

DATED 11 May 2021

- (1) RUGBY BOROUGH COUNCIL
- (2) WARWICKSHIRE COUNTY COUNCIL
- (3) LETITIA ERICA SPIRES AND JOHN PHILP WALFORD WILCOX
- (4) ROSCONN STRATEGIC LAND LIMITED

**PLANNING OBLIGATION BY DEED OF
AGREEMENT UNDER SECTION 106 OF THE
TOWN AND COUNTRY PLANNING ACT 1990**

relating to

LAND AT STRETTON ROAD, WOLSTON

(Planning reference: R19/1411)



THIS DEED is made on

11th may

2021

BETWEEN:-

- (1) **RUGBY BOROUGH COUNCIL** of Town Hall, Evreux Way, Rugby CV21 2RR (the "**Council**"); and
- (2) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall, Market Place, Warwick CV34 4RL (the "**County Council**"); and
- (3) **LETITIA ERICA SPIRES** of 48 Charnwood Way, Leamington Spa, CV32 7BU **AND JOHN PHILP WALFORD WILCOX** of 14 Cleveland Court, 41 Kenilworth Road, Leamington Spa, CV32 6JA (the "**Owner**"); and
- (4) **ROSCONN STRATEGIC LAND LIMITED** of Lumaneri House Blythe Gate, Blythe Valley Park, Solihull, West Midlands, United Kingdom, B90 8AH (the "**Developer**").

RECITALS:-

- (A) The Council and the County Council are the local planning authorities for the Site for the purposes of the 1990 Act.
- (B) The County Council is the local highway authority and the education authority for the area in which the Site is situated.
- (C) The Owner is the freehold owner of the Site registered at HM Land Registry under title number WK5072.
- (D) The Council and the County Council can enforce the obligations contained in this Deed.
- (E) The Developer has submitted the Application. The Council refused the Application on 4th November 2020 and the Developer has submitted the Appeal.
- (F) The Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed in the event that Planning Permission is granted pursuant to the Appeal.

IT IS AGREED as follows:-

OPERATIVE PROVISIONS

1. DEFINITIONS

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

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|----------------------------------|--|
| "1990 Act" | means The Town and Country Planning Act 1990 |
| "Affordable Dwellings" | means a Dwelling to be provided for Affordable Housing in accordance with this Deed |
| "Affordable Housing" | means housing which is available to persons who have a housing need or are on a low income insufficient to meet their housing need in the open market either to rent or purchase |
| "Allotment Phase 1 Works" | means the laying out of allotments in substantial accordance with the Allotment Plan but not including the construction of the management building or the laying out of the land edged purple as shown on the Retained Existing Management Building Plan |

"Allotment Phase 2 Works"	means the construction of a management building in substantial accordance with the Management Building Plan
"Allotment Phase 3 Works"	means the laying out of the land edged purple on the Retained Existing Management Plan in substantial accordance with the Allotment Plan
"Allotment Plan"	means the plan numbered 3380-34F attached to the Deed at Appendix 1 (or such other plan as may be agreed in writing with the Council)
"Appeal"	means the Appeal submitted by the Developer and allocated reference number APP/E3715/W/20/3265601 by the Planning Inspectorate
"Application"	means the application for outline planning permission for the Development validated by the Council on 05 November 2019 and allocated reference number R19/1411
"Commencement of Development"	<p>means to initiate the Development by carrying out a material operation as defined in section 56(4) of the 1990 Act pursuant to the Planning Permission other than (for the purposes of this Deed and for no other purpose) operations consisting of:-</p> <ul style="list-style-type: none"> (a) demolition works; (b) site clearance; (c) ground investigations; (d) site survey works; (e) temporary access construction works; (f) relocation and laying of services; (g) archaeological investigation; and (h) erection of any temporary fences and hoardings around the Site <p>and the terms "Commencement" and "Commenced" and "Commence Development" and "Commencement Date" are to be construed accordingly</p>
"Deed"	means this Deed made under section 106 of the 1990 Act and all other enabling powers
"Development"	means the Development of the Site for the erection of 48 dwellings with associated open space, landscaping and infrastructure
"Dwelling"	means a unit of residential accommodation constructed pursuant to the Planning Permission and the term "Dwellings" shall be construed accordingly

"Expert"	means an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the parties or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society
"Index"	means <ul style="list-style-type: none"> a) in relation to the Open Space Contribution and the NHS Contribution the All Items Index of Retail Prices published by the Office of National Statistics (or by any other successor organisation) or (if the index is rebased) the rebased index applied in a fair and reasonable manner to the periods before and after rebasing under this Deed or (if the index is no longer published or is unavailable for use) an alternative comparable basis for indexation notified in writing to the Owners by the Council; b) in relation to the Biodiversity Contribution, the Baxter Index which is the Department of Transport Local Government and the Regions Monthly Bulletin of Indices-Civil Engineering Formula 1990 Series to be weighed in the proportions Labour and Supervision 25% Plant and Road Vehicles 25% Aggregate 30% and Coated Macadam and Bitumen Products 20% (or by any other successor organisation) or (if the index is rebased) the rebased index applied in a fair and reasonable manner to the periods before and after rebasing under this Deed or (if the index is no longer published or is unavailable for use) an alternative comparable basis for indexation notified in writing to the Owner by the County Council; c) and in all other cases (save for in respect of the Community Benefit Contribution; Monitoring Contribution; and legal costs payable under clause 17 of this Deed which shall not be Index Linked), the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors or by any other successor organisation) or (if the index is rebased) the rebased index applied in a fair and reasonable manner to the periods before and after rebasing under this Deed or (if the index is no longer published or is unavailable for use) an alternative comparable basis for indexation notified in writing to the Owners by the Council and/or the County Council
"Index Linked"	means subject to the indexation provisions in Clause 13
"Interest"	means interest at 4% per annum above the base lending rate of Lloyds Bank pic from time to time
"Management Building Plan"	means the plan attached to this Deed at Appendix 1 numbered 3380-42C (or such other plan as may be agreed in writing with the Council)
"Market Dwellings"	means those Dwellings which are not Affordable Dwellings

"Occupation"	means beneficial occupation of any part of the Development for the purposes permitted by the Planning Permission (and for the avoidance of doubt does not include occupation for the purposes of construction, fitting out or use as a show home) and the terms "Occupy" and "Occupied" and "Occupation Date" are to be construed accordingly
"Plan"	means the plan attached to this Deed at Appendix 1 numbered 3380-01A showing the Site edged red
"Retained Existing Management Building Plan"	means the plan attached to this Deed marked at Appendix 1 dated 22 March 2021 (or such other plan as may be agreed in writing with the Council)
"Section 73 Consent"	means a planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any condition to which the Planning Permission was granted subject to
"Planning Permission"	means the planning permission to be granted pursuant to the Application and/or the Appeal
"Site"	means the land against which this Deed may be enforced as shown edged red on the Plan
"Utilities"	means mains services including gas, electricity, potable water, telecommunications and ducting to facilitate high speed broadband
"Working Day"	means a day other than a Saturday or Sunday or public holiday in England

2. INTERPRETATION

2.1 In this Deed, unless otherwise indicated, reference to any:-

- 2.1.1 recital, Clause, Sub-Clause, paragraph number, Schedule, Appendix or plan is a reference to a Recital, Clause or Sub-Clause of, paragraph number of, Schedule to, Appendix to or plan annexed to this Deed;
- 2.1.2 words importing the singular meaning include the plural meaning and vice versa;
- 2.1.3 words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, other corporate bodies, firms or legal entities and all such words shall be construed interchangeably in that manner; and
- 2.1.4 Act of Parliament shall include any amendment, modification, extension, consolidation or re-enactment of that Act for the time being in force and in each case shall include all statutory instruments, orders, regulations and directions for the time being made, issued or given under that Act or deriving validity from it.

2.2 Headings where they are included are for convenience only and are not intended to influence the construction and interpretation of this Deed.

2.3 Any notice, notification, consent, approval, agreement, request or statement or details to be made, given or submitted under or in connection with this Deed shall be made or confirmed in writing.

- 2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 2.5 A reference to this Deed or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 2.6 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.7 Each of the Parties to this Deed shall act in good faith and shall co-operate with each of the other Parties to facilitate the discharge and performance of all obligations on them contained in this Deed and the Owner shall comply with any reasonable requests of the Council or the County Council to provide documentation within its possession (such documentation to be provided by the Owner at its own expense) for the purposes of monitoring compliance with the obligations contained in this Deed.
- 2.8 Any approval, consent, direction, authority, agreement or action to be given by the Council or the County Council under this deed shall not be unreasonably withheld or delayed.

3. **LEGAL BASIS**

3.1 The obligations in this Deed:-

3.1.1 are to the extent they are lawfully able to be so made, made under section 106 of the 1990 Act with the intention that they should bind the Owner's legal and equitable interest in the Site as provided by that section and are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council and the County Council where applicable; and

3.1.2 are otherwise made pursuant to other enabling powers including section 278 of the 1980 Act, sections 111, 120 and 139 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other statutory and enabling powers in which case these obligations are covenants given by Deed and are enforceable as such by the Council and the County Council where applicable.

3.2 The obligations, covenants and undertakings on the part of the Owner in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and so bind the Owner's interest in the Site. Subject to Clause 9, the obligations, covenants and undertakings on the part of the Owner are entered into with the intent that they are enforceable not only against the Owner but also against any successors in title or assigns of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part of it as if that person had been the original covenanting party in respect of the interest for the time being held by it.

