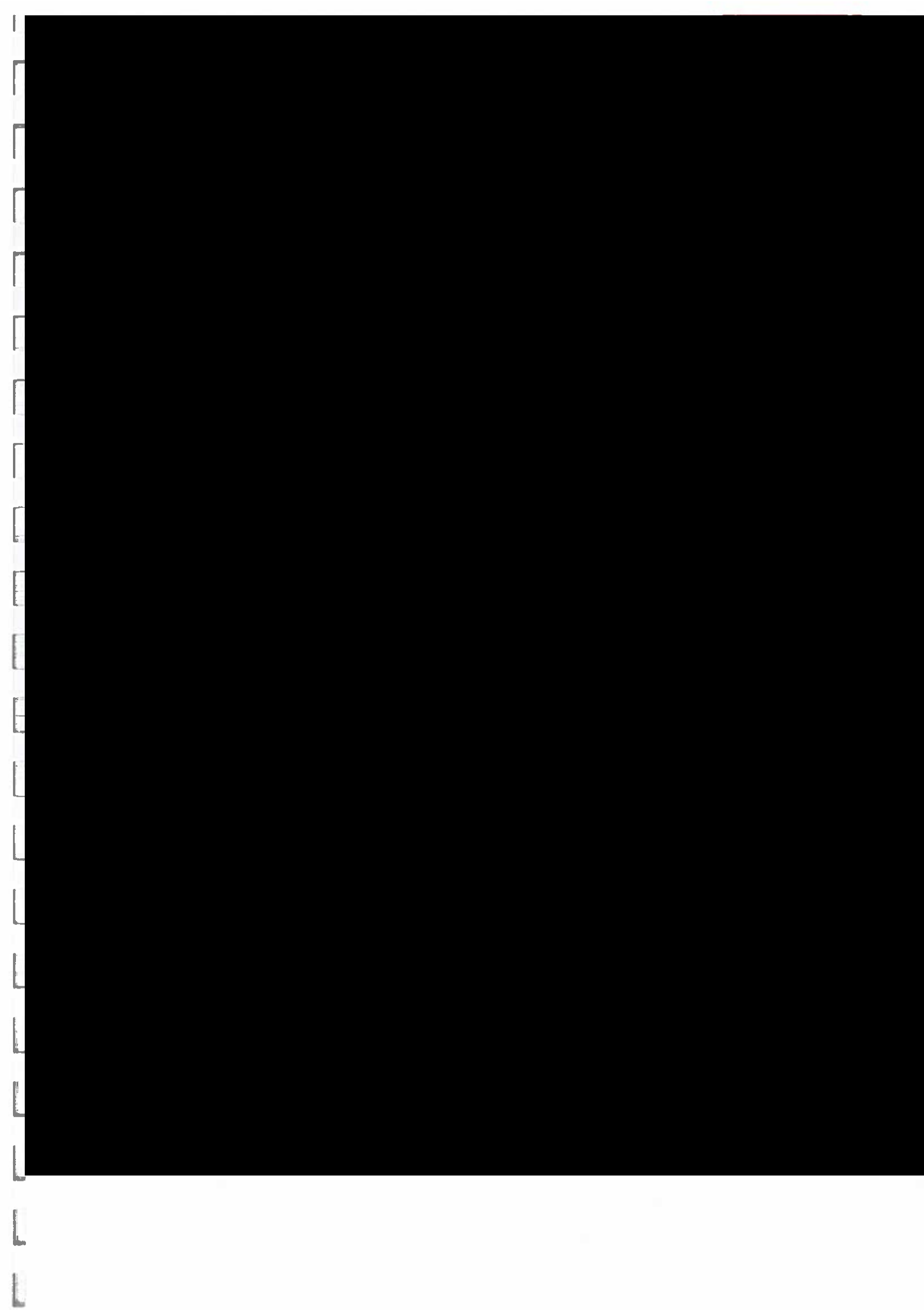
“Workplace Travel Plan” means the Travel Plan imposed by condition on the Planning Permission;

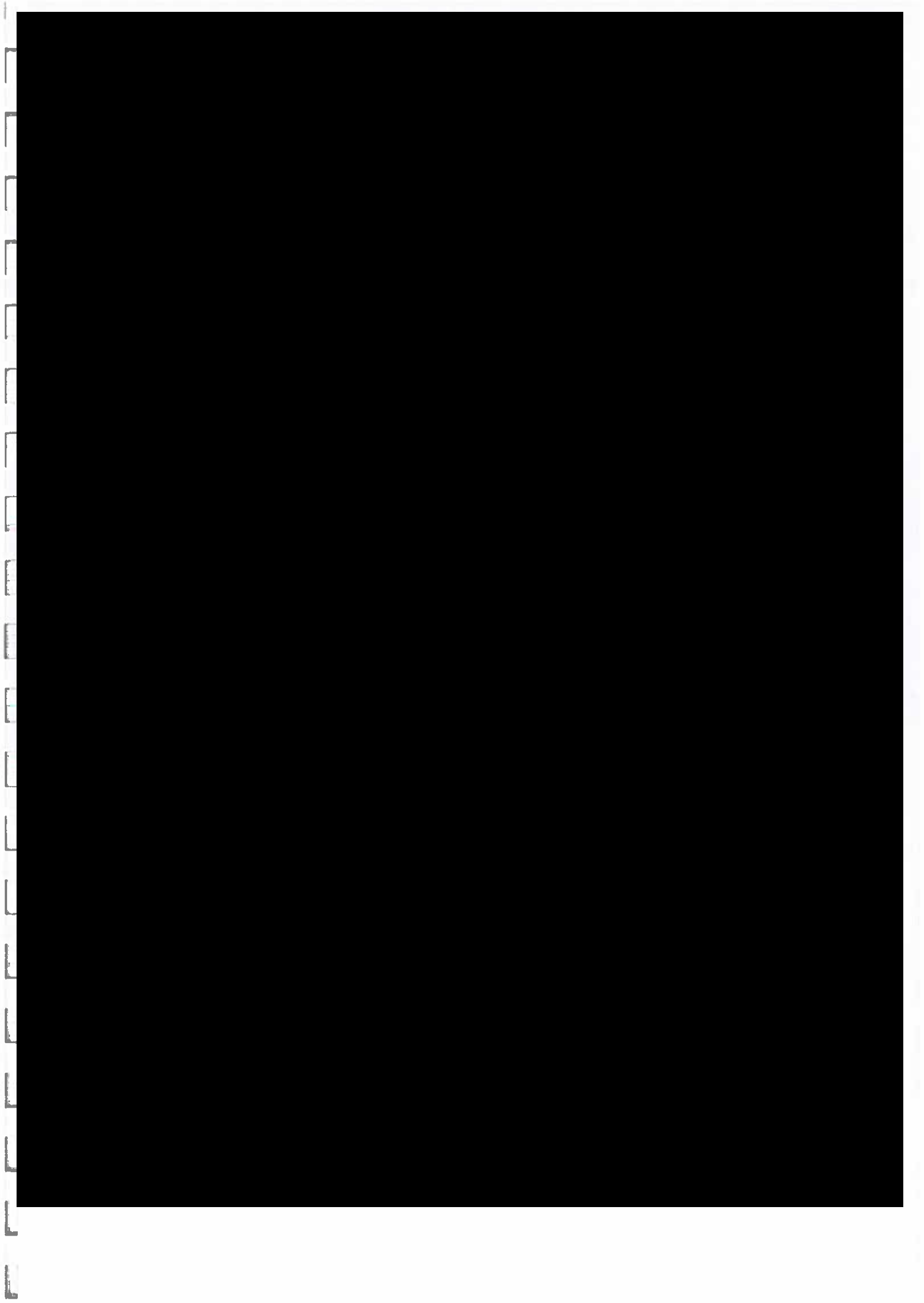
“Travel Plan Monitoring Fee” means the non-refundable payment of £7,037.16 (seven thousand and thirty seven pounds and sixteen pence sterling) plus Relevant Sustainable Travel Indexation payable prior to the date of first Occupation of the Development towards the monitoring by the County Council of the implementation of the Workplace Travel Plan to ensure that (a) monitoring is conducted in line with Workplace Travel Plan monitoring protocols and (b) the Workplace Travel Plan remains an "active" document with the overarching aim to secure a modal shift from the private car and increase the number of people using sustainable modes of travel;

