



Section 106 Agreement

**Agreement pursuant to Section 106 of the Town and Country
Planning Act 1990 relating to**

Land at north of Raleigh Drive, Claygate, Esher, Surrey

Dated

Landowners

**CLAYGATE HOUSE INVESTMENTS LIMITED AND
MJS INVESTMENTS LIMITED**

and

The Council

Elmbridge Borough Council

and

The County Council

Surrey County Council

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This Deed is:

Dated _____ **and**

made between:

- (1) **Claygate House Investments Limited** (incorporated in Jersey under company registration number OE025436) whose registered office is Clos Du Parc, La Ruelle Du Close Du Parc, St. Brelade, Jersey, JE3 8AQ **AND MJS Investments Limited** (incorporated in Jersey under company registration number OE025322) Clos Du Parc, La Ruelle Du Close Du Parc, St. Brelade, Jersey, JE3 8AQ (the **Landowner**)

and

- (2) **Elmbridge Borough Council**, the Council, of Civic Centre, High Street, Esher, Surrey, KT10 9SD, (the **Council**)

and

- (3) **Surrey County Council** of Woodhatch Place, 11 Cockshot Hill, Woodhatch, Reigate, RH2 8EF (the **County Council**)

Recitals

- A The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Application Site is situated.
- B The County Council is the County Highway Authority for the area within which the Application Site is situated and for the purposes of the Highways Act 1980.
- C The Council and the County Council are the authorities that can enforce the terms of this Deed for the purposes of the Act.
- D The Landowner is registered as the freehold owner of the Application Site (save for the area shaded yellow on the Plan, which is public highway) with title absolute at HM Land Registry under title number SY262506.
- E The Application for Planning Permission has been made by the Landowner to the Council to develop the Application Site. The Council refused the Application for Planning Permission on 22 September 2023, which is an outline application and is now the subject of the Appeal.
- F The Landowner has agreed to enter into this Deed in order to secure the

Planning Obligations contained in this Deed.

- G The Landowner has agreed that the provisions herein contained should have effect in order to secure an on-site Affordable Housing and/or a financial Contribution towards the provision of Affordable Housing off site in accordance with the Council's Development Contributions Supplementary Planning Document 2021 ("Contributions SPD (2021)"); and a minimum of 25% of this provision is to be secured as First Homes in accordance with the Written Ministerial Statement (24 May 2021 and any update statements) and accompanying Planning Practice Guidance and also to secure highway works and financial contributions to satisfy policy CS25 of the Council's Core Strategy (2011) and policy DM9 of the Council's Development Management Plan (2015).
- H The parties have agreed that the planning obligations contained herein are compliant with the tests under Regulation 122(2)(a)-(c) and 122(2A)(a)-(b) of the Community Infrastructure Levy Regulations 2010.

It is agreed:

1. Definitions

In this Deed the following expressions shall apply:

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

Additional First Homes Contribution means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with **paragraphs 5.8, 5.9 or 7 of Schedule 6**, the lower of the following two amounts:

- (a) 30% of the proceeds of sale; and
- (b) the proceeds of sale less the amount due and outstanding to any First Home Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the First Home Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which, for the avoidance of doubt, shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.

Affordable Dwellings means on-site Affordable Housing (excluding First Homes) to be provided in accordance with Schedule 5 of this Deed together with rights and easements over the Application Site to provide access to the Dwelling(s) and such entrance way, corridors, parking areas and other ancillary areas as are

necessary for the enjoyment of such a Dwelling including car parking and the words “**Affordable Dwelling**” shall mean any one of them.

Affordable Housing means housing for sale or rent, for Eligible Households whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

- a) **Affordable housing for rent** meets all of the following conditions: (a) the rent is set in accordance with the Government’s rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future Eligible Households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes, affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).
- b) **Discounted market sales housing** is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future Eligible Households.
- c) **Other affordable routes to home ownership** are housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low-cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future Eligible Households, or for any receipts to be recycled for alternative affordable housing provision or refunded to Government or the relevant authority specified in the funding agreement.
- d) **First Homes** are a specific kind of discounted market sale housing and should be considered to meet the definition of ‘Affordable Housing’ for planning purposes. Specifically, First Homes are discounted market sale units which:
 - a) must be discounted by a minimum of 30% against the market value;
 - b) are sold to a person or persons meeting the First Homes eligibility criteria;
 - c) on their first sale, will have a restriction registered on the title at HM Land Registry to ensure this discount (as a percentage of current market value)

and certain other restrictions are passed on at each subsequent title transfer; and

d) after the discount has been applied, the first sale must be at a price no higher than £250,000.

First Homes are the government's preferred discounted market tenure and should account for at least 25% of all affordable housing units delivered by developers through planning obligations.

Affordable Housing Contract means a contract for the provision of Affordable Housing (which does not include First Homes) within the Development, which includes the terms set out in Schedule 5 of the Deed (or such other terms as are agreed), between the Landowner and a Registered Provider, and which complies with the requirements of the Affordable Homes Programme.

Affordable Housing Contribution means those Affordable Dwellings and First Homes to be provided as part the Development in accordance with Schedule 4 of this Deed, calculated in accordance with requirements of Policy CS21 of the Elmbridge Core Strategy (2011) and the Contributions SPD (2021).

Affordable Housing Land means the land accommodating Affordable Dwellings (excluding First Homes) together with the associated car parking spaces, if any, shown for identification purposes and marked out on the Affordable Housing Plan.

Affordable Housing Plan means a plan to be submitted and approved by the Local Planning Authority (the Council) pursuant to an application for reserved matters and in any event prior to Commencement of Development.

Affordable Housing Standards means standards that ensure compliance with any contractual obligations entered into by the Registered Provider with Homes England (or successor organisation) under the Affordable Homes Programme as well as any reasonable standards set down by the Council in the Contributions SPD 2021.

Affordable Homes Programme means programmes that provide Public Grant Funding to registered providers in England to support the costs of delivering affordable homes. The programmes have iterations based on funding periods or policy changes: the Affordable Homes Programme 2015–2018 (2015 programme); the Shared Ownership and Affordable Homes Programme 2016–2023 (2016 programme); the Affordable Homes Programme 2021–2026 (2021 programme) and successor programmes.

Affordable Rent means rented housing let by Registered Providers of social housing to households who are eligible for Social Rented Housing. Affordable

Rent is not subject to the national rent regime but is subject to other rent controls that require a rent and service charge of no more than the lower of either:

- a) For one and two bedroom Dwellings, 80% of the Market Rent or 95% of the Local Housing Allowance Cap applying to the relevant Dwelling size for the month in which the Dwelling is to be let;
- b) For three bedroom Dwellings, 80% of the Market Rent or 85% of the Local Housing Allowance Cap applying to the relevant Dwelling size for the month in which the Dwelling is to be let;
- c) For Dwellings with four or more bedrooms, 80% of the Market Rent or 70% of the Local Housing Allowance Cap applying to the relevant Dwelling size for the month in which the Dwelling is to be let.

Appeal means an appeal to the Secretary of State and which is determined by the Secretary of State or his appointed Planning Inspector in relation to the Council's refusal of the Application for Planning Permission given appeal reference number APP/K3605/W/23/3334391.

Application for Planning Permission means the outline application for planning permission for the Application Site submitted by the Landowner to the Local Planning Authority (the Council) received on 28 March 2023 and allocated the reference number: 2023/0962 seeking permission for development as described in Schedule 3 on the Application Site and now the subject of the Appeal.

Application Site means the parcel of land which is the subject of the Application for Planning Permission and more specifically described in Schedule 1 of this Deed.

Armed Services Member means a member of the Royal Navy, the Royal Marines, the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service.

BCIS means Building Cost Information Service.

Car Club means a club operated by the Car Club Operator for the Car Club Members to hire a vehicle on a pay as you go basis

Car Club Members means any resident of the Development who joins the Car Club.

Car Club Operator means the car club operator, who may be the Landowner or

a recognized third party commercial car club operator, and who shall provide the Car Club in accordance with the terms of the agreement to be approved by the Council in accordance with paragraph 6 and 7 of Schedule 4

Car Club Parking Space means a dedicated Ultra Low Emissions Vehicle parking space for the Car Club Vehicle to be parked and located within the Development, and as shown on a plan to be provided pursuant to an application for reserved matters, and which is for the exclusive use of the Car Club Members and which has a charging point for the usage of the Car Club and Car Club Vehicle.

Car Club Vehicle means an Ultra Low Emissions Vehicle to be provided for the use of the Car Club.

Certificate of Practical Completion means in respect of any Dwelling the "Buildmark" certificate to be issued by National House-Building Council (or equivalent certificate from an alternative third-party warranty provider) to the effect that the Dwelling is complete for practical purposes.

Commencement Date means the date of Commencement of Development.

Commencement of Development means the carrying out of a Material Operation in respect of the Development and the words "**Commence Development**" and "**Development Commences**" shall be construed accordingly.

Completion means the date of issue of the Certificate of Practical Completion and the expressions "**Complete**" and "**Completed**" shall be construed accordingly.

Compliance Certificate means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria in the form at Annex 1 to Schedule 6.

Component means a part of the Development including but not limited to:

- (a) Market Dwellings;
- (b) Affordable Dwellings;
- (c) First Homes
- (d) commercial units;
- (e) any other floorspace;
- (f) property; and
- (g) land.

Deed means this document when it is duly executed, dated and delivered.

Development means the development that is the subject of the Application for

Planning Permission.

Development Standard means a standard to fully comply with the following: -

- (a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015 or any successor policy; and
- (b) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings) where applicable.

Discount Market Price means a sum which is the Market Value of the First Home discounted by at least 30%.

Disposal means:

- (a) the Sale of a Component(s) of the Development, (including the grant of a lease of a term of at least 125 years);
- (b) the grant of a lease of a term of less than 125 years of a Component of the Development; or
- (c) the grant of an assured shorthold tenancy agreement or a short term let in respect of a Component of the Development

all transfers within the Development must be by way of Disposal and the Disposal must always be at Market Value and furthermore there shall be no Fraudulent Transactions. The expressions "**Dispose**" and "**Disposals**" and "**Disposed**" shall be construed accordingly.

Dwellings mean the residential units to be constructed on the Application Site pursuant to the Planning Permission and the word "**Dwelling**" shall mean any one of them.

Eligibility Criteria (Local) mean criteria (if any) published by the Council at the date of the relevant First Home Disposal which are met in respect of a disposal of a First Home if:

- (a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).
- (b) any or all of criteria (i) and (ii) below are met:
 - i. the purchaser meets the Local Connection Criteria (or in the case of a joint purchase, at least one of the joint purchasers meets the Local Connection Criteria); and/or
 - ii. the purchaser is (or in the case of a joint purchase, at least one of the joint purchasers is) an Armed Services Member.

Eligibility Criteria (National) means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase, each joint purchaser is a First Time Buyer); and
- (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).

Eligible Household mean households living or working within the Borough of Elmbridge or any other household, approved by the Council's Head of Housing Services, with a recognised housing need and whose incomes are not sufficient to allow them to afford decent and appropriate housing on the market.

Exempt Disposal means the First Home Disposal of a First Home in one of the following circumstances:

- (a) First Home Disposal to a spouse or civil partner upon the death of the First Homes Owner;
- (b) First Home Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner;
- (c) First Home Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order;
- (d) First Home Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt **paragraph 7 of Schedule 6** shall apply to such sale)

provided that in each case other than (d) the person to whom the disposal is made complies with the terms of **paragraph 6 of Schedule 6**.

First Home means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price in accordance with Schedule 6 of this Deed and which on its 1st First Home Disposal does not exceed the Price Cap.

First Home Disposal means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- (a) a letting or sub-letting in accordance with **paragraph 6 of Schedule 6**
- (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner
- (c) an Exempt Disposal

and "**First Home Disposed**" and "**First Home Disposing**" shall be construed

accordingly.

First Home Mortgagee means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home.

First Home Owner means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (a) the Landowner; or
- (b) other developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (c) a tenant or sub-tenant of a permitted letting under **paragraph 6 of Schedule 6**.

First Time Buyer means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003.

Head of Housing Services means the Head of Housing Services for the Council for the time being or such other officer or officers as may from time to time be primarily responsible for the functions, duties and responsibilities in relation to Housing.

Homes England means the body that funds the delivery of Affordable Housing, and such expression shall include successors to the functions and powers of Homes England.