3.3 So far as the obligations, covenants and undertakings in this Deed are given by or to the Council or the County Council, they are entered into under the relevant powers referred to in Clause 3.1 and those obligations, covenants and undertakings are enforceable by or against the Council or the County Council.

3.4 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of their statutory powers, duties, functions or discretions in relation to the Site or otherwise.

4. **CONDITIONAL ENTRY INTO FORCE**

This Deed is conditional upon:-

- 4.1 the grant of the Planning Permission; and
- 4.2 the Commencement of Development,

save for the provisions of Clauses 2, 3, 4, 5, 9, 10.1, 10.2, 10.5, 10.6, 10.7, 10.8, 11, 12, 16, 17, 18, 19, 20 and 21 which shall come into effect immediately upon completion of this Deed.

5. DURATION

5.1 This Deed and all obligations within it will end and be of no further effect, if the Planning Permission:-

5.1.1 is not granted; or

5.1.2 quashed and refused upon redetermination, revoked or otherwise withdrawn at any time so as to render this Deed or any part of it irrelevant, impractical or unviable; or

5.1.3 is modified by any statutory procedure without the consent of the Owner and the Council; or

5.1.4 expires before Commencement.

5.2 Where this Deed ends the Council must remove all entries made in the Register of Local Land Charges in respect of this Deed within 20 Working Days of it ceasing to have effect.

6. THE OWNER'S COVENANTS

6.1 Subject to clauses 5.1 and 9 the Owner covenants with the Council and the County Council as set out in Schedule 1, 2 and 3 of this Deed.

7. THE COUNCIL'S COVENANTS

The Council covenants with the Owner and the County Council as set out in Schedule 4 of this Deed.

8. THE COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owner and the Council as set out in Schedule 5 of this Deed.

9. SUCCESSORS IN TITLE AND RELEASE

9.1 References in this Deed to the Council and the County Council include the successors to its statutory functions and include persons deriving title through or under them.

9.2 Subject to Clauses 9.3 and 9.4, references to the Owner or any other person include its heirs, assigns, successors in title and persons deriving title through or under them.

9.3 The obligations in this Deed are not binding on or enforceable against any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of supplying Utilities or public transport services.

9.4 If the Owner or any person disposes of its entire interest in the Site or at least 90% (by area) of the Site then that Owner or person will be released from all of the obligations in this Deed which will no longer be enforceable against that Owner or person including (for the avoidance of doubt) any obligations relating to the provision of allotments, except to the extent that disposal is the grant of an easement, restriction, restrictive covenant or similar PROVIDED THAT the person has fully complied with Clause 12 of this Deed

9.5 The release of the Owner or any person under Clause 9.4 is without prejudice to any subsisting liability for any antecedent breach or antecedent failure to comply with its obligations arising before parting with that interest.

9.6 Nothing in this Deed will prevent compliance with any obligation under it before that obligation comes into effect and early compliance will not amount to a waiver of the effect of this Clause 9.

9.7 Save for the obligations in relation to Affordable Housing, the obligations in this Deed shall not be binding on or enforceable against any purchaser or occupier of an individual Dwelling or their mortgagee or anybody deriving title from them.

10. MISCELLANEOUS

10.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

10.2 This Deed shall be registrable as a local land charge by the Council.

10.3 On the written request of the Owner, the Council must cancel all entries made in the Register of Local Land Charges relating to this Deed after all obligations under this Deed have been satisfied.

10.4 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council or the County Council will issue a written confirmation of such performance or discharge.

10.5 Insofar as any Clause or Clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

10.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

10.7 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council and County Council under all statutory by laws, statutory instruments, orders and regulations in the exercise of their functions as a local authority.

10.8 In the event that the Inspector appointed to determine the Appeal:

10.8.1 concludes that any one or more provisions of this Deed is not compatible with any of the tests for planning obligations set out in the Community Infrastructure Levy Regulations 2010 (as amended); and /or

10.8.2 decides to impose a condition upon the Planning Permission instead of one or more of the planning obligations in this Deed;

and accordingly attaches no weight to that obligation in determining the Appeal then the relevant provisions/obligations of this Deed shall thereafter have no legal effect and the Owner shall be under no obligation to comply with them but the remainder of the obligations in this Deed (if any) shall remain legally effective and binding.

11. WAIVER

No waiver (whether expressed or implied) by the Council or the County Council of any breach or default in performing or observing any of the obligations covenants undertakings terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the relevant obligations covenants undertakings terms or conditions or for acting upon any subsequent breach or default of the same.

12. CHANGE IN OWNERSHIP

The Owner agrees with the Council and the County Council to give the Council and County Council written notice as soon as reasonably practicable of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's name and registered office (if a company) or usual address (if not)

together with the area of the Site or unit of occupation purchased by reference to a plan where it is not the whole Site.

13. INDEXATION

Save for the Community Benefit Contribution; Monitoring Contribution; and the legal costs payable pursuant to clause 17 of this Deed any sum to be paid to the Council or the County Council under this Deed will be adjusted by an amount equivalent to the change in the Index from the date of this Deed to the date on which such sum is paid to be calculated as follows:-

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

where:-

A = the relevant sum as specified in this Deed in pounds sterling;

B = the Index at the date the relevant sum is paid;

C = the Index at the date of this Deed; and

D = the resultant sum in pounds sterling payable under this Deed,

and, for the avoidance of doubt, if D is less than A, then the net movement in the Index over the relevant period shall be deemed to be nil.

14. INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

15. VAT

15.1 Each amount stated to be payable by the Council, the County Council or the Owner to another party under or pursuant to this Deed is exclusive of VAT (if any).

15.2 If any VAT is at any time chargeable on any supply made by the Council, the County Council or the Owner under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

16. DISPUTE PROVISIONS

16.1 If a dispute between the parties persists beyond 10 Working Days and relates to any matter contained in this Deed (excluding any matter of law), the dispute may be referred to the Expert by any party. The Expert will act as an expert and not as an arbitrator. His decision shall be final and binding on the parties.

16.2 Each party will bear its own costs and the Expert's costs will be paid as determined by him.

16.3 The Expert will be appointed subject to an express requirement that he must reach his decision and communicate it to the parties within the minimum practical timescale allowing for the nature and complexity of the dispute, and in any event not more than 20 Working Days from the date of his appointment to act. His decision will be given in writing with reasons and in the absence of manifest error will be binding on the parties.

16.4 The Expert will be required to give notice to each of the parties, inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to the parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.

17. LEGAL COSTS

- 17.1 On completion of this Deed the Developer will pay to the Council the reasonable legal costs incurred in the negotiation, preparation and execution of this Deed in the sum of £1,000 (One Thousand Pounds Sterling) excluding VAT.
- 17.2 On completion of this Deed the Developer will pay to the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this Deed in the sum of £1,500 excluding VAT.

18. NOTICES

- 18.1 The Owner will notify the Council and the County Council:-
- 18.1.1 upon Commencement of the Development;
 - 18.1.2 upon first Occupation of the Development;
 - 18.1.3 upon Occupation of 50% of the Dwellings;
 - 18.1.4 upon Occupation of the 30th Dwelling; and
 - 18.1.5 upon Occupation of 75% of the Dwellings.
- 18.2 Any notice or other written communication to be served on a party or given by one party to any other under the provisions of this Deed will be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by recorded delivery post to the party on whom it is to be served or to whom it is to be given and will conclusively be deemed to have been received on:-
- 18.2.1 if delivered by hand, the next Working Day after the day of delivery;
 - 18.2.2 if sent by post, the day Two Working Days after the date of posting; or
 - 18.2.3 if sent by recorded delivery, at the time delivery was signed for.
- 18.3 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.
- 18.4 The address for any notice or other written communication shall be within the United Kingdom.
- 18.5 Where proceedings have been issued in the Courts of England the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.
- 18.6 A notice or communication will be served or given:-
- 18.6.1 on the Owner at 48 Charnwood Way, Leamington Spa, CV32 7BU marked for the attention of Letitia Spires and 14 Cleveland Court, 41 Kenilworth Road, Leamington Spa, CV32 6JA marked for the attention of John Wilcox or such other address as notified in writing to the Council and the County Council from time to time;
 - 18.6.2 on the Council at Town Hall, Evreux Way, Rugby, CV21 2RR or such other address notified in writing to the Owner from time to time, marked for the attention of the Chief Officer for Growth and Investment; and
 - 18.6.3 on the County Council at Shire Hall, Warwick, Warwickshire CV34 4RP or such other address notified in writing to the Owner from time to time, marked for the attention of the Infrastructure Delivery Manager.

18.7 Any notice or other written communication to be given by the Council or County Council will be deemed valid and effectual if on its face it is signed on behalf of the Council or the County Council by an officer or duly authorised signatory.

19. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

20. **DELIVERY**

The provisions of this Deed (other than this Clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

21. **SECTION 73 CONSENT**

21.1 If any Section 73 Consent is granted after the date of this Deed:

21.1.1 the obligations in this Deed shall relate to and bind such Section 73 Consent; and

21.1.2 the definitions of Application, Development and Planning Permission shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself.