“Sustainable Travel Index” means the Consumer Price Index (CPI) or in the event that the CPI is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County Council.

2. The Owner hereby covenants with the County Council:

2.1 to pay the Travel Plan Monitoring Fee to the County Council prior to the 1st Occupation of the Development and not to cause or allow first Occupation of the Development until the County Council has received the Travel Plan Monitoring Fee and in the case of late payments interest shall be payable by the Owner from the date payment is due to the date payment is made on which late sums interest shall accrue under the SONIA Rate.





ANNEX A

Existing Viability Assessment

Lanswood Developments Ltd

Land at Finches Lane, Elmstead Market, Elmstead, Colchester

July 2022

DRAFT

**Report Prepared by J P G Birchall MRICS, Partner & Head of Valuation Services,
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- 6.0 Data sources and assumptions**
- 7.0 Land Value Benchmarks**
- 8.0 Results and Conclusions**

Appendix I – Residual appraisal summary – Negative Land Value

Appendix II – Development Appraisal – 8.7% profit on GDV.

1. Introduction

This report has been prepared by John Birchall MRICS Partner and Head of Valuation Services at Fenn Wright, a Chartered Surveyor with 16 years commercial and residential development experience.

Fenn Wright Chartered Surveyors are a leading commercial, residential, agricultural and professional services firm with offices along the A12 corridor from Chelmsford in Essex up to Woodbridge in Suffolk, employing approximately 150 staff over 10 offices and incorporates the Taylor & Co and Newman Commercial brands within the group.

Fenn Wright provide a variety of specialist property services, including viability appraisals and advice for a number and variety of both landowners as well as local authorities. Fenn Wright subscribe to the Argus Developer which is the largest provider of development software for development modelling.

Fenn Wright were approached by Lanswood Developments (the "Developer") to provide site assistance on a proposed development.

The Developer has engaged with the Local Planning Authority – with formal pre-application advice on land to the north and south of Clacton Road. The result is that the local planning authority are supportive of a proposal to deliver a facility to meet Special Education Needs (SEN), alongside residential dwellings within a mixed use setting adjacent to the settlement boundary at Elmstead Market, Essex.

Fenn Wright have been instructed by Lanswood Developments to provide viability advice in respect of a proposed development, which centres around the delivery of a Special Educational Needs (SEN) facility to meet an identified need for young adults (post 16). The school focuses upon agricultural and horticultural facilities in a special training setting that extends to post 16 years employment for SEN students that have graduated (not limited to), from the nearby Market Field SEN school, on a site of 5 acres.

A specific site model has been created within Argus Developer to demonstrate the case for viability, this is supported by a number of inputs provided by our client which are either directly costed, or based on reasonable assumptions.