Income Cap (National) means, in the case of a First Home situated within the administrative area of the Council, eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home.

Indexed means the financial contribution adjusted to take account of changes in the BCIS All in Tender Price Index¹ (TPI) from the TPI published in the month this Deed is signed to the TPI published in the month of the Commencement Date.

Local Connection means either (a) or (b) below:

- (a) criteria which are met by a person who satisfies one or more of (i), (ii) and (iii) below:

- i. is ordinarily resident within the borough of Elmbridge and has been for a continuous period of not less than 12 consecutive months prior to exchange of contracts for the relevant First Home; and/or
- ii. who has a close family association with the borough of Elmbridge by reason of a parent or child who is ordinarily resident within the borough of Elmbridge and has been for five years prior to exchange of contracts for the relevant First Home; and/or
- iii. is in paid employment within the borough of Elmbridge on a permanent or fixed-term basis (with a contract of at least 16 hours per week and for fixed-term roles, a minimum duration of 12 months in place prior to exchange of contracts for the relevant First Home). Self-employed applicants who can demonstrate a high and consistent level of work in Elmbridge may also qualify as having a local connection through employment.

(b) such other local connection criteria as may be published by the Council from time to time as its “First Homes Local Connection Criteria” and which is in operation at the time of the relevant First Home Disposal and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant First Home Disposal shall be the “Local Connection Criteria” which shall apply to that disposal.

Local Housing Allowance Cap means the maximum rental allowance providing financial assistance towards the housing costs of low-income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework that may replace it.

Market Dwellings means Dwellings to be constructed on the Development which are not to be provided as Affordable Housing.

Market Rent means the estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion, inclusive of all service charges at the time the tenancy is granted (or other such valuation method recognised by the Royal Institution of Chartered Surveyors).

Market Value of First Home means the open market value as confirmed to the Council by the First Homes Owner and which has been assessed by a Valuer of

Dwelling in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation.

Market Value means the price at which the sale of the relevant property interest would have been completed unconditionally for cash consideration on the date of Disposal based on detailed comparable market evidence, including evidence of rental values achieved for any Component of the Development which has been Disposed but not Sold, to be assessed by the Council (acting reasonably) and assuming:

- (a) a willing seller and a willing buyer;
- (b) that, prior to the date of valuation, there has been a reasonable period of not less than six months for the proper marketing of the interest (having regard to the nature of the property and the state of the market) for the agreement of the price and terms and for the completion of the sale;
- (c) that no account is taken of any additional bid by a prospective purchaser with a special interest; and
- (d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion.

AND FOR THE AVOIDANCE OF DOUBT the following are not considered to be at Market Value where a disposal to a purchaser who is connected in any way to the vendor, grantor, transferor or lessor including (but not confined to) the definition in section 839 of the Income and Corporation Taxes Act 1988;

- (a) which is not an arm's length true value purchase on the usual terms as between a willing vendor grantor transferor or lessor and a willing purchaser; and/or
- (b) where the transfer artificially reduces the Disposal value of a Dwelling or another component of the Development, examples of these include but are not confined to:
 - (i) the Landowner and subsidiary companies of the Landowner
 - (ii) transactions between the Landowner and their employees
 - (iii) transactions involving loans from the Landowner and their subsidiary companies
 - (iv) other forms of deferred consideration
 - (v) finance deals
 - (vi) transactions involving other property not comprised in the Development
 - (vii) any transfer designed to reduce the revenue received from the Disposal of the Market Dwellings
 - (viii) account is taken of any additional bid by a prospective purchaser with a special interest.

Material Operation means a material operation pursuant to the Planning Permission on the Application Site pursuant to Section 56(4)(a)-(e) of the Act provided that, for the avoidance of doubt, a Material Operation shall be deemed not to have taken place for the purposes of this Deed by any surveying, ground

investigation, archaeological investigations, structural or advanced planting, site clearance, decontamination works, site preparation including earth moving, laying of sewers and services, the erection of fences and hoardings and the creation of a site compound. The undertaking of a Material Operation is considered to be the Commencement of Development pursuant to the Planning Permission.

Mortgagee/Chargee means any mortgagee or chargee of the Landowner or of the Registered Provider or the successors in title (or assigns) to such mortgagees or chargees or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925.

Nominations Agreement means an agreement between the Council and the Registered Provider that restricts occupancy of the Affordable Housing for Affordable Rent and/or Social Rented Housing to Eligible Households.

Non-Working Day means Saturday, Sunday and any bank or public holiday.

Occupation and **Occupied** means occupation for the purposes permitted by the Planning Permission but not including occupation by the personnel engaged in any construction, fitting out or marketing facility.

Plan means the plan that shows the outline of the Application Site edged in red annexed at Schedule 2.

Planning Inspector means an inspector appointed by the Secretary of State to determine the Appeal

Planning Permission means a planning permission for the Development granted pursuant to the Application for Planning Permission and shall apply to any planning permission granted pursuant to the Appeal against refusal of the Application for Planning Permission and to any planning permission subsequently granted ("Subsequent Permission") under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission and the Planning Permission shall be construed to include the Development as stated in the Subsequent Permission PROVIDED THAT with regard to the Subsequent Permission, no new material planning considerations have arisen since the granting of the Planning Permission that, in the view of the local planning authority, requires a Deed of Variation to be executed in respect of the Planning Obligation(s) or a new Unilateral Undertaking/ Planning Agreement under Section 106 of the Act to be executed.

Practical Completion means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a Certificate of Practical Completion be issued, and it can be Occupied.

Price Cap means the amount for which the First Home is sold after the application of the Discount Market Price which on its 1st First Home Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State.

Property means a First Home, as defined, for purposes of Schedule 6 and the Annex to Schedule 6

Protected Tenant means any tenant who:

- a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling
- b) has been granted a Shared Ownership Lease by a Registered Provider (or similar arrangement where a share of the Affordable Dwelling is owned by the tenant and a share owned by the Registered Provider) in respect of a particular Affordable Dwelling and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Dwelling

Public Grant Funding means funding provided by Homes England, the Council or other public sector body to facilitate the delivery of Affordable Housing and where there should be provisions for the homes to remain at an affordable price for future Eligible Households, or for any receipts to be recycled for alternative Affordable Housing provision, or refunded to Government or the relevant authority in the funding agreement.

Retail Price Index (RPI) means a price index calculated and published by the U.K.'s Office of National Statistics.

Registered Provider means one of the Council's Registered Provider partners, being a non-profit registered provider of social housing pursuant to the Housing and Regeneration Act 2008 or another Registered Provider proposed by the Party and approved by the Council in writing.

Regulator means the Regulator of Social Housing or such other government agency or successor organisation which regulates Registered Providers pursuant to part 2 of the Housing and Regeneration Act 2008.

Secretary of State means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function

Sale means:

- (a) the sale of the freehold of a Component; or
- (b) the grant of a lease of a Component with a term of 125 years or more and subject to nominal rent and "**Sold**" shall be construed accordingly

SDLT means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect.

Shared Ownership Dwelling means an Affordable Dwelling, disposed of on shared ownership terms as defined in section 2(6) of the Housing Act 1996 and the Shared Ownership Lease and under the requirements of the relevant Affordable Homes Programme.

Shared Ownership Lease means a lease in the form of the Homes England's model shared ownership lease and on terms that permits the purchase of a proportion of the initial sale value of the equity in a Shared Ownership Dwelling together with rent (if relevant) payable on the un-purchased percentage of the equity in the Shared Ownership Dwelling.

Social Rented Housing means Affordable Housing (and does not include First Homes) where the target rents are determined through the national rent regime; the landlord is a Registered Provider and it includes provisions to remain at an affordable price for future Eligible Households, or for the subsidy to be recycled for alternative Affordable Housing provision.

Traffic Regulation Order and Signage Contribution means the sum of ten thousand pounds (£10,000.00) in respect of the administrative costs of progressing a traffic regulation order required as a result of the Development including the cost of the replacement road signage in relation thereto.

Travel Plan Monitoring Contribution means the sum of four thousand six hundred pounds (£4,600) towards monitoring the Travel Plan

Travel Plan means the travel plan for the Development to be submitted and approved by the Council pursuant to the conditions attached to the Planning Permission

Ultra Low Emissions Vehicles means that such vehicles must meet the Ultra Low Emissions Zone (ULEZ) standards as defined by the Transport for London for the purposes of the ULEZ.

Valuer means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity.

Working Day means Monday to Friday 09:00 to 17:00, except bank holidays.

2. Statutory Authorities

- 2.1 The obligations contained in Clause 4 and Schedules 4 to 8 (inclusive) of this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council and County Council.
- 2.2 The obligations contained in Clause 4 and Schedules 4 to 8 inclusive of this Deed are entered into by the Landowner with the intention that these provisions should bind their interests in the freehold of the Application Site as provided by Section 106 of the Act.
- 2.3 Save where otherwise indicated and, where possible, pursuant to the relevant statutory provision, the covenants in this Deed shall be binding on the Landowner and their successors in title to the land stated to be bound.
- 2.4 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions as local planning authority, and the County Council in the exercise of its functions as local highway authority, or under any public or private statute bylaw or regulation.

3. Conditionality

- 3.1 The obligations contained in Clause 4 and Schedules 4 to 8 (inclusive) of this Deed will not have effect unless the Planning Permission has been granted.
- 3.2 The obligations contained in Clause 4 and Schedules 4 to 8 (inclusive) of this Deed will not have effect:
 - 3.2.1 If the Planning Permission shall expire prior to the carrying out of a Material Operation or shall at any time be revoked or modified without agreement this Deed shall forthwith determine and cease to have effect; or
 - 3.2.2 If the Planning Permission is quashed before the carrying out of a Material Operation, then this Deed shall absolutely determine and become null and void but without prejudice to the rights of any Party against the other.

4. Planning Obligations

- 4.1 The obligations contained in this Deed are made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all enabling powers and are enforceable by the Council and the County Council against the Landowner and successors in title and those deriving title from the Landowner.

- 4.2 The Landowner accept the restrictions and requirements in this Clause and:
- 4.2.1 will comply with the planning obligations set out herein and in Schedules 4 to 8 (inclusive) of this Deed; and
 - 4.2.2 will serve a notice upon the Council and the County Council twenty-one (21) days in advance of the first Material Operation taking place in accordance with Clause 9; and
 - 4.2.3 confirm that no person other than the Landowner hold/s an interest of ownership in this Land.

5. Future Chargee

- 5.1 A mortgagee or chargee with a charge over the Application Site or part of the Application Site created after the date of this Agreement shall have no liability under this Agreement unless it takes possession of the Application Site or part thereof or it becomes a mortgagee or chargee in possession in which case it too will be bound by the obligations as if it were a person deriving title from the landowner.

6. Interest and Statements of Account

Without prejudice to any other right remedy or power herein contained or otherwise available to the Council and the County Council if any payment of any sum referred to herein shall have become due but shall remain unpaid for a period exceeding thirty (30) days the Landowner shall pay on demand to the Council or the County Council (as appropriate) interest thereon at the interest rate of five per centum (5%) per annum above the Bank of England Base Rate from the date when the same became due until payment thereof.

7. Obligations after Disposal of Whole or Part

- 7.1 The Landowner shall cease to have any obligation or liability under the terms of this Deed in relation to the Application Site or any part thereof once it shall have parted with all of its interest in the Application Site or that part thereof respectively but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest (but in the case of the any future mortgagee/chargee, only if it takes possession of the Application Site).
- 7.2 Notwithstanding the foregoing sub-clause, the obligations under this Deed shall not be enforceable against any statutory undertaker or public authority which acquires any part of the Application Site or any interest in it for the purposes of its statutory undertaking or functions.
- 7.3. No obligations contained in this Deed shall be binding on any land held by any of the statutory utilities for their operational purposes.

- 7.4 Save for paragraph 7 of Schedule 7, no obligations contained in this Deed shall be binding on any freehold or leasehold owners or occupiers of individual Market Dwellings constructed pursuant to the Planning Permission (or their respective mortgagees).
- 7.5. Save for Schedule 5, paragraphs 4, 5 and 6, no obligations contained in this Deed shall be binding on any owners/occupiers of individual Affordable Dwelling constructed pursuant to the Planning Permission (or their respective mortgagees)
- 7.6 Save for Schedule 6 and paragraph 7 of Schedule 7, no obligations contained in this Deed shall be binding on any First Home Owners or occupiers of individual First Homes constructed pursuant to the Planning Permission (or their respective mortgagees)

8. Change in Ownership

- 8.1. The Landowner agrees to give the Council and the County Council immediate written notice of any change in ownership of any of its interest in the Application Site occurring before all of the obligations under this Deed have been discharged. Such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Application Site or Component purchased by reference to a Plan.