PROVIDED THAT:

21.1.3 nothing in this clause shall fetter the discretion of the Council or the County Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

21.1.4 to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and

21.1.5 the Council and the County Council reserve the right to require the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if they (acting reasonably) consider it desirable to do so.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

SCHEDULE 1
CONTRIBUTIONS

1. DEFINITIONS

In this Schedule the following words and phrases shall have the meanings ascribed to them:

- “Community Benefit Contribution”** means the sum of £100,000 (one hundred thousand pounds) to be used towards the establishment of a trust by Wolston Parish Council and the Heart of England Community Foundation and such trust will apply the remaining funds for the benefit of the inhabitants of Wolston
- “Education Contribution”** means the sum calculated in accordance with the formula contained in Schedule 6 of this Deed Index Linked which shall be used towards the provision or improvement of facilities for secondary education to meet the needs of the Development
- “Libraries Contribution”** Means the sum of £886.00 (eight hundred and eighty six pounds) Index Linked which shall be used towards improving, enhancing and extending the facilities or services at the libraries serving the Development. This may include the purchase of additional stock, targeted collections, additional seating/study spaces or related facilities, improved family facilities and targeted promotions to inform new residents of services available to them.
- “Monitoring Contribution”** means in case of the Council the sum of £250 (two hundred and fifty pounds) and in the case of the County Council the sum of £450 (four hundred and fifty pounds) and paid for the purposes of administering and monitoring compliance with the obligations contained in this Deed
- “NHS Contribution”** means the sum of £86,293 (eighty six thousand two hundred and ninety three pounds) Index Linked to be applied towards the provision of additional health care services at either Rugby St Cross Hospital or University Hospital Coventry to meet patient demand arising from the Development
- “Open Space Contribution”** means the sum of £50,000 (fifty thousand pounds) Index Linked which shall be used to fund improvements to the Dyers Lane Recreational Ground
- “Road Safety Contribution”** means the sum of £50 (fifty pounds) Index Linked per Dwelling to support road safety initiatives within the community. Road safety initiatives include road safety education for school and training/education for other vulnerable road users within the area of the Development
- “Travel Pack Contribution”** means the sum of £10 (ten pounds) Index Linked per Dwelling towards the provision of sustainable travel packs for Occupiers of the Development

2. EDUCATION CONTRIBUTION

- 2.1 The Owner shall pay the Education Contribution to the County Council prior to Occupation of 50% of the Dwellings.
- 2.2 The Owner shall not Occupy or permit Occupation of more than 50% of the Dwellings until the Education Contribution has been paid to the County Council in full.

3. NHS CONTRIBUTION

- 3.1 The Owner shall pay the NHS Contribution to the Council prior to first Occupation of the Development.
- 3.2 The Owner shall not Occupy or permit Occupation of the Development until the NHS Contribution has been paid to the Council in full.
- 3.3 Following receipt of the NHS Contribution the Council shall pass to the University Hospitals Coventry and Warwickshire NHS Trust (or successor in title or function) the quantum of monies requested by the University Hospitals Coventry and Warwickshire NHS Trust (or successor in title or function) in writing up to the maximum of the total received by the Council of the NHS Contribution.

4. MONITORING CONTRIBUTION

- 4.1 The Owner shall pay the Monitoring Contribution to the Council and the County Council prior to Commencement of Development.
- 4.2 The Owner shall not Commence or permit Commencement of the Development until the Monitoring Contribution has been paid to the Council and the County Council in full.

5. OPEN SPACE CONTRIBUTION

- 5.1 The Owner shall pay the Open Space Contribution to the Council prior to the Occupation of 50% of the Dwellings.
- 5.2 The Owner shall not permit the Occupation of more than 50% of the Dwellings until the Open Space Contribution has been paid to the Council in full.
- 5.3 Following receipt of the Open Space Contribution the Council shall pass Wolston Parish Council (or successor in title or function) the quantum of monies requested by Wolston Parish Council (or successor in title or function) in writing up to the maximum of the total received by the Council of the Open Space Contribution.

6. ROAD SAFETY CONTRIBUTION

- 6.1 The Owner shall pay the Road Safety Contribution to the County Council prior to first Occupation of the Development.
- 6.2 The Owner shall not Occupy or permit Occupation of the Development until the Road Safety Contribution has been paid to the County Council in full.

7. TRAVEL PACK CONTRIBUTION

- 7.1 The Owner shall pay the Travel Pack Contribution to the County Council prior to first Occupation of the Development.
- 7.2 The Owner shall not Occupy or permit Occupation of the Development until the Travel Pack Contribution has been paid to the County Council in full.

8. COMMUNITY BENEFIT CONTRIBUTION

- 8.1 The Owner shall pay the Community Benefit Contribution to the Council prior to the Occupation of 75% of the Dwellings.
- 8.2 The Owner shall not permit the Occupation of more than 75% of the Dwellings until the Community Benefit Contribution has been paid to the Council in full.
- 8.3 Following receipt of the Community Benefit Contribution the Council shall pass Wolston Parish Council (or successor in title or function) the quantum of monies requested by Wolston Parish Council (or successor in title or function) in writing up to the maximum of the total received by the Council of the Community Benefit Contribution.

9. LIBRARIES CONTRIBUTION

- 9.1 The Owner shall pay the Libraries Contribution to the County Council prior to first Occupation of the Development.
- 9.2 The Owner shall not permit the Occupation of the Development until the Libraries Contribution has been paid to the County Council in full.

SCHEDULE 2
COVENANTS WITH THE COUNCIL

Part 1

AFFORDABLE HOUSING

1. DEFINITIONS

In this Schedule the following words and phrases shall have the meanings ascribed to them:

- "Affordable Housing Agreement"** means an agreement for the construction and transfer of Affordable Dwellings made between the Owner and Affordable Housing Provider to a specification to be agreed between the Owner and Affordable Housing Provider on terms that shall include the following:-
- (a) the Affordable Housing Provider shall bear its own legal costs in relation to any contracts and transfers associated with the Affordable Dwellings; and
 - (b) such other reasonable terms as the parties to the agreement may agree
- "Affordable Housing Provider"** means (i) a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 who is registered with the regulator for affordable housing (as defined in Chapter 2 of Part 2 of the said Act) pursuant to Chapter 3 of Part 2 of the said Act and has not been removed from the register pursuant to section 118 or section 119 of that Act and as agreed in advance of any transfer in writing by the Council (acting reasonably) or (ii) the Council
- "Affordable Housing Scheme"** means a written scheme setting out the following in relation to the Affordable Dwellings:
- a) the types, size, number, tenures and locations of the Affordable Dwellings;
 - b) in the case of the Social Rent Dwellings and Affordable Rent Dwellings, estimates of the following costs: rent, service charges and/or estate rent charges and/or any other charges that may be imposed by the Owner on tenants of each Social Rent Dwelling and Affordable Rent Dwelling on first Occupation of such dwelling **PROVIDED THAT** the Owner shall use reasonable endeavours to ensure that any such service, estate rent or other charges are minimised and where possible shall work with any relevant Affordable Housing Provider that is a party to an Affordable Housing Agreement to seek to ensure the same
 - c) in respect of the Private Intermediate Dwellings the arrangements for marketing and disposal including the definition of Qualifying Purchaser

and sale price (not to exceed 75% of the Market Value of any Private Intermediate Dwelling being provided for sale) and any other details reasonably required by the Council having regard to the specific tenure of the Private Intermediate Dwelling and maintaining the Private Intermediate Dwellings as Affordable Housing in perpetuity (subject to the procedure for release benefiting Chargees as set out at paragraph 4.8 of this Schedule) and to ensure Private Intermediate Dwellings are occupied by Qualifying Purchasers as their only or principal home;

- d) in respect of the Discount Market Dwellings the Discount Market Dwelling Scheme

"Affordable Housing Tenure Mix"

means the tenure types and the proportions of those tenure types as may be agreed by the Council as part of the Affordable Housing Scheme pursuant to the provisions of this Schedule

"Affordable Rent Dwellings"

means Affordable Dwellings to be offered and occupied via an Affordable Housing Provider let at a rent of no more than 80% of the local market rent (including service charges, where applicable) in accordance with the rent standard in "The Regulatory Framework for Social Housing in England, April 2015" published by the Regulator of Social Housing (or such replacement or alternative publication issued by the Regulator of Social Housing (or any successor) that may time to time replace and/or update this document) and in accordance with Annex 2 of the National Planning Policy Framework (or such other national policy that may from time to time replace and/or update this framework) and **"Affordable Renting"** shall be construed accordingly

"Chargee"

means any mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925, or any other person appointed under any other security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator

"Completion Certificate"

means a certificate of practical completion issued by the Council

"Discount Market Dwellings"

means Affordable Dwellings to be sold on a freehold basis to a Qualifying Purchaser at the Maximum Price in accordance with the Discount Market Dwelling Scheme

"Discount Market Dwelling Scheme"

means a scheme setting out the following details in relation to the Discount Market Dwellings:

- a) definition of Qualifying Purchaser;

- b) marketing protocol for the initial and subsequent disposals of the Discount Market Dwellings;
- c) the Title Restriction and any other restrictions and covenants to be included in any agreement for sale and transfer of a Discount Market Dwelling to ensure it remains a Discount Market Dwelling in perpetuity (subject to the procedure for release benefiting Chargees as set out at paragraph 4.8 of this Schedule) and to ensure Discount Market Dwellings are occupied by Qualifying Purchasers as their only or principal home

"Fallback AH Contribution"

means a contribution to be paid to the Council in lieu of the provision of Affordable Dwellings to be applied to the provision of Affordable Housing in the Council's administrative area which shall be calculated as follows:-

TOTAL NUMBER OF AFFORDABLE DWELLINGS REQUIRED

MULTIPLIED BY

BUILD COST OF THE REQUIRED DWELLINGS

PLUS

LAND COST

MINUS

THE AMOUNT EQUIVALENT TO THAT WHICH WOULD BE PAYABLE BY A REGISTERED PROVIDER

EQUALS

THE SUM PAYABLE

Where:

Build costs are determined in line with the viability assessment supporting the Council's Local Plan as at the date of this Deed

Land costs are based on the most up to date information as at the date of the calculation of the Fallback AH Contribution

The amount payable by a Registered Provider (defined as an Affordable Housing Provider in this Deed) represents a reasonable estimate based on offers received for the Affordable Dwellings or (in the absence of offers) offers for comparable units in reasonably comparable locations in the Council's administrative area

"Intermediate Dwellings"

means

- a) Shared Ownership Dwellings and/or Affordable Dwelling of any other form of intermediate tenure (excluding Social Rent Dwellings and Affordable Rent Dwellings) managed by an Affordable Housing Provider; and
- b) Discount Market Dwellings and other Private Intermediate Dwellings, each as approved in writing by the Council

"Market Value"

means the best price that might reasonably be expected for the freehold or (where applicable) long leasehold of a Dwelling of the relevant type from a private purchaser assuming that it was a Market Dwelling as calculated in accordance with the RICS Manual of Valuation Practice (Red Book) current at the time of valuation and expressed as a value per square metre and the market value shall be calculated as the average based on the valuations undertaken by three valuers independent to the party that seeks to establish the market value and copies of the three valuations shall be provided in writing to the Council when the party seeks to establish the Market Value

"Maximum Price"

means a price which shall not exceed 75% of the Market Value of the Discount Market Dwelling as at the date of the valuations provided to the Council to evidence Market Value

"National Space Standards"

means the 'Technical housing standards – nationally described space standard' as published by the Department for Communities and Local Government (or such other national standards that may from time to time replace and/or update these standards)

"Private Intermediate Dwelling"

means any Intermediate Dwelling other than a Discount Market Dwelling which is not managed by an Affordable Housing Provider approved by the Council in writing

"Qualifying Purchaser"

means persons (together with their household) whose needs are not met on the open market where eligibility is determined with regard to local incomes and local house prices and any other criteria as the Council may determine are appropriate having regard to any national legislation and national policy then in force relevant to Affordable Housing together with local needs and locally adopted policy

"Serviced"

means the provision of vehicular and pedestrian access, Utilities, ducting to facilitate high speed broadband and foul and surface water drainage to the boundary of the relevant land in order that the users of the relevant land can connect into these services

"Shared Ownership Dwellings"

means Affordable Dwellings in which the occupiers own an initial percentage of the Affordable Dwelling being less than 75% and the remainder is owned by an Affordable Housing Provider but with the right for the

occupier to purchase further percentages of the Affordable Dwelling up to 100%

"Social Rent Dwellings"

means Affordable Dwellings to be offered and occupied via an Affordable Housing Provider pursuant to an Assured Tenancy which rents (including service charges) are determined in accordance with the rent standard in "The Regulatory Framework for Social Housing in England, April 2015" published by the Regulator of Social Housing (or such replacement or alternative publication issued by the Regulator of Social Housing (or any successor) that may from time to time replace and/or update this document) and in accordance with Annex 2 of the National Planning Policy Framework (or such other national policy that may from time to time replace and/or update this framework) and which shall be offered for rent by an Affordable Housing Provider to persons who are otherwise unable to secure private sector housing for purchase or rent in the prevailing economic circumstances and who have in the opinion of the Council need for such housing and **"Social Renting"** shall be construed accordingly

"Title Restriction"

means a title restriction to be entered into the Land Registry Proprietorship Register of any Discount Market Dwelling in the following terms (subject to any amendments thereto required by the Land Registry and agreed by the Owner or the owner of the Discount Market Dwelling from time to time and the Council):

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by Rugby Borough Council that the provisions of Discount Market Dwelling Scheme approved pursuant to Schedule 2 to the Section 106 Agreement dated [] containing planning obligations relating land at Warwick Road, Wolston have been complied with or are not relevant to the disposition"

"Tenure Blind"

means in relation to the Affordable Dwellings indistinguishable from Market Dwellings in terms of design, external appearance and quality of materials

"Utilities"

means mains services including gas, electricity, potable water, foul and surface water drainage, data cables and telecommunications

2. AFFORDABLE HOUSING SCHEME

2.1 The Owner covenants with the Council:-

- 2.1.1 prior to the Commencement of Development, to submit in writing to the Council the Affordable Housing Scheme for the Council's approval; and
- 2.1.2 not to Commence Development until the Affordable Housing Scheme has been approved in writing by the Council.

- 2.2 The Owner shall be permitted to seek to amend any approved Affordable Housing Scheme at any time following the approval of the Affordable Housing Scheme **SAVE THAT** in seeking to do so the Owner shall submit such amendments to the Council in writing for approval of those amendments and obtain the Council's written approval to such amendments before such amendments may be permitted to be implemented.

3. PROVISION OF AFFORDABLE HOUSING

- 3.1 The Owner covenants with the Council:

3.1.1 to provide or procure the provision of 30% (thirty per cent) of the Dwellings as Affordable Dwellings (rounded up or down to the nearest whole number)

3.1.2 to provide or procure that the Affordable Dwellings shall be provided as follows:-

- (a) Serviced;
- (b) in compliance with the standards required by building regulations in force at the relevant time and the National Space Standards;
- (c) in accordance with the approved Affordable Housing Scheme;
- (d) Tenure Blind; and
- (e) pursuant to a nomination agreement being entered into with the Council based on the Affordable Housing Provider's standard terms and/or such choice based local lettings scheme arrangements as may be required by the Council where unless otherwise agreed in writing between the Affordable Housing Provider and the Council the Council will retain 100% first nomination rights and 50-75% subsequent nomination rights depending inter alia on the tenure and housing need evidence at the time the nomination agreement is entered into.

3.1.3 that no Social Rent Dwelling and/or Affordable Rent Dwellings shall be Occupied unless and until a nomination agreement is entered into with the Council and/or choice based local lettings scheme arrangement has been entered into in relation to the relevant Social Rent Dwelling and/or Affordable Rent Dwelling as applicable.

4. MANAGEMENT AND TRANSFER OF THE AFFORDABLE DWELLINGS

- 4.1 No later than 6 (six) months from Commencement of Development (the "**Longstop Date**"), the Owner covenants with the Council to have used reasonable endeavours for a period of no less than 6 (six) months to market the Affordable Dwellings to at least 4 (four) Affordable Housing Providers (not including the Council and who shall have first been approved by the Council in writing) and to enter into an Affordable Housing Agreement with one or more of such approved Affordable Housing Providers in respect of the same and forthwith upon such Affordable Housing Agreement(s) having been entered into the Owner shall notify the Council of the identity of the Affordable Housing Provider(s) which is or are party to such Affordable Housing Agreement(s) together with details of the number, size and tenure type of the Affordable Dwellings the subject of the Affordable Housing Agreement(s);

4.2 if an Affordable Housing Agreement has not been entered into in respect of the Affordable Dwellings by the Longstop Date then:

4.2.1 where the reason for a lack of offers is identified as being the Affordable Housing Tenure Mix:-

- (a) the Owners shall apply to the Council in writing to revise the Affordable Housing Tenure Mix and in doing so the Owner shall provide the Council with the following:-
 - (i) written reasons for the variation from the original Affordable Housing Tenure Mix for approval; and
 - (ii) evidence to demonstrate that the Owner has used reasonable endeavours to market the Affordable Housing to at least 4 (four) Affordable Housing Providers (not including the Council and who shall have first been approved in writing by the Council); and
 - (iii) in relation to marketing of the Affordable Dwellings, evidence to show that the Owner has marketed the Affordable Dwellings at a consideration no higher than 75% of Market Value;
- (b) if the Council approves the revised Affordable Housing Tenure Mix then the Owner shall use reasonable endeavours for a further period of 5 (five) months to enter into an Affordable Housing Agreement on the basis of the revised approved Affordable Housing Tenure Mix and shall market the Affordable Dwellings to at least 4 (four) Affordable Housing Providers (not including the Council and who shall have first been approved by the Council in writing) and enter into an Affordable Housing Agreement with one or more of such approved Affordable Housing Providers in respect of the same and forthwith upon such Affordable Housing Agreement(s) having been entered into the Owner shall notify the Council of the identity of the Affordable Housing Provider(s) which is or are party to such Affordable Housing Agreement(s) together with details of the number, size and tenure type of the Affordable Dwellings the subject of the Affordable Housing Agreement(s);

4.2.2 where the reason for lack of offers is not the Affordable Housing Tenure Mix the provisions of paragraph 4.2.4 shall apply;

4.2.3 in the event that the Owner re-markets the Affordable Dwellings in the circumstances referred to in paragraph 4.2.1(b) above but is not able to enter into an Affordable Housing Agreement on the basis of an approved revised Affordable Housing Tenure Mix despite the Owner having used reasonable endeavours to do so for a further period of 5 (five) months then the provisions of paragraph 4.2.4 shall apply.