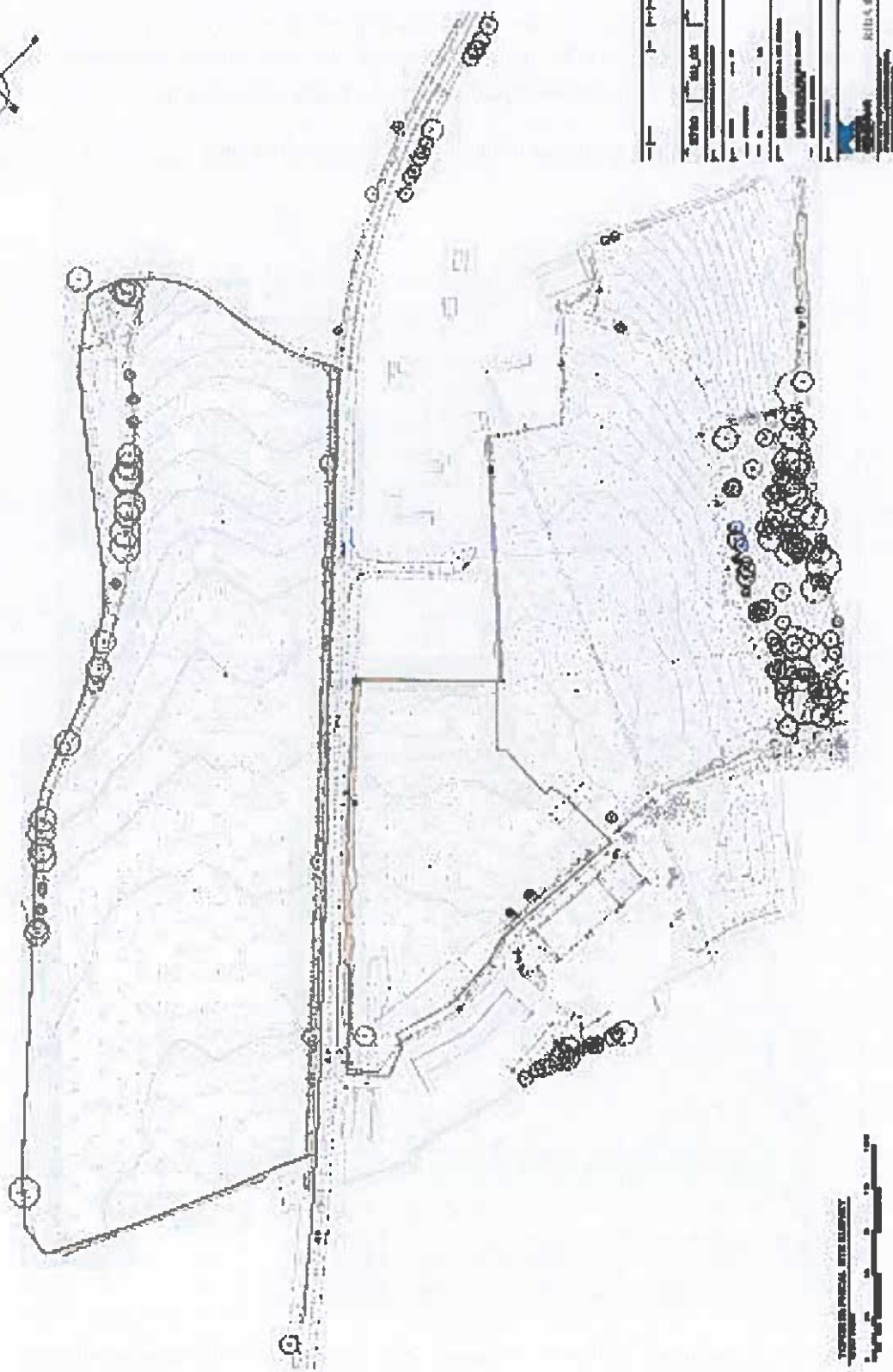
2. The Site and Location

The site is located to the East of the town of Elmstead Market. The scheme presents development to the north and south of Clacton Road. Clacton Road connects the centre of Elmstead with the A120 to the East. The scheme is located immediately to the north and east of the mixed use site at Lanswood Business Park and Chattowood, which is currently being developed by the applicant. Chattowood residential development is being delivered by the applicant on land immediately adjacent where they are constructing 84 dwellings.

Like the site of Chattowood, the site falls outside the defined settlement boundary for Elmstead Market within the Tendring 2013 – 2033 and beyond Local Plan. The existing settlement boundary is around 150 metres to the west. Notwithstanding that the site is outside the settlement boundary, there has been fairly significant mixed use development of land to the south and east. The site also connects favourably with Elmstead Market. The land also benefits from an allocation for mixed use development falling within use classes B1, B2 and B8 of up to 10,000 sq. m. / 107,640 under consent 20/00239/FUL