9. Notices

- 9.1 Any notice or other written communication to be served upon or given by one party to any other party hereunder shall be deemed to have been validly served or given in the following circumstances:
- i. if delivered by hand, upon delivery at the address of the relevant party as set out in this deed;
 - ii. if sent by email, delivered in strict accordance with clause 9.2 below; or
 - iii. if sent by first class pre-post to the party upon whom it is to be served or to whom it is to be given within two Working Days after the date of posting;

provided that if in accordance with the above provision any notice or other written communication would otherwise be deemed to be served or given after 4.30 p.m. such notice or other written communication shall be deemed to be served or given at 9.00 a.m. on the next Working Day.

- 9.2 The address for any notice or other written communication shall only be within the

United Kingdom and is:

- i. for the Council: Civic Centre, High Street, Esher, Surrey, KT10 9SD or by e-mail sent to: tplan@elmbridge.gov.uk and quoting the reference given by the Council for the Application for Planning Permission in the subject line
- ii. for the Landowner: to the address at the beginning of this Deed or by email to: lesslie@duparcq.co.uk quoting the reference given by the LPA for the Application for Planning Permission in the subject line;
- iii. for the County Council: to the address at the beginning of this Deed or by e-mail sent to: TDPElmbridge@surreycc.gov.uk and quoting the reference in the Application for Planning Permission.

9.3 In the event that the parties decide that the recipients of any notice or other written communication should change from the individuals and/or contact details referred to in clause 9.2 the parties shall notify each other in writing giving details of the replacement individual(s) and/or contact details.

9.4 This clause 9 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10. VAT

10.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable.

10.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed, then to the extent that VAT has not been charged in respect of that supply, the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

11. General

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

11.2 For the avoidance of doubt the provisions of this Deed (other than those contained in this sub-clause) shall not have any effect until this document has been signed and dated.

11.3 Any covenant in this Deed by which the relevant Party is not to do an act shall be construed as if it were a covenant not to do or permit or suffer to be done such

act.

- 11.4 Any covenant contained herein whereby the relevant Party is not to omit to do an act or thing shall be construed as if it were a covenant not to omit or permit or suffer to be omitted such act.
- 11.5 References to statutes, by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation re-enacting or made pursuant to the same.
- 11.6 References to the Landowner include references to their successors in title as owners of the Application Site or any part thereof and subject to the provisions of clause 7 above this Deed shall bind such successors in title of the Application Site or any part thereof.
- 11.7 Where the agreement, approval, consent or expression of satisfaction is to be given by any party or any person on behalf of any party hereto under this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction may only be given in writing and may be validly obtained only prior to the act or event to which it applies and the party giving such agreement, approval, consent or expression of satisfaction shall at all times act reasonably.

12. Local Land Charges

This Deed is a Local Land Charge and shall be registered as such by the Council in the Local Land Charges Register provided that if the Planning Permission expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 6 of the Local Land Charges Rules 2018 or any statutory re-enactment thereof and the registration shall be cancelled.

13. Contracts (Rights of Third Parties) Act 1999

The parties to this Deed do not intend that the provisions of this Deed shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to this Deed.

14. Council's and County Council's Legal Costs

The Landowner shall pay on the date hereof the Council's and the County Council's reasonable legal costs incurred in the preparation, negotiation, completion, and registration of this Deed.

15. Monitoring Fee for First Homes

The Landowner shall pay to the Council £350.00 per Property, to be paid collectively prior to the 1st First Home Disposal for all First Homes, as a contribution towards the Council's costs incurred in connection with the Council's obligations in relation to Schedule 6 of this Deed.

16. Monitoring Fee for Biodiversity Net Gain

The Landowner shall pay to the Council £4,131.08 (four thousand and one hundred and thirty one pounds and eight pence only) as a contribution towards the Council's costs incurred in connection with the Councils' obligations in relation to Schedule 7 of this Deed

17. Jurisdiction

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

18. Dispute Resolution

18.1 In the event of a disagreement, without prejudice to the Landowner and the Council's and/or the County Council's rights to seek redress through the courts, all disputes or differences arising out of this Deed or as to the rights or obligations of the parties under it or in connection with its construction shall be referred to a person acting as an expert (hereinafter referred to as the "**Expert**") being a person with the relevant experience of the matter in dispute whose identity will be agreed between the Landowner and the Council and/or the County Council or, failing agreement, by an Expert to be appointed at the request of any party by the President of The Royal Institution of Chartered Surveyors as the case may be having due regard to any representations made to him as to the appropriate qualifications of such Expert.

18.2 It is further agreed that: -

18.2.1 the determination of the Expert will be final and binding on the Landowner and the Council and/or the County Council save in the case of manifest error;

18.2.2 the Landowner and the Council and/or the County Council will be entitled to make representations and counter representations (no more than one counter representations each unless the Expert agrees to further counter representations being made) in accordance

- with such timetable as the Expert shall direct; and
- 18.2.3 the Expert's costs will be borne in such proportions as he/she may direct, failing which each party will bear its own costs and an equal proportion each of the Expert's costs.

19. No Fetter of Discretion

Nothing (contained or implied) in this deed shall fetter or restrict the Council's or the County Council's statutory rights, powers, discretions and responsibilities.

20. Appeal: Materiality

If the Secretary of State or his Planning Inspector for the purposes of the determination of the Appeal shall in his decision letter for the Appeal clearly and expressly indicate that one or more of the planning obligations secured by this Deed are incompatible with any one or more of the criteria for planning obligations set out at Regulation 122(2) and/or Regulation 122(2A) of the CIL Regulations, and/or that any such obligation is not a material planning consideration in respect of the determination of the Appeal and/or that he attaches no weight to the relevant obligation(s) for the purposes of his determination then the relevant obligation so expressly specified in the decision letter shall, from the date of the decision letter cease to have effect and the Landowner shall be under no obligation to comply with it (but this shall not affect the validity or enforceability of the other obligations under this Deed) and for the avoidance of doubt where the Secretary of State or his Planning Inspector is silent upon any obligations then the obligations shall apply and be enforceable by the Council and the County Council in accordance with the terms of this Deed.

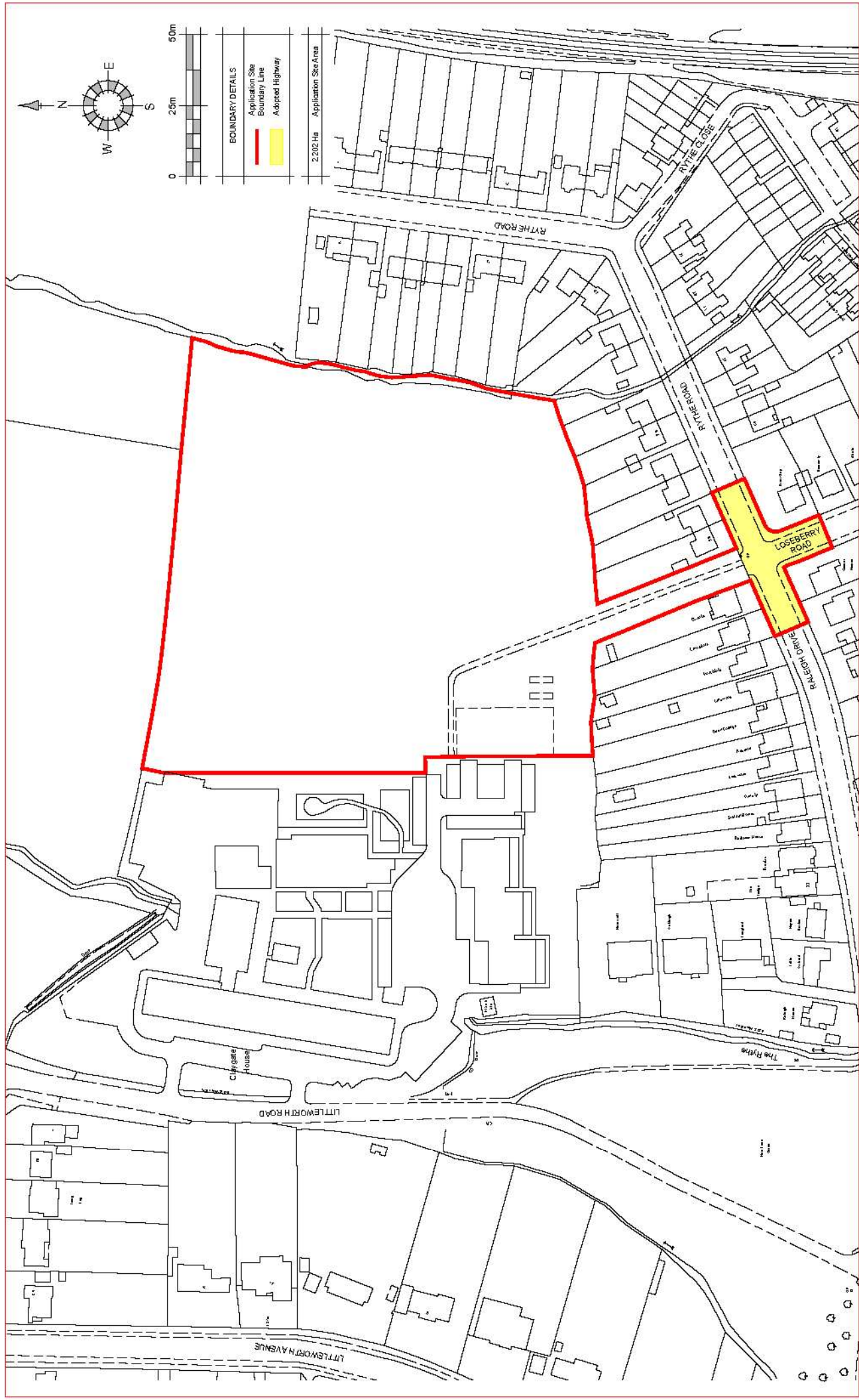
SCHEDULE 1 – THE APPLICATION SITE

All that piece or parcel of land comprising Land at north of Raleigh Drive,
Claygate, Esher Surrey

outlined red for identification purposes only on the Plan being land on which the
Application for Planning Permission is made.

SCHEDULE 2 – Plan and Drawings

- 1. The Plan**
- 2. Site Access Drawing – 170822-03 Rev D**
- 3. Raised Table Traffic Calming - 107822-07 Rev A**
- 4. Carriageway Narrowing and Pedestrian Crossing - 170822-02 Rev F**



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 www.osipartners.com

CLIENT:	Claygate House Investments Ltd and MJS Investments Ltd	PROJECT:	Raleigh Drive Claygate
SCALE:	1:1250 (AS ORIGINAL)	DRAWING:	Site Location Plan
DRAWN:	JG	DRAWING:	S101
DATE:	13 Jun 2022	DRAWING:	D
		PROJECT:	22071

Planning

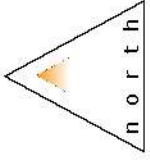
BY: STATUS:

REVISIONS:

REV: DATE:

This drawing may be scaled or cross-referenced to the scale and/or plan for planning purposes only. Do not scale for any other purpose. Use figured dimensions only. Subject to site survey and site location. All dimensions to be checked by user and any discrepancies, errors or omissions to be reported to the architect before work commences. This drawing is to be read in conjunction with all other requirements. OS Licence No: 100019721

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Salford
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GU1 4AU
T: 01483 531 300

Golden Cross House
8 Duncannon Street
London
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T: 020 7031 8141

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Project:

Land North of Raleigh Drive, Claygate

Title:

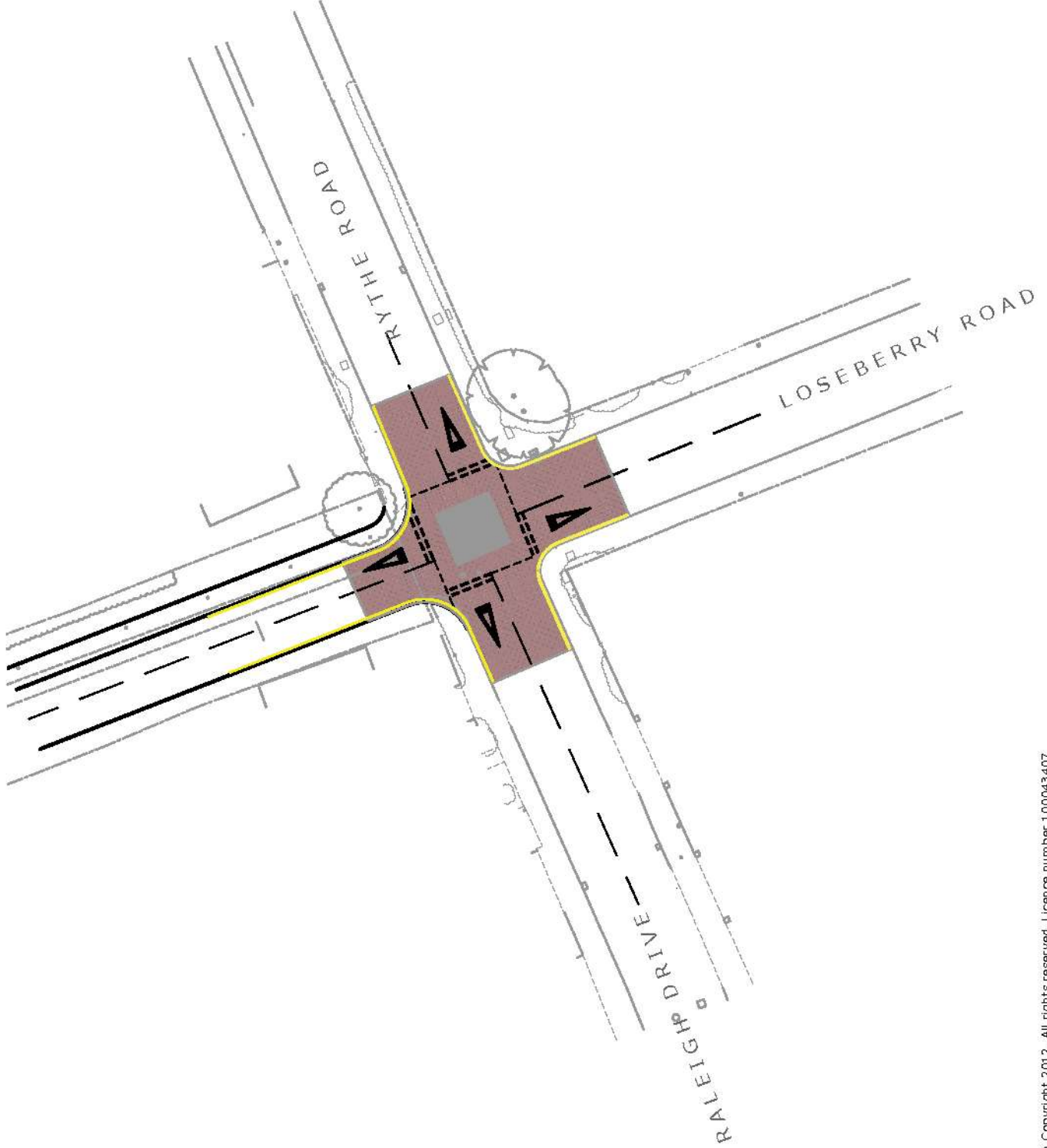
Proposed Crossroads
Access Arrangement

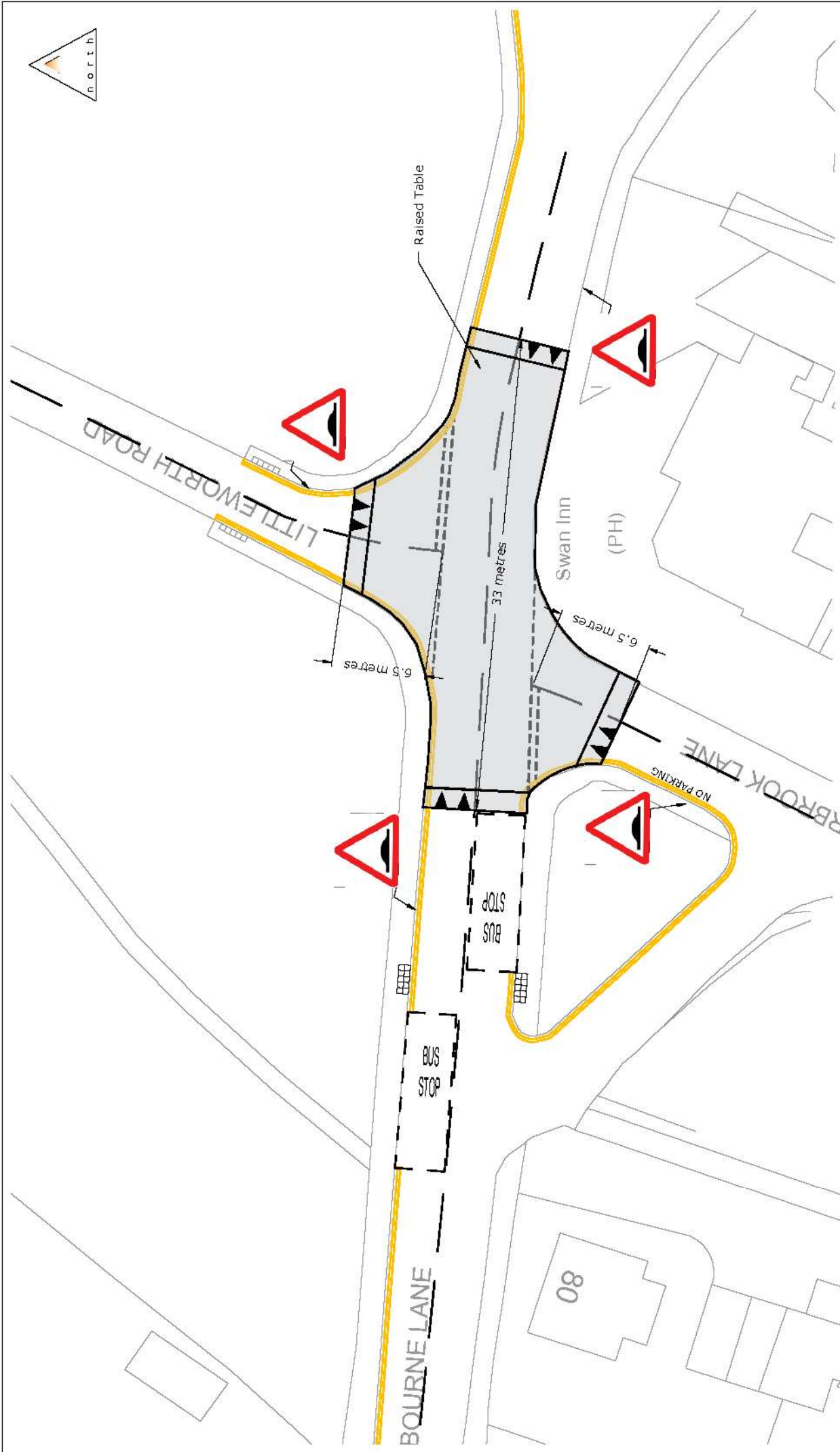
Scale: 1:500 (@ A4)


Drawing:

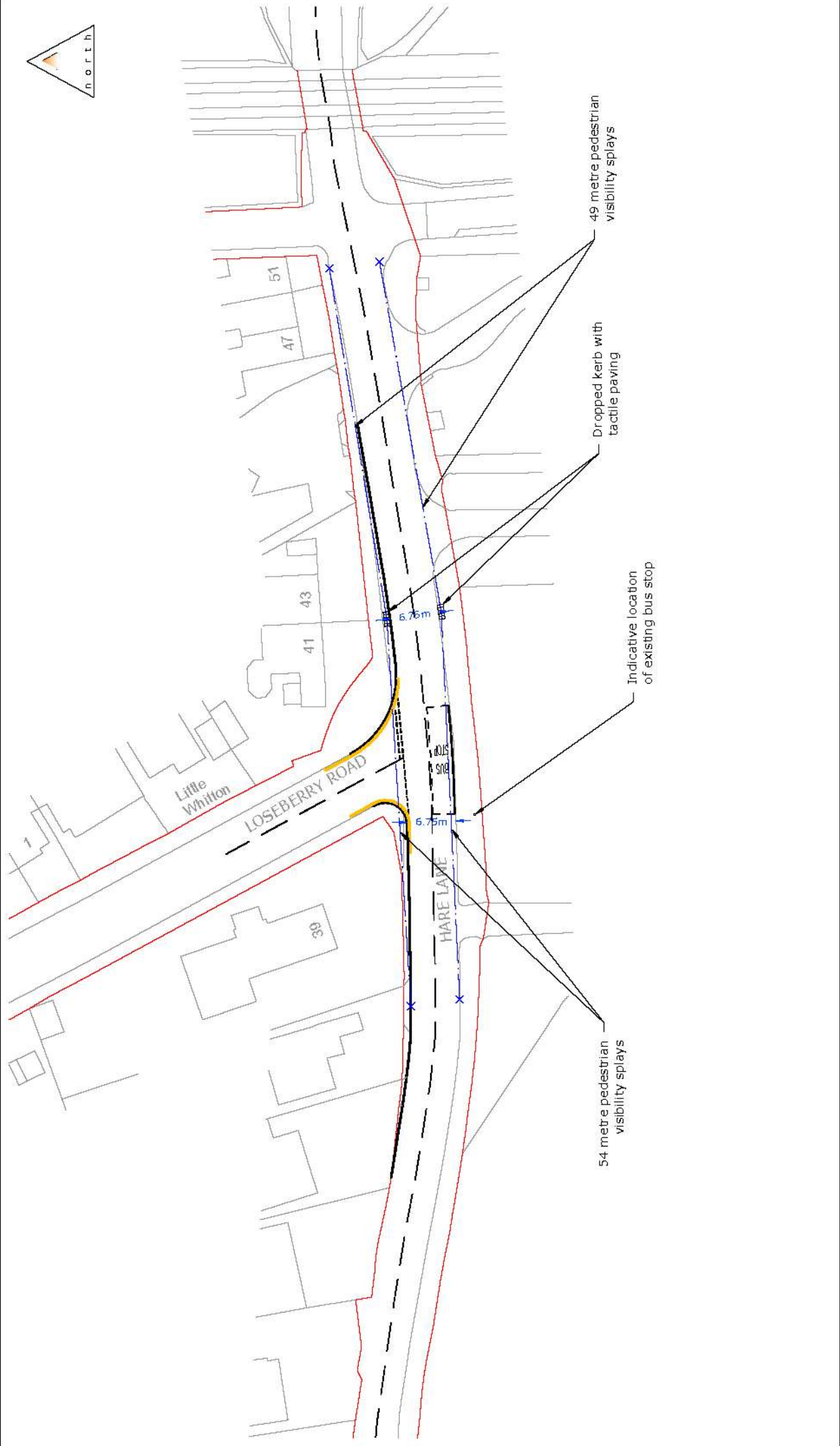
170822-03

Revision:
D





		Project: Land North of Raleigh Drive, Claygate	Revision: A
26 North Street London WC1N 4JF T: 020 8005 1300 www.mdebt.co.uk		Title: Proposed Raised Table Location	Drawing: 170822-07
Golden Cross House 8 Duncannon Road London WC1N 4JF T: 020 8005 1308		Scale: 1:250 (A3)	NOBS:



Project: Land North of Raleigh Drive, Claygate	
Title: Potential Pedestrian Crossing on Hare Lane and Visibility Splays	
Scale: 1:500 (A3)	
Notes:	Revision: 170822-02 F

motion

26 North Street
 Salisbury
 Wiltshire
 SP1 1BA
 T: 01453 331300
 www.motion.co.uk

Golden Cross House
 2 Duncannon Road
 London
 WC1N 4JF
 T: 020 8005 3208

Legend

Highway Boundary

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SCHEDULE 3 – THE PLANNING APPLICATION

The planning application is that submitted by the Landowner applying for planning permission or approval for:

Outline application for up to 60 dwellings and associated landscaping and open space with access from Raleigh Drive

SCHEDULE 4 – COUNCIL PLANNING OBLIGATIONS

The Landowner covenants with the Council to bind the Application Site as follows:

1. to serve on the Council written notification 21 days prior to the following events in accordance with Clause 9:
 - 1.1 Commencement Date;
 - 1.2 first Occupation of the first Dwelling;
 - 1.3 first Disposal of the first Dwelling; and
 - 1.4 50% of the Market Dwellings being Occupied.
2. Upon Commencement of Development, to provide 50% of all Dwellings within the Development as Affordable Housing and the Affordable Housing percentage breakdown shall be provided as follows and on terms in accordance with Schedule 5 and Schedule 6 of this Deed (as applicable):

Table 1

Percentage split of the 50% of all Dwellings	Tenure	
25%	First Homes	
12%	Social Rented Housing	
41%	Affordable Rent	
22%	Shared Ownership	

3. To ensure that all Affordable Dwellings and First Homes comply with the Affordable Housing Standards and Development Standards.
4. To provide an Affordable Housing Plan, and to provide details on the number of bedrooms and size of the Affordable Dwellings and First Homes, to be approved in writing as part of the Landowner's application for reserved matters and in any event approved in writing prior to Commencement of Development.
5. To provide a minimum 50% of the overall Dwellings as the Affordable Housing Contribution made by the Development and as per Table 1 above and in accordance with Schedule 5 and Schedule 6 (as applicable). Where the required percentage of each tenure provides less than a value of a whole First Home or less than the value of an

Affordable Dwelling, the Landowner is to round up as appropriate, including to increase a percentage of one tenure and to reduce a percentage of another tenure so that no less than 50% is provided as Affordable Housing, UNLESS and PURSUANT to the Landowner's application for reserved matters:

- 5.5.1 The Landowner is unable to round up without providing more than 50% of all Dwellings as Affordable Housing; and
- 5.5.2 The Landowner informs the Council that they seek to provide a financial contribution to the equivalent value of the shortfall of the on-site provision of Affordable Housing towards the off-site provision of Affordable Housing; and
- 5.5.3 The Landowner has provided reasons to the Council upon seeking to provide such a financial contribution to make up for the shortfall in the provision of onsite Affordable Housing; and
- 5.5.4 The financial contribution will be calculated in accordance with Core Policy CS21 and the Contributions SPD (2021); and
- 5.5.5 The amount of the financial contribution to be paid shall be the higher of the financial contribution as calculated in accordance with paragraph 5.5.4 or the financial contribution as Indexed and is calculated from the date of agreement until the payment is made (without prejudice to Clause 6); and
- 5.5.6 Subject to paragraphs 5.5.2 and 5.5.3 being agreed by the Council, the Council will confirm in writing that the specific sum calculated in accordance with paragraphs 5.5.4 and 5.5.5 (as appropriate) and is to form the financial contribution to be paid; and
- 5.5.7 The Landowner shall pay the agreed sum of the financial contribution prior to 50% of the Market Dwellings being Occupied or Disposed and shall not permit or cause, allow to permit 50% of the of the Market Dwellings being occupied or disposed unless the financial contribution is paid (including any interest that may have fallen due under Clause 6 of this agreement).

Car Club Obligations

- 6. Not to Occupy or permit to the Occupation of the first Dwelling of the Development until:

- (a) the Landowner has entered into an agreement with a Car Club Operator to provide a Car Club Vehicle with free membership available to Car Club Members for three (3) years together with fifty pounds (£50) worth of drive time credit;
 - (b) the Landowner has submitted to the Council for approval details of how it and/or the Car Club Operator will publicise the Car Club to potential occupiers and occupiers of the Development in accordance with paragraphs 8-9 inclusive of this Schedule;
 - (c) the Landowner has provided one Car Club Space within the Development, and the location of it has been agreed by the Local Planning Authority pursuant to the application for reserved matters, for the benefit of the Car Club Members and Car Club Vehicle and this space shall be retained for a period of a minimum of 3 years from the date of the last Dwelling so Occupied.
7. To give to the Council fourteen (14) days' written notice prior to entering into an agreement with the Car Club Operator of the details of the agreement for approval by the Council and to provide with details of the Car Club Operator and the date of commencement of the Car Club.
8. Within fourteen (14) days of first Occupation of each Dwelling to notify the occupiers of that Dwelling of:
- (a) the availability of the Car Club; and
 - (b) their entitlement to three (3) years free membership of the Car Club and fifty pounds (£50) pounds worth of drive time credit.
9. To provide the first occupiers of each Dwelling within the Development who request it free membership (at a maximum of one membership per Dwelling) of the Car Club for three (3) years commencing on the date upon which they first Occupy the relevant Dwelling PROVIDED THAT the first occupier of the relevant Dwelling:
- (i) has confirmed to the Landowner that it wishes to accept the Car Club membership; and
 - (ii) is legally entitled to drive a motor vehicle.
10. If the Car Club Operator ceases to provide a Car Club to serve the Development and more than three (3) months remain of any three (3) year Car Club membership, the Landowner shall enter into an agreement with an alternative Car Club Operator for the balance of the originally contracted term.
11. To publicise the Car Club to potential occupiers and occupiers in accordance with the details approved by the Council pursuant to paragraph 6(b) of this Schedule.

SCHEDULE 5 – AFFORDABLE HOUSING OBLIGATIONS

For the avoidance of doubt, the obligations contained in Schedule 5 do **not** apply to First Homes. Provision of First Homes is subject to the obligations contained in Schedule 6.

The Landowner covenants with the Council to bind the Application Site as follows:

1. That the Affordable Housing will be built to comply with the Affordable Housing Standards.
2. Upon Commencement to construct the Affordable Dwellings, the location and number to be identified pursuant to any reserved matters approval and pursuant the Affordable Housing Plan to be approved, to be suitable for occupation by wheelchair users and to comply with Building Regulations Operational Requirements Approved Document M4 (3) Category 2: Accessible and Adaptable Dwellings / Category 3: Wheelchair User dwellings (as may be required pursuant to any reserved matters approval) and evidence of compliance shall be notified to the building control body appointed for the development in appropriate full plans Application, or building notice, or initial notice to enable the building control body to check compliance.
3. No more than 50% of the Market Dwellings shall be in Occupation before:
 - 3.1. all the Affordable Dwellings have been constructed in accordance with the Planning Permission and made ready for Occupation and written notification of such has been received by the Council;
 - 3.2. the Landowner has entered into a binding Affordable Housing Contract with a Registered Provider for the transfer of the freehold and / or the grant of a long lease in accordance with the Affordable Homes Programme in force as at the date of the lease of the Affordable Housing Land, including the Affordable Dwellings, on terms that accord with any relevant requirements set down by the Regulator current at the date of construction of the Affordable Dwellings and Affordable Homes Programme and such an Affordable Housing Contract to include the following terms:
 - 3.2.1 That the transfer / lease of the Affordable Housing Land, (including the Affordable Dwellings), to be free from encumbrances save any existing encumbrances and such rights reservations and covenants as are necessary to enable the Landowner to develop the Application Site in accordance with the Planning Permission and shall grant to the

Registered Provider such rights and covenants as are necessary to enable it to complete (and provide) the Affordable Housing.

3.2.2 That the Landowner shall not require the Registered Provider to meet any of the Landowner's legal or other conveyancing costs.

3.2.3 That the Registered Provider shall ensure a housing management contract is set up for the day-to-day management of the Affordable Dwellings.

3.2.4 That the Registered Provider shall enter into a Nominations Agreement a minimum of three months in advance of first Occupation of the Affordable Dwellings which are provided as Affordable Rent or Social Rented Housing.

3.3 That the Affordable Housing Land is transferred into the ownership of the Registered Provider.

4. Subject to paragraph 6 below, that the Affordable Dwellings shall not be used for any other purposes other than as Affordable Housing.

5. Subject to paragraph 6 below, that the Affordable Dwellings that are the subject of this Schedule 5) shall not be occupied unless a prospective occupier constitutes an Eligible Household, as defined, and that such Affordable Dwellings shall only be occupied by such households; and

5.1 Affordable Dwellings provided as Affordable Rent shall be let at gross rents including service charges, which should not exceed the lower of either the 80% of the local market rent or the proportion of the Local Housing Allowance Cap applying to the relevant Dwelling size for the month in which the Dwelling is to be first let, and in accordance with the Nominations Agreement; and

5.2 Affordable Dwellings provided as Social Rented Housing shall be let in accordance with the Nominations Agreement; and

5.3 Affordable Dwellings provided as Shared Ownership Dwelling will be provided by a Shared Ownership Lease.

6. The obligations and restrictions contained in Schedule 5 of this Deed shall not be binding on:

6.1. any Protected Tenant or any mortgagee of a Protected Tenant or any person deriving title from such persons;

- 6.2. any Mortgagee of a Registered Provider providing that such Mortgagee shall have first complied with the provisions of paragraph 7 of Schedule 5 below;
 - 6.3. any successor in title from a mortgagee of an individual Affordable Dwelling;
 - 6.4. any statutory undertakers or utility companies in relation to any part of the Affordable Housing Land required by them for electricity substations and / or for the supply of services.
7. The Affordable Housing provisions in this Schedule 5 shall not be binding on a Mortgagee or Chargee (or any receiver including an administrative receiver) appointed by such Mortgagee or Chargee or any other person appointed under any security documentation to enable such Mortgagee or Chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **'Receiver'**) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such Mortgagee or Chargee or Receiver PROVIDED THAT:
- 7.1. such Mortgagee or Chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Dwelling/s and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwelling/s to another Registered 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; and
 - 7.2. if such disposal has not completed within the three months period, the Mortgagee, Chargee or Receiver shall be entitled to dispose of the Affordable Dwelling/s free from the affordable housing obligations in this Deed which provisions shall determine absolutely.

SCHEDULE 6 – FIRST HOMES OBLIGATIONS

The Landowner covenants with the Council to bind the Application Site as follows:

1. Unless otherwise agreed in writing by the Council, the Landowner and on behalf of itself and its successors in title to the Application Site with the intention that the following provisions shall bind the Application Site and every part of it into whosoever's hands it may come covenants with the Council as below save that:
 - 1.1 paragraphs 2, 3 and 4 shall not apply to a First Homes Owner;
 - 1.2 paragraphs 5 and 6 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and
 - 1.3 paragraph 7 applies as set out therein.

2. Quantum of First Homes

- 2.1 The First Homes shall be provided in accordance with the Affordable Housing Plan and Table 1 of Schedule 4 and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

3. Type and Distribution

- 3.1 The mix of First Homes provided within the Application Site shall be in accordance with the distribution in the Affordable Housing Plan; and as detailed in paragraphs 2, 3, 4, and 5 of Schedule 4.

4. Development Standard

- 4.1 All First Homes shall be constructed to the Development Standard; and no less than the standard applied to the Market Dwellings.
- 4.2 The First Homes shall not be visually distinguishable from the Market Housing based upon their external appearance.
- 4.3 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted.

5. Delivery Mechanism

5.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

5.1.1 the Eligibility Criteria (National), and

5.1.2 The Eligibility Criteria (Local)

5.2 If after a First Home has been actively marketed for 3 months (and in the case of a 1st First Home Disposal of a First Home the three (3) months period shall expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 5.1.2 shall cease to apply.

5.3 Subject to paragraphs 5.6 to 5.10, no First Home shall be First Home Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a First Home Mortgagee.

5.4 No First Home shall be First Home Disposed of (whether on a first or any subsequent sale) unless and until:

5.4.1 the Council has been provided with evidence that:

5.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 5.2 applies meets the Eligibility Criteria (Local) if any

5.4.1.2 the Dwelling is being First Home Disposed of as a First Home at the Discount Market Price and

5.4.1.3 the transfer of the First Home includes:

a) a definition of the "Council" which shall be Elmbridge Borough Council

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in clauses 5.1 to 5.10 of Schedule 6 of the S106 Agreement a copy of which is attached hereto as the Annex".

c) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [_____] made between (1) the Council [and] (2) _____ [and] (3) _____

d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise First Home Dispose of the Property or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annex.

5.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty-eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 5.3 and 5.4.1 have been met.

5.5 On the 1st First Home Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Elmbridge Borough Council of Civic Centre, High Street, Esher, Surrey, KT10 9SD or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [_____] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

5.6 The owner of a First Home (which for the purposes of this clause shall include the Landowner and any First Homes Owner) may apply to the Council to dispose of it other than as a First Home on the grounds that either:

5.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clause 5.1 and 5.2 (and in the case of a 1st First Home Disposal of a First Home the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to dispose of the Dwelling as a First Home but it has not been possible to dispose of that Dwelling as a First Home in accordance with paragraphs 5.3 and 5.4.1; or

5.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 5.6.1 before being able to First Home Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.