4.2.4 where the provisions of paragraph 4.2.2 or 4.2.3 apply:-

- (a) the Owner shall provide written evidence to the Council to satisfy the Council that the Owner in accordance with the provisions of paragraph 4.1 or (as applicable) paragraph 4.2.1 used reasonable endeavours to enter into an Affordable Housing Agreement(s) in relation to the Affordable Dwellings such information to include details of all offers received and marketing undertaken and negotiations with at least 4 (four) Affordable Housing Providers (who were previously approved in writing by the Council pursuant to previous paragraphs) and (in relation to the marketing of the Affordable Dwellings) confirmation that the Owner has offered the relevant Affordable Dwellings at a consideration no higher than 75% of Market Value for those Affordable Dwellings;
- (b) if the Council (acting reasonably) confirms in writing setting out its reasons why it is not satisfied that the Owner has used reasonable endeavours to comply with

the obligations set out in paragraph 4.1 or (as applicable) paragraph 4.2.1 above and provides a detailed explanation as to why it is not satisfied, then the Owner shall be required to repeat the process set out in paragraph 4.1 or (as applicable) paragraph 4.2.1 above until such time as the Council is satisfied that the Owner has discharged its obligations **PROVIDED THAT** if the Council has not confirmed its satisfaction within 3 months from the date of its first confirmation pursuant to this paragraph (b) then the matter shall be referred to an Expert for determination pursuant to Clause 16 of this Deed;

- (c) in the event the Council in writing confirms its satisfaction that the Owner has discharged their obligations set out in paragraph 4.1 or (as applicable) paragraph 4.2.1 above then the Owner shall offer to transfer to the Council the freehold or leasehold interest in the relevant Affordable Dwellings together with the land on which the Affordable Dwellings will be constructed on the basis that:-
 - (i) the Owner shall construct the Affordable Dwellings prior to transfer of the completed Affordable Dwellings to the Council; and
 - (ii) the Owner shall bear its own and the Council's legal costs in relation to any contracts and transfers associated with the Affordable Dwellings and the land on which they are constructed;

4.2.5 if either:-

- (a) the offer to the Council made pursuant to 4.2.4(c) above is not accepted by the Council within 30 (thirty) Working Days of the offer being received by the Council in writing; or
- (b) contracts have not been exchanged within 6 (six) months of acceptance of the offer by the Council;

then the Owner shall:-

- (c) be entitled to withdraw any outstanding offer or acceptance and/or withdraw from contractual negotiations (as applicable) with the Council in relation to the Affordable Dwellings; and
- (d) shall pay the Fallback AH Contribution to the Council in accordance with the further provisions of this paragraph 4.2 in respect of the Affordable Dwellings that would otherwise have been provided;

4.2.6 on payment of the Fallback AH Contribution the Owner shall:-

- (a) be released from the provisions of this Schedule and shall be entitled to dispose of the Affordable Dwellings on the open market; and
- (b) be taken as having discharged the requirement to provide Affordable Housing by the payment of the Fallback AH Contribution;

4.2.7 where a Fallback AH Contribution is to be paid pursuant to paragraph 4.2.5(d) above then not earlier than 40 (forty) Working Days prior to the anticipated date of the Occupation of 75% of the Market Dwellings, the Owner shall submit to the Council in writing for approval details of what the Fallback AH Contribution should be together with written evidence and copies of an independent valuation used to establish Market Value justifying the calculation of the said Fallback AH Contribution;

4.3 if the Owners have entered into one or more Affordable Housing Agreements and have provided written evidence of the same to the Council in accordance with paragraph 4.1 no more than 75% of the Market Dwellings shall be Occupied until such time as the Affordable Dwellings the subject of the

Affordable Housing Agreements have been completed and transferred to the relevant Affordable Housing Providers in accordance with the terms of the Affordable Housing Agreements;

- 4.4 if the Owner has been unable to enter into any Affordable Housing Agreements in respect of the Affordable Dwellings by the Longstop Date then no more than 75% of the Market Dwellings shall be Occupied until such time as one of the following has occurred:
- 4.4.1 all such Affordable Dwellings have been constructed and completed such that they are capable of being Occupied and the Council has accepted an offer of the completed Affordable Dwellings made to it pursuant to paragraph 4.2.4(c); or
- 4.4.2 the Fallback AH Contribution has been paid to the Council;
- 4.5 subject to paragraphs 4.7, 4.8 and 4.9 below, Social Rent Dwellings and Affordable Rent Dwellings shall not be used other than for Social Renting or Affordable Renting (as applicable);
- 4.6 subject to paragraphs 4.7, 4.8 and 4.9 below, Intermediate Dwellings shall only be offered by the Affordable Housing Provider to each new occupier at a cost no more expensive than those approved by the Council in relation to the Intermediate Dwelling in question as part of the Affordable Housing Scheme (subject to provisions for staircasing applying to Shared Ownership Dwellings where appropriate) unless otherwise approved in writing by the Council;
- 4.7 the covenants contained in this paragraph 4 shall not be binding on a Chargee or a bona fide purchaser for value thereof from such a Chargee (except in the case of a purchaser which is an Affordable Housing Provider or the Council or successors in title of such purchaser) **PROVIDED THAT** the following procedure set out in paragraph 4.8 shall have been followed;
- 4.8 the procedure referred to in paragraph 4.7 above shall be as follows:-
- 4.8.1 the Chargee of the Affordable Housing Provider shall give prior written notice to the Council of its intention to exercise its powers;
- 4.8.2 the Chargee shall use reasonable endeavours over a period of three months from the date of receipt of the written notice by the Council to complete a disposal of the Affordable Dwellings to another Affordable Housing Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses PROVIDED THAT nothing shall preclude the Council from making arrangements to secure the lease (of a duration acceptable to the Council) or (as applicable) freehold transfer of the Affordable Dwellings to another Affordable Housing Provider during this time and if within three months of the date of receipt by it of the notice served under paragraph 4.8.1 the Council serves the Chargee with a response indicating that arrangements can be made in accordance with this paragraph then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such disposal (provided always that the Chargee will not be required to co-operate with such arrangements or use its reasonable endeavours to secure such disposal after the expiry of the period of 3 months referred to in paragraph 5.8.4 below)
- 4.8.3 the Council shall in formulating or promoting any arrangements referred to in paragraph 4.8.2 give full consideration to protecting the interest of the Chargee as regards the Chargee recovering the full amount of monies outstanding under the charge or mortgage together with all interest and costs (but for the avoidance of doubt the Chargee shall not be required to accept any arrangement which would be insufficient to repay the monies outstanding under the mortgage or charge including interest and costs);
- 4.8.4 if the Chargee, the Council or any other person cannot within 3 months of the date of receipt by the Council of the Chargee's notice under paragraph 4.8.1 complete the disposal of the Affordable Dwellings then the Chargee shall be entitled to exercise its power of sale free of the restrictions set out in this Schedule 2 which provisions shall determine absolutely

- 4.8.5 if the Chargee does not wish to exercise its power of sale at any time after the giving of notice under paragraph 4.8.1 or the Council does not wish to continue with the exercise of its powers under paragraph 4.8.2 after the giving of its response that party shall give to the other not less than 5 Working Days written notice of its intention to discontinue;
 - 4.8.6 if the Council has proposed arrangements to any Chargee of the Affordable Dwellings but the consideration offered to the Chargee as appropriate under the proposed arrangement would be insufficient to repay the monies outstanding under the mortgage or charge including interest and costs then the Chargee shall be entitled to sell or otherwise dispose of the Affordable Dwellings free of the restrictions set out in this Schedule 2 which in respect of the relevant Affordable Dwelling(s) determine absolutely;
- 4.9 the Owner covenants with the Council not to Occupy or permit to be Occupied the Affordable Dwellings otherwise than in strict accordance with the provisions of this paragraph 4 **PROVIDED THAT** the provisions in this paragraph 4 will only be binding on the applicable Affordable Dwellings until such time as:-
- 4.9.1 any chargee of an Affordable Dwelling or any part or parts thereof is in possession or has exercised a power of sale thereof as Chargee and the procedure in paragraph 4.8 has been followed;
 - 4.9.2 any chargee of a share of a Shared Ownership Dwelling subject to a lease on shared ownership terms (as defined in Section 70(4) Housing and Regeneration Act 2008) has exercised its powers as Chargee;
 - 4.9.3 any Shared Ownership Dwelling owner has staircased to own 100% of any lease of an Affordable Dwelling; or
 - 4.9.4 an occupant of an Affordable Dwelling has exercised a statutory right to buy or acquire such Affordable Dwelling or has acquired such Affordable Dwelling pursuant to any voluntary purchase scheme approved by Homes England,

then in each case the provisions shall not bind or be enforceable and shall cease to have effect against such person or persons and against successors in title and any person or persons deriving title therefrom (except where the successor in title following the procedure in paragraph 4.8 above is an Affordable Housing Provider or the Council).

Part 2

ALLOTMENT PROVISION

- 1. The Owner covenants with the Council:
 - 1.1 prior to the Commencement of Development to submit in writing to the Council a written timetable detailing the timing for the Allotment Phase 1 Works and the Allotment Phase 2 Works including the estimated completion dates for the Allotment Phase 1 Works and the Allotment Phase 2 Works; and
 - 1.2 not to Commence Development until the written timetable has been submitted in writing by the Council;
 - 1.3 to carry out the Allotment Phase 1 Works and the Allotment Phase 2 Works in accordance with the written timetable submitted to the Council and to use reasonable endeavours to complete the Allotment Phase 1 Works as soon as reasonably practicable after the Commencement of Development PROVIDED THAT the Council may request an amendment to the written timetable by notifying the Owner up to 20 Working Days after Commencement of Development and the Owner and the Council shall use reasonable endeavours to agree such amendment and following such agreement the Owner shall carry out the Allotment Phase 1 Works and the Allotment Phase 2 Works in accordance with the amended written timetable; and
 - 1.4 in any event to;

- 1.4.1 complete the Allotment Phase 1 Works prior to first Occupation of the Development;
- 1.4.2 complete the Allotment Phase 2 Works prior to Occupation of more than 30 Dwellings; and
- 1.4.3 complete the Allotment Phase 3 Works within eight weeks of the completion of the Allotment Phase 2 Works (or such other date as may be agreed in writing with the Council in consultation with the Parish Council).