A location plan delineating the extent of the site can be found below: -

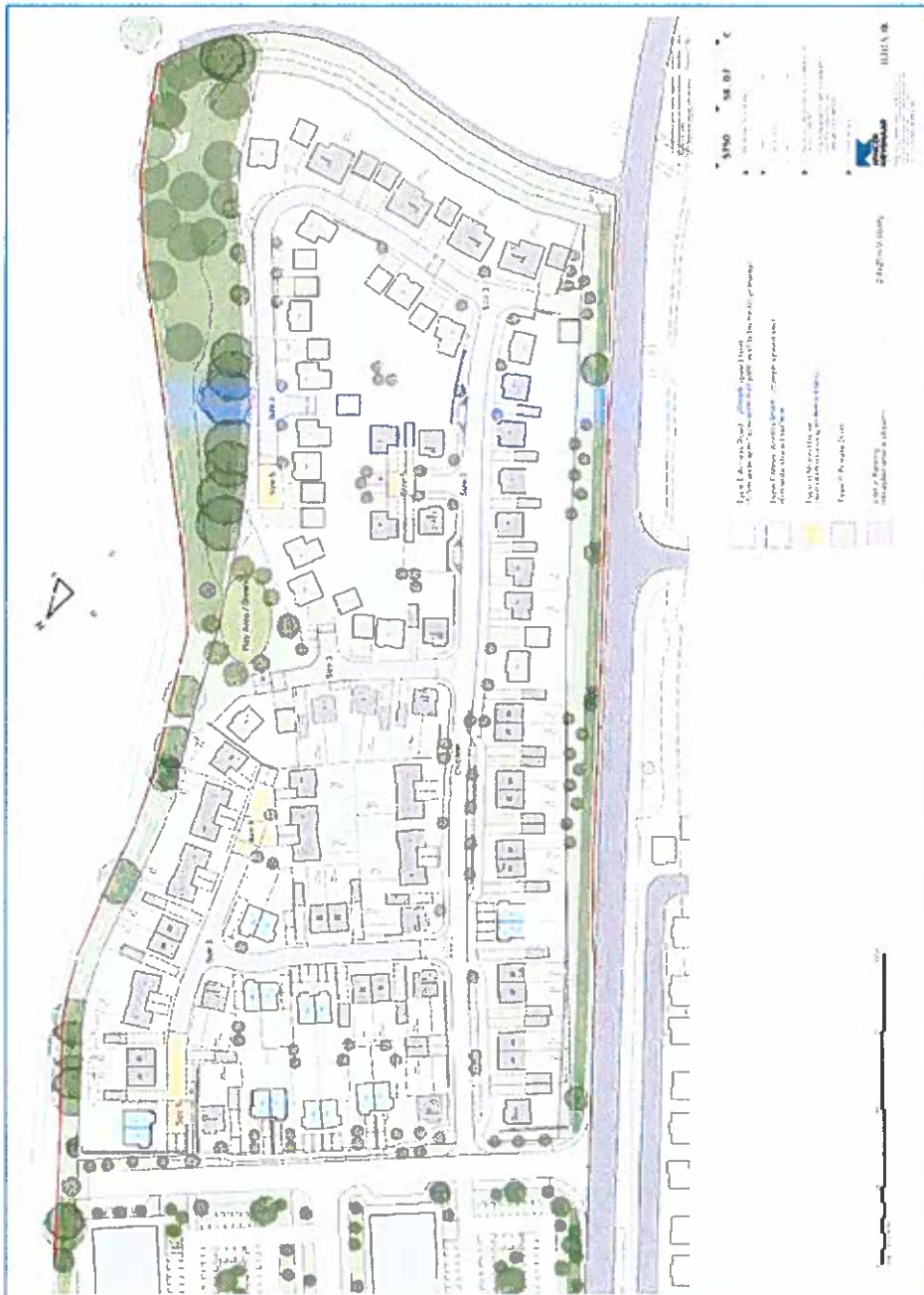




3. The Proposed Scheme

The Proposed scheme is for the development of 121 dwellings totalling 143,436 sq. ft. a Special Education Needs facility offering 5,975 sq. ft. on 5 acres, with two areas for the development of commercial floor space. The scheme to be developed on a total site of 24.85 acres

The northern residential element can be identified from the below drawing: -



The house types are summarised within the proposed scheme above. A similar scheme will continue on land to the southern side of Clacton Road where the balance of the dwellings will be created around a central estate road.

4. Policy background and viability

4.1 National Planning Policy

Previously, at the national level, Planning Policy Statement 3: Housing (November 2006; consolidated 2011) stated that: 'In Local Development Documents, Local Planning Authorities should:

'Set out the range of circumstances in which affordable housing will be required. The national indicative minimum site size threshold is 15 dwellings. However, Local Planning Authorities can set lower minimum thresholds, where viable and practicable, including in rural areas. This could include setting different proportions of affordable housing to be sought for a series of site-size thresholds over the plan area. Local Planning Authorities will need to undertake an informed assessment of the economic viability of any thresholds and proportions of affordable housing proposed, including their likely impact upon overall levels of housing delivery and creating mixed communities'. (Para 29)'

The historic planning position was amended with the National Planning Policy Framework which was published in 2012 which states that (Paragraph 173):

'Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable'.

The NPPF thus continues in the vein of ensuring that viability is taken into account when making plans, the latest revision of the NPPF released in June 2018 is less prescriptive to dealing with viability assessments. Advice is provided via the national planning practice guidance on viability published July 2018. The guidance suggests: -

How should plan makers set policy requirements for contributions from development?

Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure).

These policy requirements should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability that takes into account all relevant policies, and local and national standards, including the cost implications of the Community Infrastructure Levy (CIL) and section 106. Policy requirements should be clear so that they can be accurately accounted for in the price paid for land. To provide this certainty, affordable housing requirements should be expressed as a single figure rather than a range. Different requirements may be set for different types of site or types of development.

The national policy suggests that a holistic view to the production of local plans needs to be considered, including all policies when deciding the impact of viability. With particular interest in this instance is the delivery of employment land within the district.

4.2 Local Planning Policy

Tendring District Council has adopted its local plan – Tendring District Local Plan 2013 – 2033 and Beyond.

Tendring's Vision confirms amongst other things: -

*The District will be home to people of all ages and abilities, providing a range of activities, attractions and facilities that will appeal to the active retired, the young and residents of working age. The District will also provide for the **specialist needs** of all people ensuring, in particular, that children and young people have the knowledge and skills to secure the opportunity for a good start in life.*

Whilst Tendring is not the education provider – the job of the County Council, the Local Plan makes limited reference as to how planning policy will be used to meet Special Educational Needs. Tendring confirms that there are:

"39 primary schools, 6 secondary schools in the district. In addition there are 2 Special Schools for children ages 5-16"

There is currently no provision to meet the Education, health and care plan needs, for those young adults aged 16-25.

Planning Policy 12 (PP12) confirms that the Local Authority will "improve education and employment prospects for Tendring District's residents."

4.3 Local Planning Policy on Viability

Whilst commentary on viability is limited there is reference within affordable housing policy as follows: -

Tendring's Local Plan viability study finds that affordable housing could be achieved across the whole district on sites of 10 or more homes. However, it also finds that there are some viability issues in the eastern area of the District and certain sites in this area may not be able to meet all policy requirements. It would therefore seem reasonable to set the affordable housing target at 30% for sites of 11 homes or more. This will enable those sites that are viable to achieve 30% and those sites that are only viable at less than 30% to make a reasonable contribution to the achievement of the overall affordable housing need. Therefore, 30% will be taken as the baseline for viability testing of individual planning applications. When undertaking viability assessment the Tendring District Council - Local Plan Part 2 Viability Study (June 2017, as updated in 2019) should be read as a whole because there is differentiation for certain types of homes, such as flats. The viability assessment for the Tendring Colchester Borders Garden Community also provides for a target of 30% affordable housing. The zones of viability are illustrated below by ward.

This is confirmed within policy LP5 –

For development proposals outside of the Tendring Colchester Borders Garden Community, involving the creation of 11 or more (net) homes, the Council will expect 30% of new dwellings, (including conversions) to be made available to Tendring District Council (subject to viability testing) or its nominated partner(s) to acquire at a proportionate discounted value for use as affordable housing.

4.4 Site specific Considerations

The site itself is currently not the subject of a current allocation within the adopted local plan. The site was not the subject of a representation within the call for sites that formed part of the current Local Plan evidence base.