- 5.7 Upon receipt of an application served in accordance with paragraph 5.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price.
- 5.8 If the Council is satisfied that either of the grounds in paragraph 5.6 above have been made out it shall confirm in writing within twenty-eight (28) days of receipt of the written request made in accordance with paragraph 5.6 that the relevant Dwelling may be First Home Disposed of:
- 5.8.1 to the Council at the Discount Market Price; or
- 5.8.2 if the Council confirms that it does not wish to acquire the relevant Dwelling, other than as a First Home
- and on the issue of the written confirmation the obligations in this Deed, which apply to First Homes, shall cease to bind and shall no longer affect that Dwelling apart from where paragraph 5.8.2 applies then paragraph 5.10 shall cease to apply on receipt of payment of the Additional First Homes Contribution by the Council where the relevant Dwelling is First Home Disposed of other than as a First Home.
- 5.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 5.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.6, serve notice on the owner of the First Home setting out the further steps it requires the owner of the First Home to take to secure First Home Disposal as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period, the owner of the First Home has been unable to First Home Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 5.6 following which the Council must, within 28 days, issue confirmation in writing that the Dwelling may be First Home Disposed of other than as a First Home.
- 5.10 Where a Dwelling is First Home Disposed of other than i) as a First Home or ii) to the Council at the Discount Market Price in accordance with paragraphs 5.8 or 5.9 above, the owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.
- 5.11 Upon receipt of the Additional First Homes Contribution the Council shall:
- 5.11.1 within 10 working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 5.5 where such restriction has previously been registered against the relevant title;

5.11.2 apply all monies received towards the provision of Affordable Housing.

5.12 Any person who purchases a First Home free of the restrictions in Schedule 6 of this Deed pursuant to the provisions in paragraphs 5.8 and 5.9 shall not be liable to pay the Additional First Homes Contribution to the Council.

6. Use

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise First Home Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 6.1 – 6.4 below.

6.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

6.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
- c) the First Homes Owner is reasonably required to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- d) the First Homes Owner is reasonably required to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- e) the First Homes Owner is reasonably required to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and

- f) the First Homes Owner is reasonably required to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 6.3 A letting or sub-letting permitted pursuant to paragraph 6.1 or 6.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 6.4 Nothing in this paragraph 6 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

7. First Home Mortgagee Exclusion

The obligations in paragraphs 1-6 of this Schedule in relation to First Homes shall not apply to any First Home Mortgagee or any receiver (including an administrative receiver appointed by such First Home Mortgagee or any other person appointed under any security documentation to enable such First Home Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver))) of any individual First Home or any persons or bodies deriving title through such First Home Mortgagee or Receiver PROVIDED THAT:

- 7.1 such First Home Mortgagee or Receiver shall first give written notice to the Council of its intention to First Home Dispose of the relevant First Home; and
- 7.2 once notice of intention to First Home Dispose of the relevant First Home has been given by the First Home Mortgagee or Receiver to the Council the First Home Mortgagee or Receiver shall be free to sell that First Home at its full Market Value **of the First Home** and subject only to paragraph 7.3;
- 7.3 following the First Home Disposal of the relevant First Home, the First Home Mortgagee or Receiver shall, following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses, pay to the Council the Additional First Homes Contribution;
- 7.4 following receipt of notification of the First Home Disposal of the relevant First Home the Council shall:
 - 7.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 5.5; and
 - 7.4.2 apply all such monies received (i.e. the Additional First Home Contribution) towards the provision of Affordable Housing.

SCHEDULE 7 –BIODIVERSITY NET GAIN OBLIGATIONS

The Landowner covenants with the Council as follows:

1. The definitions for the purposes of this Schedule 7 are as follows:

"BNG Metric For The Appeal

Scheme"

means the statutory biodiversity metric dated 7th February 2024 submitted in evidence at Appendix E to Document SB1 and accompanying the Proof of Evidence of Mr Steven Brown submitted by on behalf of the Owner as part of the Appeal a summary of which is annexed to this Deed in the Annex 1 to Schedule 7 .

"Biodiversity Metric"

means the version of DEFRA's statutory biodiversity metric in force at the date of the applications for reserved matters approval

"Biodiversity Net Gain Plan"

means a scheme to be approved in writing by the Council to achieve a minimum 10% biodiversity net gain above the Biodiversity Pre-Development Site Value in accordance with the Biodiversity Metric (including the Trading Rules) in relation to the Development using on-site and off-site mitigation measures, comprising:

- (a) On-Site Biodiversity Mitigation and/or Enhancement Works; and
- (b) Off-Site Biodiversity Mitigation and/or Enhancement Works in the event that the said 10% biodiversity net gain in accordance with the Biodiversity Metric (including the Trading Rules) cannot be achieved wholly within the Development site boundaries; and
- (c) the On-Site Biodiversity Mitigation and Enhancement Specification and the On-

Site Biodiversity Management and Maintenance Plan and

- (d) the Off-Site Biodiversity Mitigation and Enhancement Specification and the Off-Site Biodiversity Management and Maintenance Plan (where (b) above applies).

“Biodiversity Pre-Development Site Value”

means 14.3 Habitat Units, 1.56 Hedgerow Units and 0.51 River Units, being the biodiversity value of the Application Site prior to the Development and calculated as part of the Planning Application and Appeal as set out in the BNG Metric For The Appeal Scheme

“Biodiversity Units”

means the measure of biodiversity resource quantified and assessed in accordance with the Biodiversity Metric which encompasses three sub-categories: “Habitat Units”, “Hedgerow Units” and “River Units”.

“The Biofarm Scheme”

means the Biofarm Preliminary Off-Site BNG Delivery Strategy relating to land at Clandon, Guildford KT24 6AR as annexed to this Deed in Annex 2 of Schedule 7

“Monitoring Reports”

means the reports on the performance of the Off-Site Biodiversity Management and Maintenance Plan during the 30 years period from completion of the Off-site Biodiversity Mitigation Works; and such reports to be provided to the Council in the years 2, 5, 10, 15, 20, 25 and 30 and for such reports to be reviewed by the Council or a suitably qualified ecologist instructed on their behalf.

“Monitoring Site Visits”

means site visits carried out by the Council or by a suitably qualified ecologist instructed on their behalf in years 1, 5, 15, 25 and 30 and a sixth (6th) site visit at an unspecified time during the 30 years period from completion of the Off-Site Biodiversity Mitigation and Enhancement Works.

<p>“Off-Site Biodiversity Mitigation and Enhancement”</p>	<p>means habitat creation or enhancement to compensate for lost Biodiversity Units from the Development to be delivered within the Off-Site Biodiversity Land.</p>
<p>“Off-Site Biodiversity Land”</p>	<p>means that area of land the subject of the Off-Site Biodiversity Mitigation and/or Enhancement Works; the Off-Site Biodiversity Mitigation and Enhancement Specification and the Off-Site Biodiversity Management and Maintenance Plan and such land shall be either comprised of:</p> <ul style="list-style-type: none"> i) the appropriate area of land provided by the Biofarm Scheme to achieve at least a 10% net gain above the Biodiversity Pre-Development Site Value when combined with any On-Site Biodiversity Mitigation and Enhancement, and calculated in accordance with the Biodiversity Metric (including the Trading Rules); and/ or ii) any other area of land as may be approved by the Council in writing to achieve at least 10% net gain above the Biodiversity Pre-Development Site Value when combined with any On-Site Biodiversity Mitigation and Enhancement calculated in accordance with the Biodiversity Metric (including the Trading Rules) <p>to be approved by the Council as part of the Biodiversity Net Gain Plan</p>
<p>"Off-Site Biodiversity Land Owner”</p>	<p>means the owner of the land for the Off-Site Biodiversity Land</p>
<p>“Off-Site Biodiversity Mitigation</p>	

and/or Enhancement Works” means works to be carried out in accordance with the Off-Site Biodiversity Mitigation and Enhancement Specification to deliver the Off-Site Biodiversity Mitigation and Enhancement on the Off-Site Biodiversity Land

“Off-Site Biodiversity Mitigation and Enhancement Specification”

means a specification prepared by a suitably qualified ecologist for the Off-Site Biodiversity Mitigation and/or Enhancement Works demonstrating that the proposals will in combination with any On -Site Biodiversity Mitigation and/or Enhancement Works deliver measurable biodiversity net gain of at least 10% above the Biodiversity Pre-Development Site Value calculated in accordance with the Biodiversity Metric (including the Trading Rules).

“Off-Site Biodiversity Management and Maintenance Plan”

means a management and monitoring plan for all Off-Site Biodiversity Mitigation and/or Enhancement Works including 30 year objectives, management responsibilities, maintenance schedules and a methodology to ensure the submission of monitoring reports from first Occupation of Development, demonstrating how the Off-Site Biodiversity Mitigation and/or Enhancement Works are progressing towards achieving their objectives, and any rectifying measures needed and to include details for the set up and incorporation of a management company to ensure that the operation of the management and monitoring plan is run by the owners and occupiers of the Development

“On-Site Biodiversity Mitigation and Enhancement”

means habitat creation and enhancement with the effect of avoiding, reducing and compensating for lost habitat and biodiversity from the Development to be delivered within the On-Site Biodiversity Land

- “On-Site Biodiversity Mitigation and/or Enhancement Works” means works to be carried out in accordance with the On-Site Biodiversity Mitigation and Enhancement Specification to deliver the On-Site Biodiversity Mitigation and Enhancement on the On-Site Biodiversity Land
- “On-Site Biodiversity Land” means that area of land within the Development being the subject of the On-Site Biodiversity Mitigation and/or Enhancement Works, the On-Site Biodiversity Mitigation and Enhancement Specification and the On-Site Biodiversity Mitigation Management and Maintenance Plan
- “On-Site Biodiversity Management and Maintenance Plan” means a management and monitoring plan for all On-Site Biodiversity Mitigation and/or Enhancement Works including 30 year objectives, management responsibilities, maintenance schedules and a methodology to ensure the submission of monitoring reports from first Occupation of Development, demonstrating how the On-Site Biodiversity Mitigation and/or Enhancement Works are progressing towards achieving their objectives and any rectifying measures needed and to include details for the set up and incorporation of a management company to ensure that the operation of the management and monitoring plan is run by the owners and occupiers of the Development
- “On-Site Biodiversity Mitigation and Enhancement Specification” means a specification prepared by a suitably qualified ecologist for the On-Site Biodiversity Mitigation and/or Enhancement Works demonstrating that the proposals will in combination with any Off-Site Biodiversity Mitigation and/or Enhancement Works deliver measurable biodiversity net gain of at least 10%

above the Biodiversity Pre-Development Site Value calculated in accordance with the Biodiversity Metric- (including Trading Rules)

“Trading Rules”

means the the trading rules which are included within the Biodiversity Metric and which set minimum habitat creation and enhancement requirements to compensate for specific habitat losses based on the habitat type and distinctiveness of the lost habitat.

2. Prior to the Commencement of Development the Landowner shall submit to the Council the Biodiversity Net Gain Plan for approval.
3. Not to cause or permit the Commencement of Development unless the Council has approved in writing the Biodiversity Net Gain Plan submitted pursuant to paragraph 2 above .
4. Not to cause or permit the Commencement of Development until:
 - 4.1 such time that evidence has been provided to, and has been approved by, the Council in writing which brings into effect the Off-Site Biodiversity Land and related Off Site Biodiversity Mitigation and/or Enhancement Works for a period of 30 years from the date of the of receipt of the written confirmation received from the Council as referred to in paragraph 6 below and at Landowners' expense. Such evidence is to include legal agreement(s) securing the Off-Site Biodiversity Land for a period of 30 years and arrangements for the management, maintenance and retention of the specific measures set out in the approved scheme for Off-Site Biodiversity Mitigation and Enhancement, including Monitoring Site Visits and the provision of Monitoring Reports to the Council on the monitoring of the Off-Site Biodiversity Land and the Off-Site Biodiversity Management and Maintenance Plan for a period of 30 years; and
 - 4.2 The monitoring fee has been paid in accordance with Clause 16 above.
5. Not to cause or permit first to Occupation of the Development until evidence has been provided to the Council in writing that the following works have been carried out in accordance with the Biodiversity Net Gain Plan as approved by the Council pursuant to paragraphs 2 and 3 above:
 - (a) the On-Site Biodiversity Mitigation and/or Enhancement Works and
 - (b) the Off-Site Biodiversity Mitigation and/or Enhancement Works
6. Not to cause or permit the first Occupation of the Development unless the Council has confirmed in writing that the On-Site Biodiversity Mitigation and/or Enhancement Works and Off-Site Biodiversity Mitigation and/or Enhancement Works as comprised

in the Biodiversity Net Gain Plan, as set out in paragraph 5 above, and have been carried out to the reasonable satisfaction of the Council in accordance with the Biodiversity Net Gain Plan.