Part 3

LOCAL NEEDS MARKETING

1. The Owner covenants with the Council;
 - 1.1 that it shall not Occupy any of the Market Dwellings until it has submitted to the Council for the Council's approval (such approval not to be unreasonably withheld or delayed) a marketing strategy which demonstrates how 50% of the Market Dwellings will be marketed to the inhabitants of the parish of Wolston only for a period of 12 weeks prior to being made available to those living outside of the parish of Wolston;
 - 1.2 that it shall not permit the Occupation of any of the Market Dwellings until the marketing strategy has been approved by the Council; and
 - 1.3 that the Market Dwellings shall be marketed in accordance with the approved marketing strategy thereafter.

SCHEDULE 3

BIODIVERSITY OFFSETTING

1. DEFINITIONS

In this Schedule the following words and phrases shall have the meanings ascribed to them:

"Biodiversity Impact Assessment"	means the use of the most current and locally adopted Defra Biodiversity Offsetting Metric to calculate the biodiversity impact of the scheme measured in Biodiversity Units
"Biodiversity Loss"	means a negative Biodiversity Unit score
"Biodiversity Offsetting Scheme"	means a scheme which will deliver biodiversity enhancements which shall not be less than the Biodiversity Impact Assessment score
"Biodiversity Unit"	means the product of the size of an area, and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value
"Defra Biodiversity Offsetting Metric"	means the Defra mechanism to quantify impacts on biodiversity that allows biodiversity losses and gains affecting different habitats to be compared and ensure offsets were sufficient to compensate for residual losses of biodiversity
"Reserved Matters"	has the same meaning as in the Town and Country Planning (Development Management Procedure) (England) Order 2015
"Warwickshire County Council Financial Contribution Calculator"	means the mechanism used to calculate the fixed sum contribution

2. The Owner covenants with the County Council:

2.1 Commencement of Development which, for the purposes of this Schedule only, shall include operations consisting of:

- 2.1.1 site clearance;
- 2.1.2 demolition work;
- 2.1.3 archaeological investigations;
- 2.1.4 investigations for the purpose of assessing ground conditions;
- 2.1.5 remedial work in respect of any contamination or other adverse ground conditions;
- 2.1.6 diversion and laying of services;
- 2.1.7 erection of any temporary means of enclosure;
- 2.1.8 the erection of a site office;
- 2.1.9 the creation of a site compound; and

2.1.10 the creation of temporary means of access,

shall not take place until the Reserved Matters have been approved by the Council.

2.2 The approved Reserved Matters shall not result in a Biodiversity Impact Assessment score greater than –1.15 Biodiversity Units or such other number as may be agreed with the County Council.

2.3 Commencement of Development which, for the purposes of this Schedule only, shall include operations consisting of:

2.3.1 site clearance;

2.3.2 demolition work;

2.3.3 archaeological investigations;

2.3.4 investigations for the purpose of assessing ground conditions;

2.3.5 remedial work in respect of any contamination or other adverse ground conditions;

2.3.6 diversion and laying of services;

2.3.7 erection of any temporary means of enclosure;

2.3.8 the erection of a site office;

2.3.9 the creation of a site compound; and

2.3.10 the creation of temporary means of access,

shall not take place (unless otherwise agreed by the County Council) until a Biodiversity Offsetting Scheme has been submitted to and approved in writing by the County Council (the "**Approved Scheme**").

2.4 The Approved Scheme shall be approved with the purpose of ensuring that the Development shall not result in a Biodiversity Loss in accordance with the National Planning Policy Framework.

2.5 The Approved Scheme shall either:

2.5.1 Include: -

(a) the identity of an appropriate receptor site or sites;

(b) a management plan for the provision and maintenance of such offsetting measures for not less than 30 years from the date of implementation of the Approved Scheme; and

(c) the provision of contractual terms to secure the delivery of the offsetting measures; or

(d) provision for the purchase of 1.15 biodiversity offsetting credits from a provider approved by the County Council

or

2.5.2 provide for a fixed sum contribution to be paid to the County Council based on using the Warwickshire County Council Financial Contribution Calculator. Such fixed sum contribution shall not exceed £65,725 (sixty five thousand seven hundred and twenty five pounds) Index Linked.

- 2.6 The County Council shall use any biodiversity contribution to enhance and secure long-term management of biodiversity within the vicinity of the Development.
- 2.7 Where an Approved Scheme is to be implemented pursuant to paragraph 2.5.1 above, no changes to the Approved Scheme shall be permitted without the prior written consent of the County Council.

SCHEDULE 4

COUNCIL'S COVENANTS

1. The Council covenants with the Owner and the County Council:-
 - 1.1 to comply with each obligation, covenant and undertaking on the part of the Council contained in this Deed;
 - 1.2 not to use or apply the contributions other than for the purposes for which the contributions are paid, as specified in this Deed;
 - 1.3 from time to time following a reasonable request in writing by the Owner but not more frequently than once every twelve (12) months to provide the Owner with a breakdown of expenditure from the contributions that has been expended; and
 - 1.4 that if any, all or any part of the contributions (including any interest earned) have not been expended or committed on the day 7 years after the day on which the relevant payment was received or on the date the Deed ends (whichever is the earlier), the Council shall repay the unspent portion to the party that made payment of the relevant contribution together with any interest at the base lending rate of Lloyds Bank plc accrued from the date of payment to the date of repayment.
- 1.5 In relation to the NHS Contribution:
 - 1.5.1 following a reasonable request by the Owner, to provide the Owner with details of whether the NHS Contribution (or any part thereof) has been passed to the University Hospitals Coventry and Warwickshire NHS Trust; and
 - 1.5.2 for the purposes of paragraph 1.4 above, if the Council has passed the NHS Contribution (or any part thereof) to the University Hospitals Coventry and Warwickshire NHS Trust it shall be treated as expended and/or committed.
- 1.6 In relation to the Open Space Contribution:
 - 1.6.1 following a reasonable request by the Owner, to provide the Owner with details of whether the Open Space Contribution (or any part thereof) has been passed to Wolston Parish Council; and
 - 1.6.2 for the purposes of paragraph 1.4 above, if the Council has passed the Open Space Contribution (or any part thereof) to Wolston Parish Council it shall be treated as expended and/or committed.
- 1.7 In relation to the Community Benefit Contribution:
 - 1.7.1 following a reasonable request by the Owner, to provide the Owner with details of whether the Community Benefit Contribution (or any part thereof) has been passed to Wolston Parish Council; and
 - 1.7.2 for the purposes of paragraph 1.4 above, if the Council has passed the Community Benefit Contribution (or any part thereof) to Wolston Parish Council it shall be treated as expended and/or committed.

SCHEDULE 5

COUNTY COUNCIL'S COVENANTS

1. The County Council covenants with the Owner and the Council:-
 - 1.1 to comply with each obligation, covenant and undertaking on the part of the County Council contained in this Deed;
 - 1.2 not to use or apply the contributions other than for the purposes for which the contributions are paid, as specified in this Deed;
 - 1.3 from time to time following a reasonable request in writing by the Owner but not more frequently than once every twelve (12) months to provide the Owner with a breakdown of expenditure from the contributions that has been expended; and
 - 1.4 that if any, all or any part of the contributions (including any interest earned) have not been expended or committed on the day 7 years after the day on which the relevant payment was received or on the date the Deed ends (whichever is the earlier), the County Council shall repay the unspent portion to the party that made the relevant contribution together with any interest at the base lending rate of Lloyds Bank plc accrued from the date of payment to the date of repayment.

SCHEDULE 6
EDUCATION CONTRIBUTION FORMULA

The Education Contribution is calculated as follows:

$$\textit{Contribution} = Y \times \textit{NYG} \times \textit{£}$$

Where:

Y (rounded up or down to the nearest whole number) is calculated as follows:

$$Y = \left(\frac{N}{100} \right) \times P$$

N is the number of relevant dwellings. i.e. those with more than one bedroom and not restricted to older residents

P is the pupil yield, being 4.83 for the purposes of this calculation

NYG is the number of year groups, being 5 for the purposes of this calculation

£ is the pupil place cost, being £19,403 for the purposes of this calculation

Executed as a Deed by
affixing the common seal of
RUGBY BOROUGH COUNCIL
in the presence of:

)
)
)



Authorised Signatory

[Handwritten signature]

52/21

Executed as a Deed by
affixing the common seal of
WARWICKSHIRE COUNTY COUNCIL
in the presence of:

)
)
)



Authorised Signatory

[Handwritten signature]

237/21

Signed as a Deed by
**ROSCONN STRATEGIC LAND
LIMITED**
Acting by:

[Handwritten signature]

Director:

Witness: *[Handwritten signature]*

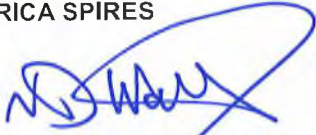
Witness Name: *JOHN PATRICK WILLIAM GREENING*

Witness Address: *WRIGHT HARALL LLP
OLYMPUS AVENUE
LEAMINGTON SPA
CV34 6BF*

Signed as a Deed by
LETITIA ERICA SPIRES

)
)
) 

Witness:



Witness Name: NICHOLAS DEREK WATTS

Witness Address: Blythe Liggins
Edmund House, Rugby Road
Leamington Spa
CV32 6EL

Signed as a Deed by
JOHN PHILP WALFORD WILCOX

)
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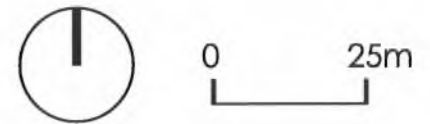
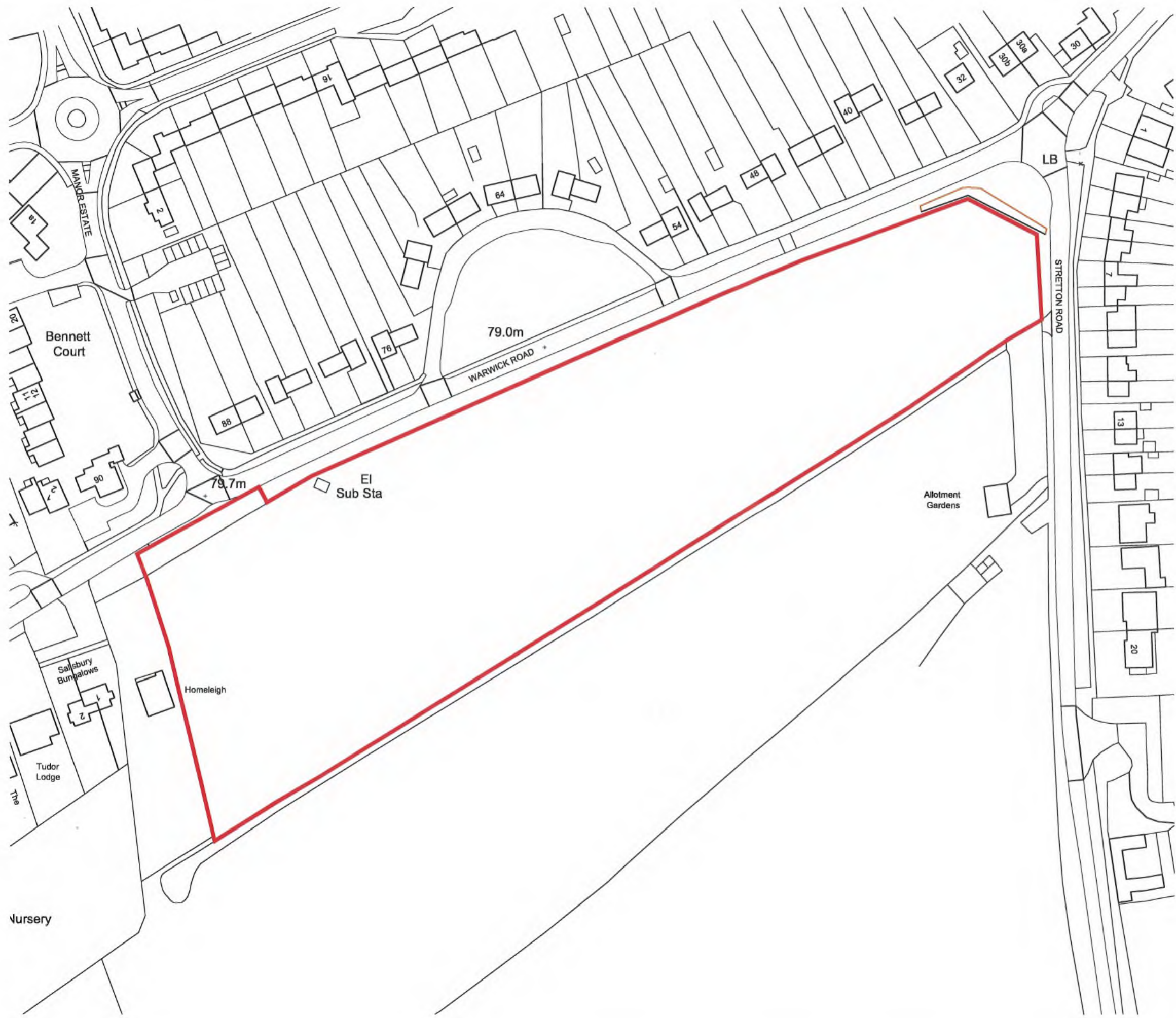
Witness:



Witness Name: NICHOLAS DEREK WATTS.

Witness Address: Blythe Liggins
Edmund House, Rugby Road
Leamington Spa
CV32 6EL

APPENDIX 1
PLANS



LEGEND

Application site boundary

Spines
M. M. M. M.
DOJ

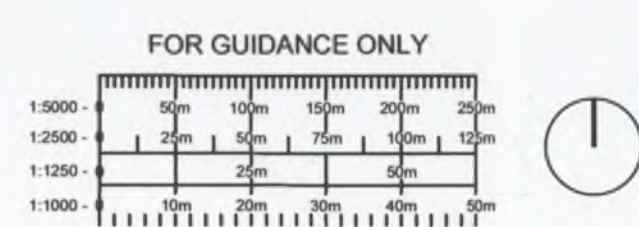
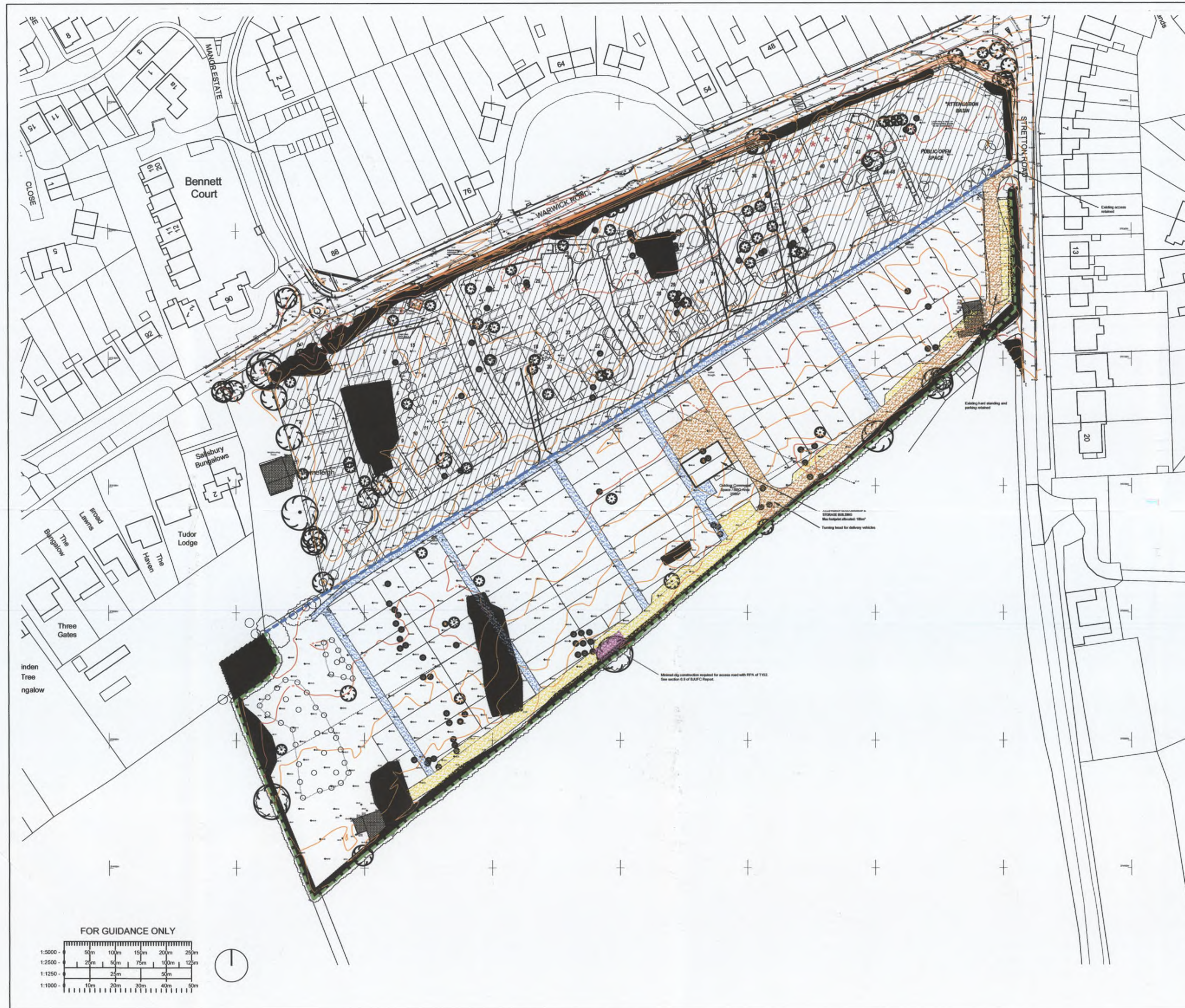