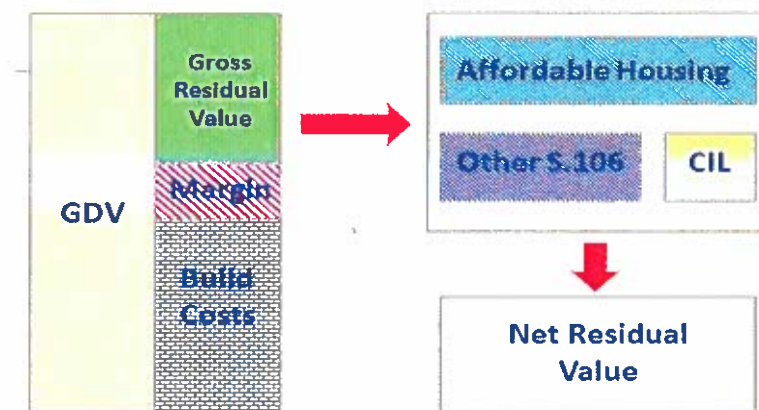
Land to the south was the subject of a viability negotiation which sets some precedence to the subject site, we have included a number of previously agreed assumptions in respect of this development, although it should be noted that the subject site is much more complex. Whilst previously there was risk with quite high capital outlay, this was mostly with third parties where overspends and delays would be the subject of strict contracts and performance agreements, whereas the subject site has a variety of variables and even greater initial capital outlay.

5. Approach to viability assessment

5.1 Overview

It is important to understand how viability is assessed in the planning and development process. The assessment of viability is usually referred to a residual development appraisal approach. Our understanding is illustrated in the diagram below. This shows that the starting point for negotiations is the gross residual site value which is the difference between the scheme revenue and scheme costs, including a reasonable allowance for developer return.

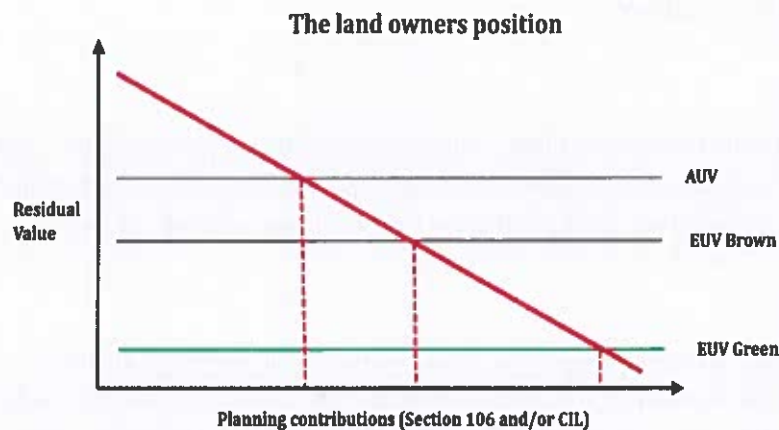
Once CIL or Section 106 contributions have been deducted from the gross residual value, a 'net' residual value results. The question is then whether this net residual value is sufficient in terms of development value relative to the site in its current use.



Calculating what is likely to be the value of a site given a specific planning permission, is only one factor in deciding what is viable.

5.2 Land owner considerations

A site is unlikely to proceed where the costs of a proposed scheme exceed the revenue. But simply having a positive residual value will not guarantee that development happens. The existing use value of the site, or indeed a realistic alternative use value for a site (e.g. commercial) will also play a role in the mind of the land owner in bringing the site forward and thus is a factor in deciding whether a site is likely to be brought forward for housing.



The diagram shows how this operates. The land owner will always be concerned to ensure that residual value clears the relevant land value benchmark.

This concept is covered within the planning guidance document on viability through the following quote: -

What factors should be considered to establish benchmark land value?

Benchmark land value should:

- *be based upon existing use value*
- *allow for a premium to landowners (including equity resulting from those building their own homes)*
- *reflect the implications of abnormal costs; site-specific infrastructure costs; and professional site fees and*
- *be informed by market evidence including current uses, costs and values wherever possible. Where recent market evidence is used to inform assessment of benchmark land value this evidence should be based on developments which are compliant with policies, including for affordable housing. Where this evidence is not available plan makers and applicants should identify and evidence any adjustments to reflect the cost of policy compliance. This is so that historic benchmark land values of non-policy compliant developments are not used to inflate values over time.*

In plan making, the landowner premium should be tested and balanced against emerging policies. In decision making, the cost implications of all relevant policy requirements, including planning obligations and, where relevant, any Community Infrastructure Levy (CIL) charge should be taken into account.

Where viability assessment is used to inform decision making under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan. Local authorities can request data on the price paid for land (or the price expected to be paid through an option agreement).

6. Data sources and assumptions

6.1 Overview

The appraisal work and report relies on a range of information sources. These include comparable market analysis for house prices; this is derived from both my own research and best available secondary data sources. In addition, costs taken from the BCIS industry standard source.

6.2 Costs

There are normally two main elements of cost analysis: base construction costs and other development costs. The base construction costs include items such as Build Plot costs (sub and superstructure), roads and sewers, landscaping and other external works. Added to these are abnormal construction costs and site remediation works.

Other development costs include such items as professional fees, developer overheads, finance costs and developer margin.

6.3 Construction costs

The industry standard approach to agreeing costs for the purposes of Section 106 negotiations is by reference to the RICS Building Cost Information Service (BCIS). BCIS undertake tender price research from a variety of similar schemes and then provide a breakdown of cost on a per sq. m. This approach is reinforced within the planning practice guidance document on viability. The BCIS Data has been extracted from the BCIS online service, rebased to Tendring, Essex and adjusted to Q3 2022.

Build Costs (Estates Housing)	Costs per Sq. M	Costs per Sq. Ft.
Semi Detached	£1,439	£133.79
Detached	£1,855	£172.33
Special Schools	£2,733	£253.90

It is important to remember that BCIS figures adopt the following approach: -

The cost of the building with preliminaries apportioned, excluding external works, contingencies and design fees. The sample is from actual building contracts and represents a price including the contractors' overheads and profits included in the contract. The buildings sampled represent projects submitted to BCIS and will not necessarily be representative.

The costs include prelims, but exclude externals, contingency sums, design fees as well as exceptional costs. Contractors profits are included, but not developer profits.

The scheme costs do not include the cost of delivering garages. We have allowed for 83 garages at £20,000 per garage.

We have allowed 10% on costs for externals – including soft & hard landscaping, delivery of estate roads, estate footpaths, some basic utility infrastructure (i.e. meters). This rate is accepted in Tendring's Economic Viability Study, which forms part of the local plan evidence base.

We have allowed 5% on cost for contingency – this is a market lead assumption which we believe to be reasonable given the particularly unique nature of the development. Lanswood having to deliver a facility the likes of which doesn't exist in Tendring currently. This rate is accepted in Tendring Plan Viability Study.