7. To manage and maintain the On-Site Biodiversity Mitigation and/or Enhancement Works in accordance with the approved On-Site Management and Maintenance Plan and not to permit use of the On-Site Biodiversity Land other than in accordance with the On-Site Management and Maintenance Plan and for a period of 30 years from the date of the receipt of the written confirmation received from the Council as referred to in paragraph 6 above.

SCHEDULE 8 – COUNTY COUNCIL PLANNING OBLIGATIONS

The Landowner covenants with the County Council to bind the Application Site as follows:

Site Access Junction Arrangements

1. To submit a scheme for the provision of the access to the Development in the form of a 4-arm junction at Raleigh Drive/Loseberry Road/Rythe Road as shown in principle on drawing number 170822-03 Rev D (and which is appended to this Deed) to the County Council for approval prior to Commencement of Development and not to Commence Development until such scheme has been submitted to and approved in writing by the County Council.
2. To construct the scheme referred to in paragraph 1 above such that a provisional certificate for the works has been issued by the County Council in accordance with the terms of a Section 278 Agreement prior to Occupation of the Development and not to Occupy the Development until a provisional certificate for the works has been issued by the County Council.

Raised Table Traffic Calming Facility

3. To submit a scheme for the provision of a 'raised table' traffic calming facility within the existing highway boundary at the junction of Hare Lane/Littleworth Road/Arbrook Lane as shown in principle on submitted drawing number 170822-07 Rev A (and which is appended to this Deed) to the County Council for approval prior to Commencement of Development and not to Commence Development until such scheme has been submitted to and approved in writing by the County Council.
4. To construct the scheme referred to in paragraph 3 above such that a provisional certificate for the works has been issued by the County Council in accordance with the terms of a Section 278 Agreement prior to Occupation of the Development and not to Occupy the Development until a provisional certificate for the works has been issued by the County Council.

Carriageway Narrowing And Pedestrian Crossing Facilities

5. To submit a scheme for the narrowing of the carriageway on Hare Lane within the existing highway boundary and associated non-signalised pedestrian crossing facilities on Hare Lane, as shown in principle on submitted drawing number 170822-02 Rev E (and which is appended to this Deed) to the County Council for approval prior to Commencement of Development and not to Commence Development until such scheme has been submitted to and approved in writing by the County Council.

6. To construct the scheme referred to in paragraph 5 above such that a provisional certificate for the works has been issued by the County Council in accordance with the terms of a Section 278 Agreement prior to Occupation of the Development and not to Occupy the Development until a provisional certificate for the works has been issued by the County Council.

Traffic Regulation Order and Signage Contribution

7. To pay to the County Council the Traffic Regulation Order and Signage Contribution prior to the Commencement of Development.
8. Not to Commence the Development until the Traffic Regulation and Signage Contribution has been paid to the County Council.

Travel Monitoring Fee

9. To pay to the County Council Travel Plan Monitoring Contribution prior to the Commencement of Development.
10. Not to Commence Development until the Travel Plan Monitoring Contribution has been paid to the County Council.

County Council Covenants

11. The County Council covenants with the Landowner that in the event that the total costs of progressing and implementing a traffic regulation order required as a result of the Development is less than the amount of the Traffic Regulation Order and Signage Contribution paid by the Landowner to the County Council pursuant to paragraph 7 above, the County Council shall return any unexpended balance thereof to the person who paid the Traffic Regulation Order and Signage Contribution within 28 Working Days of a written request to be made following the conclusion of the traffic regulation order process and implementation of the order as appropriate and for the avoidance of doubt the Landowner shall be responsible for the costs incurred by the County Council in progressing a traffic regulation order whether or not the traffic regulation order is made and/or implemented.

ANNEX TO SCHEDULE 6 - COMPLIANCE CERTIFICATE

FIRST HOMES COMPLIANCE CERTIFICATE

Date:	[]
To:	[Buyer's conveyancer]
	[Builder's/Seller's conveyancer]
	[Buyer's mortgage advisor]
	[First Home Buyer(s)]
First Homes Buyer(s) name(s) (the proposed First Homes Owner(s)):	[]
First Home property to be purchased:	[plot number & site name/address]
Copied to:	[First Homes Buyer(s) current address before purchase] [First Homes house builder]

The proposed First Homes Buyer(s) First Homes application has been approved by Elmbridge Borough Council pursuant to the supplemental agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to [details of site] dated [date] and made between [parties] and this Compliance Certificate issued to the proposed First Homes Buyer(s) and their conveyancer by Elmbridge Borough Council as follows:

First Homes Buyer(s) name(s) (the proposed First Homes Owner(s))	[Full Names]
[Landowner /developer] [Current First Homes Owner]	[developer/Seller]
First Home property to be purchased:	[plot number & site name/address]
First Home forecast purchase legal completion date:	
Market value of First Home (100% of value)	[£]
First Homes discount %	30%
First Homes Purchase Price (price to be paid by the proposed First Homes Buyer(s) applying the First Homes discount to the Market value of First Home)	[£])
Proposed date of exchange of contracts	
Proposed date of completion	

This **COMPLIANCE CERTIFICATE** is issued by Elmbridge Borough Council and confirms that a Dwelling is being disposed of to the First Home Buyer(s) specified in this Compliance Certificate who meet the:

- a. Eligibility Criteria (National); and
- b. Eligibility Criteria (Local)

As set out in full in the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to [*details of site*] dated [*date*] and made between [*parties*] ("**Planning Obligations**").

The First Homes Buyer(s) (the new First Homes Owner) has provided all the necessary First Homes confirmations and declarations of eligibility required by Elmbridge Borough Council and the First Homes Buyer(s) solicitor has confirmed that the transfer to the First Home Buyer(s) will comply with the requirements in Planning Obligations in relation to the Property.

Yours sincerely

Name:	
Signed:	
For and on behalf of:	Elmbridge Borough Council
Dated:	

ANNEX 1 TO SCHEDULE 7 - BNG Metric For The Appeal Scheme

The Statutory Biodiversity Metric

Start page

Main menu

Results

View all

Reset view

Project details			
Planning authority:	Elmbridge Borough Council		
Project name:	Land north of Raleigh Drive, Claygate		
Applicant:	Claygate House Investments Ltd and MJS Investments Ltd		
Application type:	Outline		
Planning application reference:	2023/0962		
Completed by:	Sophie Vines / Jodie Van Gramberg		
Date of metric completion:	07 February 2024		
Reviewer:	Mark Rose MICIEM		
Calculation iteration:	3		
Planning authority reviewer:			
Date of planning authority review:			
Target % net gain:	10%		
Irreplaceable habitat present at baseline:	No ✓		
Total site area - including irreplaceable habitat area (hectares):	2.06	Irreplaceable habitat site area (hectares):	0.00
Total off-site area - including irreplaceable habitat area (hectares):	1.42	Irreplaceable habitat area off-site (hectares):	N/A

Cell style conventions	
A	Attention required
▲	Input error/rules and principles not met
	Use of this cell is not appropriate
	Enter data
	Automatic lookup
	Result

Headline Results

Scroll down for final results ▲

Return to results menu

On-site baseline	Habitat units	14.30
	Hedgerow units	1.56
	Watercourse units	0.51

On-site post-intervention (Including habitat retention, creation & enhancement)	Habitat units	10.79
	Hedgerow units	2.09
	Watercourse units	0.95

On-site net change (units & percentage)	Habitat units	-3.51	-24.56%
	Hedgerow units	0.53	33.76%
	Watercourse units	0.44	86.72%

Un-site net gain is less than target
cat A

Off-site baseline	Habitat units	3.12
	Hedgerow units	0.00
	Watercourse units	0.00

Off-site post-intervention (Including habitat retention, creation & enhancement)	Habitat units	13.13
	Hedgerow units	0.00
	Watercourse units	0.00

Off-site net change (units & percentage)	Habitat units	10.00	320.17%
	Hedgerow units	0.00	0.00%
	Watercourse units	0.00	0.00%

Combined net unit change (Including all on-site & off-site habitat retention, creation & enhancement)	Habitat units	6.49
	Hedgerow units	0.53
	Watercourse units	0.44

Spatial risk multiplier (SRM) deductions	Habitat units	0.00
	Hedgerow units	0.00
	Watercourse units	0.00

Combined net unit change (Including all on-site & off-site habitat retention, creation & enhancement)	Habitat units	6.49
	Hedgerow units	0.53
	Watercourse units	0.44
Spatial risk multiplier (SRM) deductions	Habitat units	0.00
	Hedgerow units	0.00
	Watercourse units	0.00

FINAL RESULTS		
Total net unit change (Including all on-site & off-site habitat retention, creation & enhancement)	Habitat units	6.49
	Hedgerow units	0.53
	Watercourse units	0.44
Total net % change (Including all on-site & off-site habitat retention, creation & enhancement)	Habitat units	45.41%
	Hedgerow units	33.76%
	Watercourse units	86.72%
Trading rules satisfied?	Yes ✓	

Unit Type	Target	Baseline Units	Units Required	Unit Deficit
Habitat units	10.00%	14.30	15.73	0.00
Hedgerow units	10.00%	1.56	1.72	0.00
Watercourse units	10.00%	0.51	0.56	0.00

No additional area habitat units required to meet target ✓
 No additional hedgerow units required to meet target ✓
 No additional watercourse units required to meet target ✓

Trading Summary

Distinctiveness Group	Trading Rule	Trading Satisfied?
Very High	Same habitat required – bespoke compensation option Δ	Yes ✓
High	Some habitat required =	Yes ✓
Medium	Same broad habitat or a higher distinctiveness habitat required E	Yes ✓
Low	Same distinctiveness or better habitat required Z	Yes ✓

Very High Distinctiveness

habitat group	group	On-site unit change	Off-site unit change	Project-wide unit change	unit losses
Grassland - Lowland dry acid grassland	Grassland	0.00	0.00	0.00	
Grassland - Lowland meadows	Grassland	0.00	0.00	0.00	
Grassland - Upland hay meadows	Grassland	0.00	0.00	0.00	
Heathland and shrub - Mountain heaths and willow scrub	Heathland and shrub	0.00	0.00	0.00	
Lakes - Aquifered naturally fluctuating waterbodies	Lakes	0.00	0.00	0.00	
Sparsely vegetated land - Callunetum grasslands	Sparsely vegetated land	0.00	0.00	0.00	
Sparsely vegetated land - Limestone pavement	Sparsely vegetated land	0.00	0.00	0.00	
Wetland - Blanket bog	Wetland	0.00	0.00	0.00	
Wetland - Depressions on peat substrates (F7150)	Wetland	0.00	0.00	0.00	
Wetland - Fen (upland and lowland)	Wetland	0.00	0.00	0.00	
Wetland - Lowland raised bog	Wetland	0.00	0.00	0.00	
Wetland - Oceanic valley mire [J] (D2.1)	Wetland	0.00	0.00	0.00	
Wetland - Purple moor grass and rush pastures	Wetland	0.00	0.00	0.00	
Wetland - Transition mires and quaking bogs (H7150)	Wetland	0.00	0.00	0.00	
Woodland and forest - Wood-pasture and parkland	Woodland and forest	0.00	0.00	0.00	
Rocky shore - High energy littoral rock - on peat, clay or chalk	Rocky shore	0.00	0.00	0.00	
Rocky shore - Moderate energy littoral rock - on peat, clay or chalk	Rocky shore	0.00	0.00	0.00	
Rocky shore - Low energy littoral rock - on peat, clay or chalk	Rocky shore	0.00	0.00	0.00	
Rocky shore - Features of littoral rock - on peat, clay or chalk	Rocky shore	0.00	0.00	0.00	
Intertidal sediment - Littoral seagrass on peat, clay or chalk	Intertidal sediment	0.00	0.00	0.00	0.00