REV	DETAILS	DATE	CHECKED

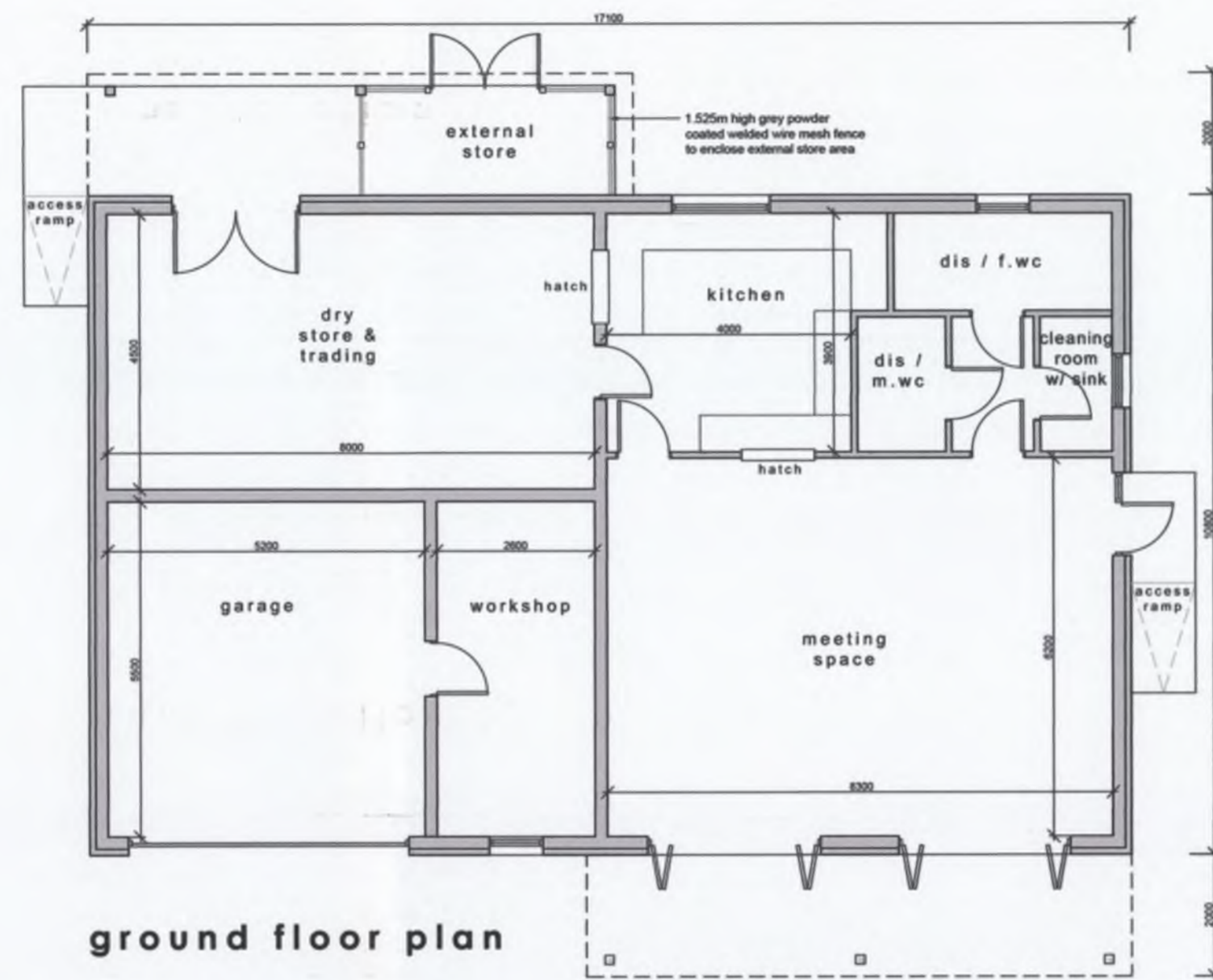
brownlie howland brownlie

01543 2		NO	NO
Land South of Warwick Road,		380 - 01	
Location Plan		REV	DATE
Rosconn Strategic Land		A	Jan '19
PRELIMINARY	DRAWN	CHECKED	SCALE
	AC		1:1250 @ A3

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Safety Health and Environmental Information		A2
The following risks are identified as unusual or unfamiliar to a competent contractor There are no significant or unfamiliar risks		
CONSTRUCTION RISKS There are no significant or unfamiliar risks		
DEMOLITION RISKS (FUTURE) There are no significant or unfamiliar risks		
It is assumed that all work will be carried out by a competent contractor working, where appropriate, to an approved method statement		
HARDSTANDING LEGEND		
	200mm Base Recycled Road Planings	
	400mm Base Recycled Road Planings	
	New Self-binding Gravel Track	
	Minimal Dig Gravel Hardstanding	
BOUNDARIES LEGEND		
	Existing boundary retained and enhanced	
	New 1.525 high green powder coated welded wire mesh fence panels	
	Adjoining Residential Application	
REV DETAILS		DATE CHECKED
Land South of Warwick Road, Wolston		DRAWING NO. 3380 - 34
Allotments - Hardstanding & Boundaries		REV DATE
Roscom Strategic Land		F Jul '20
PRELIMINARY	DRAWN AC	CHECKED MW
SCALE 1:1000 @ A2		
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ground floor plan

Note : All external windows and doors to be fitted with security shutters



front elevation



side elevation



rear elevation



side elevation

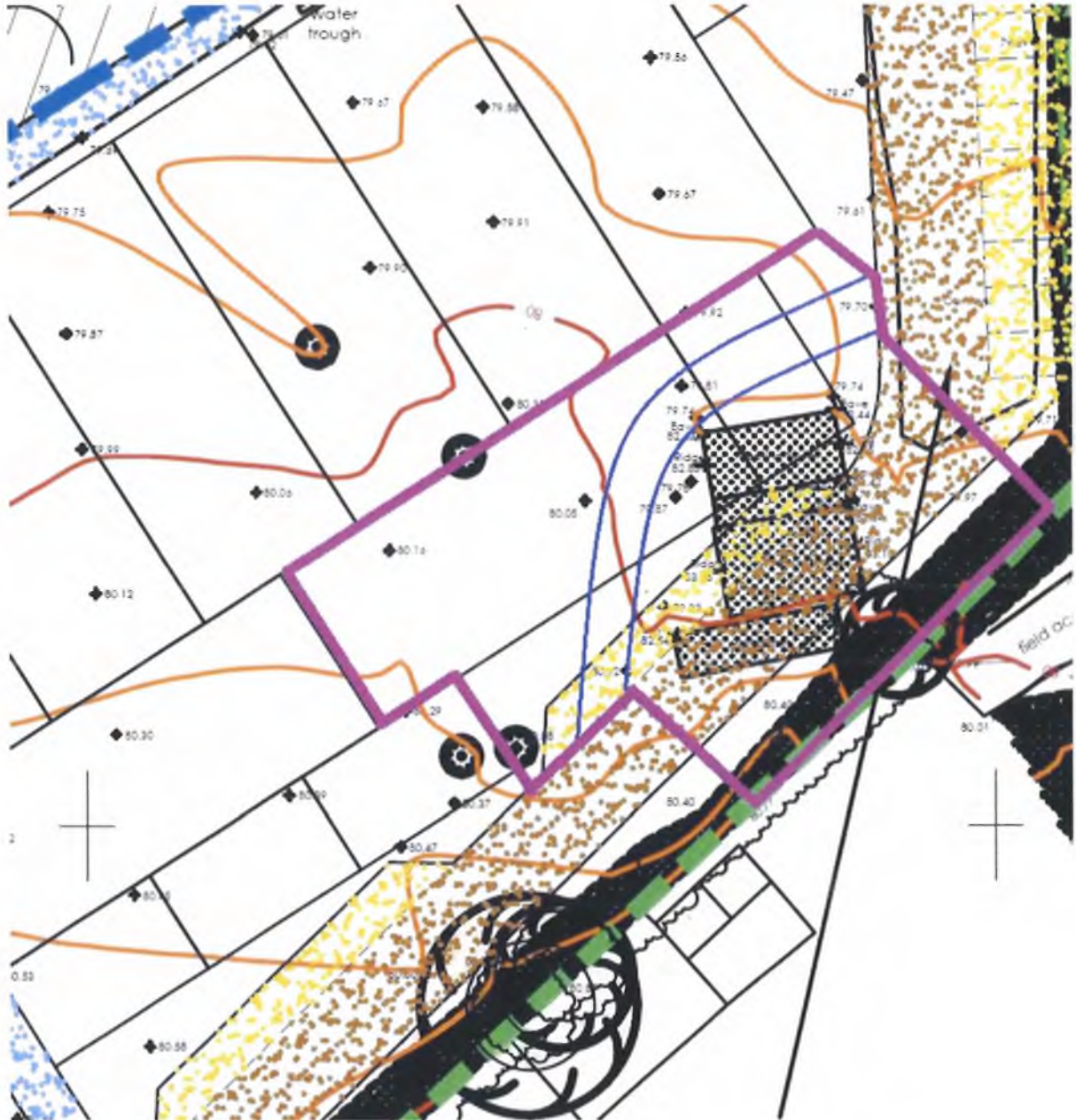


Safety Health and Environmental Information		A2
The following risks are identified as unusual or unfamiliar to a competent contractor		
CONSTRUCTION RISKS There are no significant or unfamiliar risks		
DEMOLITION RISKS (FUTURE) There are no significant or unfamiliar risks		
It is assumed that all work will be carried out by a competent contractor working, where appropriate, to an approved method statement		
Notes:		
<p><i>James</i> <i>McKee</i> <i>July 2021</i></p> <p><i>73764</i></p> <p><i>52/21</i> <i>Stephan</i></p>		
REV	DETAILS	DATE CHECKED
<p>brownhill hayward brown chartered architects</p> <p>01543 254337 - mail@bhbarchitects.co.uk</p>		
Land off Stratton Road, Wolston		DRAWING NO. 3380 - 42
Roscommon Strategic Land		REV DATE
PRELIMINARY		C Jul '20
DRAWN	CHECKED	SCALE
AC		1:100 @ A2
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Wolston – Reconfigured Allotments
Retained Existing Management Building Plan
22nd March 2021

SCOPPER

52/21



737/21

M. M. M. M.

52/21

Spur