These costs may be subject to a specific QS assessment at a later stage.

6.4 Other Construction Costs

There are a number of site specific exceptional costs which we briefly set out below: -

Water lift and shift:	£75,000
Water Pumping Station:	£250,000
Section 278 Works – see below:	£336,050
School Car Park:	£100,000
Total Exceptional Costs	£761,050

The highways authority have confirmed within their draft consultation that improvement work will be required to Clacton Road – this will include traffic calming measures, speed reduction, temporary road closures to enlarge the current footpath on the northern side of Clacton Road to improve connectivity (length unknown). There will also be a new pedestrian crossing created. Essex Highways cost guide suggests the following indicative costs: -

“Change of speed limit where four new street lighting columns are required” £35,000

“200m of footway width 1.2m....” £90,000

“Stand-alone Pedestrian Crossing – single carriageway...” £180,500

The above costs make no allowance for land acquisition. It should be stressed that the information forming part of the initial consultation is fairly limited and the final obligations may vary either way from the forecast – the above figures were set in 2016/17 so we have increased these costs by 10% to produce a total cost of £336,050.

We have also allowed a sum of £20,000 per acre for initial investigations, trenching and ongoing reporting for the purposes of discharging planning obligations.

6.5 Section 106 Costs & CIL

We understand that a payment for RAMS (Recreational and disturbance mitigation) will be due. The amount payable is to be confirmed. We have adopted a rate of £340 per property.

6.6 Residential Values

There are a number of ways to establish new build prices. As far as I am aware, there is no bespoke valuation of the properties for sale.

Fenn Wright subscribes to Rightmove Plus which enables searching of comparable evidence. In addition Fenn Wright has a new homes department which are responsible for selling new build houses for a variety of developers. We have spoken to our colleagues and set out our comparable evidence listed below:-

Chattowood – this scheme is located opposite the subject property. It is developed by Lanswood Homes. There have been a number of reservations on the plots there which show capital values of around £350 per sq. ft. Many units include extras – i.e. carpets which somewhat skews figures.

Land at Edward Road, Thorpe Le Soken – located close to the subject, these two dwellings are uniform being 3 bed detached with detached garage on fairly decent plot. Located in a rural setting at the end of a private road, with good access to Thorpe Le Soken railway. The dwellings are being offered at £425,000 offering 1,257 sq. ft. - £338 per sq. ft. located adjacent to the branch line, but not an estate setting.

Frating Road, Great Bromley – a detached 4 bedroom house within a small scheme of 7 units. This property offers 2,809 sq. ft. and originally marketed in January 2021 at £925,000, subsequently price dropped to in June £900,000 - £320.40 per sq. ft. same size unit but different plot marketed from Sept 21 at £875,000 - £311.50 per sq. ft.

Victory Fields, School Road, Elmstead Market – this scheme is being developed by Go Homes a short distance north west of the subject. We understand current marketed prices are as follows :-

Grosvenor – 5 Bed Detached – 2,434 sq. ft.	-	£750,000	-	£308.13 psf
The Richmond - 5 Bed Detached – 2,063 sq. ft.	-	£675,000	-	£327.19 psf
The Hampton – 4 Bed Detached - 1,683 sq. ft.	-	£565,000	-	£335.71 psf
The Portland – 4 Bed Detached – 1,407 sq. ft.	-	£500,000	-	£355.36 psf

The Corner House, Turnpike Close, Ardleigh – Sold in July 2021 – this property comprises a 5 bedroom detached house offering 2,207 sq. ft. plus double garage. Sold for £550,000 - £249 per sq. ft.

Within the same scheme – The Orchards 1,765 sq. ft. sold in June 2021 - £460,000 - £260 per sq. ft.

Fusilers Green, Heckfords Road – a detached 4 bedroom house, offering 1,240 sq. ft. currently marketed at £475,000 - £383 per sq. ft.

Kingswood Heath, Colchester – A new build scheme by Taylor Wimpey – offering estate style housing in a more central location than the subject. We understand the current sales info as follows -

The Stanton – 5 bed	1,546 sq. ft. -	£455,000	-	£294.30
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Adopting this methodology we have adopted an overall averaged sales rate of £350 per sq. ft. and applied this to the units as below: -

House Type	No	Size Each	Total Sq. Ft.	Beds	Type	Market Value	MV total
1							
1a	16	937	14992	2	Semi	327950	5247200
1b	4	883	3532	2	Semi	309050	1236200
2e	18	990	17820	3	Semi	346500	6237000
3	12	1076	12912	3	Link Detached	376600	4519200
3a	6	1076	6456	3	Detached	376600	2259600
5	4	1195	4780	3	Detached	418250	1673000
6	15	1206	18090	3	Detached	422100	6331500
6a	10	1206	12060	3	Detached	422100	4221000
7	15	1539	23085	4	Detached	538650	8079750
12	10	1432	14320	4	Detached	501200	5012000
13	11	1399	15389	4	Detached	489650	5386150
	121		143436				£50,202,600

6.7 Commercial Values

We understand the school will be delivered to the school as part of an undertaking and there will be no receipt. Our instructions are to disregard the commercial element as this formed the part of an earlier viability appraisal.

6.8 Finance / timescales

We have used Argus Developer to produce our residual appraisal. We have assumed a 6 year construction period. A 5 year sales period, but sales to start after two years – to enable delivery of infrastructure / highways improvements etc.

We have adopted a finance rate of 7%. - Our previous viability scheme at Chattowood was agreed at 6%, although the bank of England Base Rate has increased by 1.15% since that time. The Three Dragons and Troy Planning Tendring Viability Study notes an interest rate of 6% but net of inflation. 7% is reflective of fairly typical investment finance rates currently.

6.9 Professional Fees

We have assumed professional fees as follows:

Architect:	6%
Quantity Surveyor:	1%
Structural Engineer:	1%
CDM / PM:	1%

These costs total 9% which is inline with the assumptions contained within Tendring's own viability studies.

6.10 Acquisition / Disposal Costs

We have adopted 1% agent and 0.75% legal acquisition costs.

Stamp Duty at the prevailing rate.

We have adopted 1% sales fee, 1% marketing budget and 0.75% solicitors fee on disposals.

These figures are in line with the figures previously adopted, and the Tendring Plan Viability Study.

6.11 Profit

We previously agreed profit on GDV at 17.5% on the residential only scheme to the south. Arguably for a scheme where upfront costs and obligations are so onerous this should be increased. There is quite a lot of risk associated with delivering a school – a particularly specialist property with no capital receipt for completing the development. In addition there are a number of other uncertainties – S278 works which are all outside the developers control. We therefore have adjusted the profit on GDV to 18.5%.

This profit on GDV is below the level suggested by Three Dragons and Troy Planning's Tendring Plan Viability Study.

7. Land Value Benchmark

We have previously referred to the methodology adopted to reach a conclusion on land value. The Existing Use Value + Method is now the preferred methodology of concluding the appropriate land value benchmark. The planning policy guidance confirms that price paid should not be the determining factor on land value.

The Local Plan evidence base suggests the following benchmark values.

Tendring	Small - Medium sites	Intermediate site	Large strategic site Over 20 ha (gross) (Excluding Garden Communities)²⁹
Eastern - Low Value area	£0.4m	£0.35m	£0.25m
Manningtree & Rural North - Mid Value Area	£0.7m	£0.57m	£0.44m
Frinton Cluster - High value area	£0.95m	£0.7m	£0.44m

We previously adopted £230,671 per acre on the southern site which now houses Chattowood. Whilst this figure was agreed around 2 years ago, we do not believe the market to have substantially

altered since that time. Arguably the extant consent for commercial could be perceived of enhancing value. We believe the characteristics of the proposed development and the Chattowood development are fundamentally the same, geographically and the application background. In the interests of consistency, we have adopted the same Benchmark Land Value as previously, which we believe sets a precedence. We therefore have identified a benchmark land value of £5,732,174 – being 24.85 acres x £230,671.

The land ownership position is relatively complex and to deliver the required school to the registered care provider we must consider the “landowner position”. This concept is considered within the planning guidance note on viability – it is inconceivable that an unconnected third party would sell land which is to be developed as residential dwellings, at a price which reflects anything other than the development which will take place on them. These figures therefore make a reasonable allowance for the uplift in value required to accurately reflect the landowner position.

The fallback position would be a development of B2 / B8 space, with much of the servicing already being in place it is unlikely that a land value of anything less would be achieved, and more likely somewhat more with increasing demand in the logistic sector in the areas surrounding the ports of Felixstowe and Harwich.

8. Results and conclusions

Our Residual Calculations and Development appraisal can be found at Appendix I and Appendix II respectively.

The scheme as prepared currently fails to meet an acceptable return if we adopt a profit on cost of 18.5% - the scheme only producing a residual land value of £2,729,424 – around £3,000,000 less than the benchmark land value.

If we switch to a development appraisal (Appendix II), we can see that a developer would have to accept a profit on GDV of 8.7% for the landowner to achieve the required return. This figure is around 10% less than a typical return that a developer would require for a scheme of this type – or in pure monetary terms around £5,000,000.

The scheme has no affordable housing and limited financial contributions (RAMS and S278 works) but still demonstrates a substantial short fall on a commercially acceptable return. We understand that the developer may be prepared to accept a lower than standard profit level, but beyond that the only other option would be to cut cost associated with the delivery of the SEN facility or increase private housing floorspace.

.....

J P Birchall MRICS

Partner – Head of Valuation Services

For and on behalf of Fenn Wright

Appendix I – Residual Appraisal (Fixed Profit)



APPRAISAL SUMMARY

FENN WRIGHT

Finches Lane,
Elmstead Market

Summary Appraisal for Phase 1

Currency In £

REVENUE

Sales Valuation	Units	ft²	Rate ft²	Unit Price	Gross Sales
Private Houses	121	143,436	350.00	414,898	50,202,600

NET REALISATION

50,202,600

OUTLAY

ACQUISITION COSTS

Residualised Price (24.85 Acres 109,835.99 pAcre)

2,729,424

2,729,424

Stamp Duty

125,971

Agent Fee

1.00% 27,294

Legal Fee

0.75% 20,471

173,736

CONSTRUCTION COSTS

Construction	Units	Unit Amount	Cost
Garages	83 un	20,000	1,660,000
	ft²	Rate ft²	Cost
SEN School	5,975 ft²	247.03 pft²	1,476,004
Private Houses	143,436 ft²	159.06 pft²	22,815,244
Totals	149,411 ft²		24,291,248
			25,951,248

Infrastructure / Externals

10.00% 2,595,125

Contingency

5.00% 1,297,562

Car Park

100,000

Water lift & shift

75,000

Archaeological

25 ac 20,000 /ac 497,000

Water pumping station

250,000

RAMS

121 un 340.00 /un 41,140

Section 278 works

338,050

5,191,877

PROFESSIONAL FEES

Architect

6.00% 1,557,075

QS

1.00% 259,512

SE

1.00% 259,512

CDM

1.00% 259,512

2,335,612

DISPOSAL FEES

Sales Agent Fee

1.00% 502,026

Marketing

1.00% 502,026

Sales Legal Fee

0.75% 376,520

1,380,571

FINANCE

Debit Rate 7.000%, Credit Rate 0.000% (Nominal)

Land

1,378,428

Construction

1,774,221

Total Finance Cost

3,152,649

TOTAL COSTS

40,915,119

PROFIT

9,287,481

Project: C:\Users\jpb\Desktop\Argus Developer Files\Lanswood 2022\Updated Appraisal 27.6.22.wcfx
ARGUS Developer Version: 7.60.001

Date: 03/07/2022

**APPRAISAL SUMMARY****FENN WRIGHT****Finches Lane,
Elmstead Market****Performance Measures**

Profit on Cost%	22.70%
Profit on GDV%	18.50%
Profit on NDV%	18.50%
IRR	18.09%
Profit Erosion (finance rate 7.000%)	2 yrs 11 mths

Appendix II – Development Appraisal (Fixed Land Price at previously agreed BLV)



APPRAISAL SUMMARY

FENN WRIGHT

Finches Lane,
Elmstead Market

Summary Appraisal for Phase 1

Currency in £

REVENUE

Sales Valuation	Units	ft²	Rate ft²	Unit Price	Gross Sales
Private Houses	121	143,436	350.00	414,898	50,202,600

NET REALISATION

50,202,600

OUTLAY

ACQUISITION COSTS

Land North - 19.65 acres	4,532,685	
Land South - 5.2 acres	1,199,489	
Total Acquisition (24.85 Acres 230,670.99 pAcre)	5,732,174	
		5,732,174
Stamp Duty	276,109	
Agent Fee	1.00%	57,322
Legal Fee	0.75%	42,991
		376,422

CONSTRUCTION COSTS

Construction	Units	Unit Amount	Cost
Garages	83 un	20,000	1,660,000
	ft²	Rate ft²	Cost
SEN School	5,975 ft²	247.03 pft²	1,476,004
Private Houses	143,436 ft²	159.06 pft²	22,815,244
Totals	149,411 ft²		24,291,248
			26,951,248

Infrastructure / Externals		10.00%	2,595,125
Contingency		5.00%	1,297,562
Car Park			100,000
Water lift & shift			75,000
Archaeological	25 ac	20,000 /ac	497,000
Water pumping station			250,000
RAMS	121 un	340.00 /un	41,140
Section 278 works			336,050
			5,191,877

PROFESSIONAL FEES

Architect	6.00%	1,557,075
QS	1.00%	259,512
SE	1.00%	259,512
CDM	1.00%	259,512
		2,335,612

DISPOSAL FEES

Sales Agent Fee	1.00%	502,026
Marketing	1.00%	502,026
Sales Legal Fee	0.75%	376,520
		1,380,571

FINANCE

Debit Rate 7.000%, Credit Rate 0.000% (Nominal)		
Land		3,005,985
Construction		1,774,221
Other		86,484
Total Finance Cost		4,866,690

TOTAL COSTS

45,834,595

Project: C:\Users\jpb\Desktop\Argus Developer Files\Lanswood 2022\Updated Appraisal 27.6.22.wcfx
ARGUS Developer Version: 7.60.001

Date: 03/07/2022

**APPRAISAL SUMMARY****FENN WRIGHT****Finches Lane,
Elmstead Market****PROFIT****4,368,005****Performance Measures****Profit on Cost%** 9.53%**Profit on GDV%** 8.70%**Profit on NDV%** 8.70%**IRR** 11.13%**Profit Erosion (finance rate 7.000%)** 1 yr 4 mths

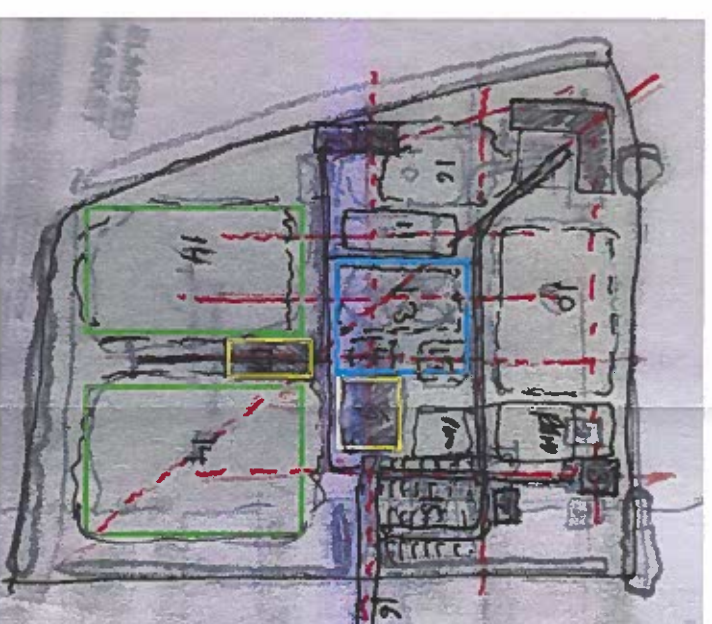
- 1: 4 bay Cart Lodge/Barry/storage
- 2: 3no Workshop Spaces & Gathering
- 3: External Seating
- 4: Multi-Use Building
Bakery/Shop/Cafe/Display/Library
- 5: Reception Building
Office/Meeting/Boot Room
- 6: Covered Drop Off
- 7:Public WCs
- 8: Small animals & Chickens
- 9: Manure/Bins/Compost
- 10: Play Area
- 11: Horticulture beds and Plant Nursery
- 12: Car Park (45 spaces)
- 13: Entrance
- 14: Multi -use area /patio
- 15: Wildflower Meadow and Orchard
- 16: Kitchen garden (public access area)
- 17: Cycle Parking (18 spaces)
- 18: PTW (4 spaces)



DESIGN CONCEPT

Barn inspired buildings, light and modern using materials natural and sustainable. Simple yet striking, to lead the eye to a meeting point within the site.

The concept uses lines of site and views to link the areas and the buildings is continued within them. Views and pathways are allowed through the buildings to the outside areas beyond.



Red lines indicate:

- Visual connections between the buildings and areas.
- Aid students in identifying key areas
- Help their understanding of the farm layout and how to get to places

'AN OASIS OF CALM'

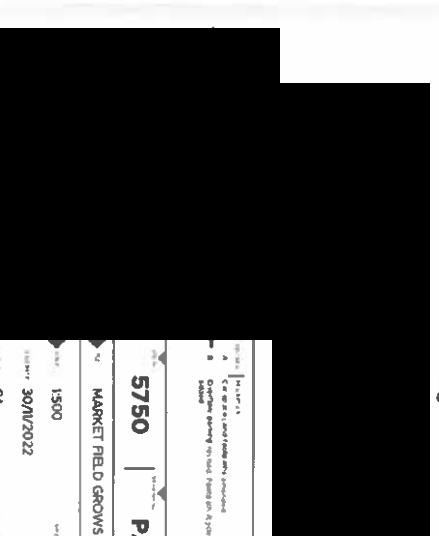
Buildings are nestled amongst the planted and working areas like islands in a sea of green, but linked to each other by pathways and views

Horticultural planting creates a buffer from traffic to the buildings and at first glance presents the agricultural nature of the site's activities.

Key buildings are aligned with the main entrance and arrival/parking areas.

The idea is that building will use glazing and layouts to create views through to the spaces beyond to create a connection between inside and out and aid in understanding the flow of the site

DESIGN CONCEPT



Areas open to the public are more central, meaning visitors can feel surrounded and observe farm activities without impacting the working farm.