Very High Distinctiveness Summary

Very High Distinctiveness Units available to offset lower distinctiveness deficit:	0.00
Remaining losses; Like for like not satisfied	0.00

Medium Distinctiveness

Habitat group	Group	On-site unit change	Off-site unit change	Project wide unit change	Cumulative broad habitat change
Cropland - Arable field margins cultivated annually	Cropland	0.00	0.00	0.00	0.00
Cropland - Arable field margins game bird mix	Cropland	0.00	0.00	0.00	0.00
Cropland - Arable field margins pollen and nectar	Cropland	0.00	0.00	0.00	0.00
Cropland - Arable field margins tussocky	Cropland	0.00	0.00	0.00	0.00
Grassland - Other lowland acid grassland	Grassland	0.00	0.00	0.00	0.00
Grassland - Other neutral grassland	Grassland	-9.22	13.15	3.91	3.91
Grassland - Upland acid grassland	Grassland	0.00	0.00	0.00	0.00
Heathland and shrub - Blackthorn scrub	Heathland and shrub	0.00	0.00	0.00	0.00
Heathland and shrub - Bramble scrub	Heathland and shrub	-0.44	0.00	-0.44	0.00
Heathland and shrub - Gorse scrub	Heathland and shrub	0.00	0.00	0.00	0.00
Heathland and shrub - Hawthorn scrub	Heathland and shrub	0.00	0.00	0.00	0.00
Heathland and shrub - Willow scrub	Heathland and shrub	0.00	0.00	0.00	0.00
Heathland and shrub - Hazel scrub	Heathland and shrub	0.00	0.00	0.00	0.00
Heathland and shrub - Mixed scrub	Heathland and shrub	0.83	0.00	0.83	0.00
Lakes - Ponds (not priority habitat)	Lakes	0.00	0.00	0.00	0.00
Lakes - Reservoirs	Lakes	0.00	0.00	0.00	0.00
Sparsely vegetated land - Other inland rock and scree	Sparsely vegetated land	0.00	0.00	0.00	0.00
Urban - Cemeteries and churchyards	Urban	0.00	0.00	0.00	0.00
Urban - Biodiverse green roof	Urban	0.00	0.00	0.00	0.00
Individual trees - Urban tree	Individual trees	4.38	0.00	4.38	4.38
Individual trees - Rural tree	Individual trees	0.00	0.00	0.00	0.00
Woodland and forest - Other Scots pine woodland	Woodland and forest	0.00	0.00	0.00	0.00
Woodland and forest - Other woodland; broadleaved	Woodland and forest	0.00	0.00	0.00	0.00
Woodland and forest - Other woodland; mixed	Woodland and forest	0.00	0.00	0.00	0.00
Intertidal sediment - Littoral coarse sediment	Intertidal sediment	0.00	0.00	0.00	0.00
Intertidal sediment - Littoral sand	Intertidal sediment	0.00	0.00	0.00	0.00
Intertidal hard structures - Artificial hard structures with integrated greening or grey infrastructure (IGSI)	Intertidal hard structures	0.00	0.00	0.00	0.00
		4.45	13.13	8.57	8.57

Medium Distinctiveness Summary	
Medium Distinctiveness Units available to offset Lower Distinctiveness Deficit	8.57
Medium Distinctiveness Broad Habitat losses to be offset by trading up	0.00
Higher Distinctiveness Surplus Units minus Medium Distinctiveness Broad Habitat Deficit	0.00
Cumulative surplus of units	8.57

Low Distinctiveness

Habitat group	Group	On-site unit change	Off-site unit change	Project wide unit change
Cropland - Cereal crops	Cropland	0.00	-3.12	-3.12
Cropland - Horticulture	Cropland	0.00	0.00	0.00
Cropland - Intensive orchards	Cropland	0.00	0.00	0.00
Cropland - Non-cereal crops	Cropland	0.00	0.00	0.00
Cropland - Temporary grass and clover leys	Cropland	0.00	0.00	0.00
Cropland - Winter stubble	Cropland	0.00	0.00	0.00
Grassland - Modified grassland	Grassland	0.23	0.00	0.23
Grassland - Bracken	Grassland	0.00	0.00	0.00
Heathland and shrub - Rhododendron scrub	Heathland and shrub	0.00	0.00	0.00
Lakes - Ornamental lake or pond	Lakes	0.00	0.00	0.00
Sparsely vegetated land - Ruderal/ephemeral	Sparsely vegetated land	0.00	0.00	0.00
Sparsely vegetated land - Tall forbs	Sparsely vegetated land	0.00	0.00	0.00
Urban - Bioswale	Urban	0.00	0.00	0.00
Urban - Bare ground	Urban	0.00	0.00	0.00
Urban - Allotments	Urban	0.00	0.00	0.00
Urban - Facade-bound green wall	Urban	0.00	0.00	0.00
Urban - Ground based green wall	Urban	0.00	0.00	0.00
Urban - Ground level planters	Urban	0.00	0.00	0.00
Urban - Other green roof	Urban	0.00	0.00	0.00
Urban - Intensive green roof	Urban	0.00	0.00	0.00
Urban - Introduced shrub	Urban	0.00	0.00	0.00
Urban - Rain gardens	Urban	0.00	0.00	0.00
Urban - Actively worked sand pit quarry or open cast mine	Urban	0.00	0.00	0.00
Urban - Sustainable drainage system	Urban	0.00	0.00	0.00
Urban - Vacant or derelict land	Urban	0.00	0.00	0.00
Urban - Vegetated garden	Urban	0.71	0.00	0.71
Woodland and forest - Other coniferous woodland	Woodland and forest	0.00	0.00	0.00
Coastal saltmarsh - Artificial saltmarshes and saline reedbeds	Coastal saltmarsh	0.00	0.00	0.00
Intertidal sediment - Artificial littoral coarse sediment	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral mud	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral sand	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral muddy sand	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral mixed sediments	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral seagrass	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral biogenic reefs	Intertidal sediment	0.00	0.00	0.00
Intertidal hard structures - Artificial hard structures	Intertidal hard structures	0.00	0.00	0.00
Intertidal hard structures - Artificial features of hard structures	Intertidal hard structures	0.00	0.00	0.00
Heathland and shrub - Other sea buckthorn scrub	Heathland and shrub	0.94	-3.12	-2.18

Low Distinctiveness Summary

Low Distinctiveness net change in units	-2.18
Cumulative surplus of units	6.69

Low Distinctiveness			
Habitat group	On-site unit change	Off-site unit change	Project wide unit change
Native hedgerow	0.22	0.00	0.22 ✓
Line of trees	0.00	0.00	0.00
Line of trees - associated with bank or ditch	0.00	0.00	0.00
	0.22	0.00	0.22

Low Distinctiveness Summary	
Low Distinctiveness net change in units	0.22 ✓
Cumulative availability of units	0.22 ✓

Very Low Distinctiveness			
Habitat group	On-site unit change	Off-site unit change	Project wide unit change
Non native and ornamental hedgerow	0.31	0.00	0.31 ✓
	0.31	0.00	0.31

Very Low Distinctiveness Summary	
Very Low Distinctiveness net change in units	0.31 ✓
Cumulative availability of units	0.53 ✓

Medium Distinctiveness			
Habitat group	On-site unit change	Off-site unit change	Project wide unit change
Ditches	0.44	0.00	0.44 ✓
Creeks	0.00	0.00	0.00
	0.44	0.00	0.44

Medium Distinctiveness Summary	
Medium Distinctiveness Units available to offset	0.44 ✓
Lower Distinctiveness Remedial losses, like for like not satisfied	0.00

Low Distinctiveness			
Habitat group	On-site unit change	Off-site unit change	Project wide unit change
Culvert	0.00	0.00	0.00
	0.00	0.00	0.00

Low Distinctiveness Summary	
Low Distinctiveness not change in units	0.00
Cumulative availability of units	0.44 ✓

ANNEX 2 TO SCHEDULE 7 – Biofarm Scheme

Biofarm Report No.

BF2024R1

COMMISSIONED BY

CLAYGATE HOUSE INVESTMENTS LTD & MJS INVESTMENTS LTD

CLANDON, GUILDFORD, KT24 6AR

PRELIMINARY OFF-SITE BNG DELIVERY STRATEGY

MARCH 2024

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- i-iii) PDF copy of Statutory Metric readouts

1 INTRODUCTION

1.1 Background

1.1.1 Claygate House Investments Ltd & MJS Investments Ltd is seeking a solution for a biodiversity net gain requirement generated by a c. 2.2 hectares (ha) development site around central grid reference TQ 1479 6410, to the east of Esher, Surrey. Based on the Ecological Impact Assessment provided by CSA Environmental, the site represents a field comprising other neutral grassland (1.68ha) and modified grassland (0.16ha) with a small area of hardstanding bounded by outgrown hedgerows and treelines. The landscape context is dominated by residential developed land, with grassland fields to the south and immediate north, and scattered woodland further north and east.

1.1.2 CSA Environmental's Ecological Impact Assessment, using The Natural England Statutory Biodiversity Metric, reports that the on-site mitigation strategy results in a total net loss of 3.51 habitat units. It is therefore understood that the number of habitat units required off-site is 4.94 to achieve the targeted 10% net gain in biodiversity. The losses stated within CSA Environmental's calculations predominantly relate to a deficit in 'medium distinctiveness' grassland habitat units, and therefore must be replaced by the same broad habitat type (improved condition) or a higher distinctiveness habitat.

1.1.3 Biofarm has been appointed by Claygate House Investments Ltd & MJS Investments Ltd to source land for the purpose of off-site BNG delivery. This document identifies viable land for delivery and outlines a robust and achievable off-site compensation strategy for achieving an overall 10% net gain in biodiversity, considering the impact of trading rules, condition and strategic significance.

1.1.4 With this document, Biofarm primarily aims to aid Elmbridge Borough Council in their planning application review, specifically the following reason for refusal:

"2. The proposed development, by reason of the on-site net loss of biodiversity which cannot be offset off-site, would result in harm to on-site ecology and biodiversity and would be contrary to Policy CS15 of the Core Strategy 2011 and the NPPF 2023."

This document intends to address this through providing an appropriate and deliverable biodiversity offsetting strategy. Upon approval, a detailed Habitat Management and Monitoring Plan (HMMP) for the full thirty year duration will be provided, in which the following will be detailed in line with official guidance:

- Habitat specifications and condition targets evidenced through soil, hydrology and botanical surveys
- Management activities including objectives, design principles and phasing strategy
- Monitoring schedule detailing strategy, methods and intervals

² Elmbridge Borough Council Refusal of Outline Permission. Application No: 2023/0962

1.2 Sources of Information

1.2.1 This report is based on information provided by Claygate House Investments Ltd & MJS Investments Ltd, as well as data sourced from readily available online sources. This includes:

- Ecological Impact Assessment (EclA) prepared by CSA Environmental (2022)
- Surrey Nature Partnership, Biodiversity Opportunity Areas (2019) [appendix-6_north-downs-biodiversity-opportunity-area-policy-statements.pdf \(wordpress.com\)](https://www.surreynature.org.uk/wp-content/uploads/2019/06/north-downs-biodiversity-opportunity-area-policy-statements.pdf)
- 'MAGIC' database managed by Natural England¹ for the identification of statutory designations and priority habitats <http://magic.defra.gov.uk/MagicMap.aspx>
- British Standard² for guidance on key principles and good practice regarding biodiversity net gain
- UKHab and corresponding biodiversity net gain condition assessment criteria <https://ukhab.org/>
- BNG guidance as available on gov.uk [Biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain)
- NCA Character Profile: 114 Thames Basin Lowlands (2014) Natural England: [NCA Profile:114 Northern Thames Basin - NE466 \(naturalengland.org.uk\)](https://www.naturalengland.org.uk/Profile/114/Northern-Thames-Basin-NE466)
- Aerial imagery provided by Google Earth Pro 7.3.6.9750 (2024)
- Historical mapping: [Map Finder - with Outlines - National Library of Scotland \(nls.uk\)](https://www.nls.uk/Map-Finder-with-Outlines)
- [LandIS - Land Information System - SoilsCapes soil types viewer](https://www.landis.gov.uk/)
- [BGS Geology Viewer - British Geological Survey](https://www.bgs.gov.uk/geology-viewer)
- Elmbridge Borough Council – Refusal of Outline Permission

1.2.2 At this time, a site visit has not been conducted due to the preliminary status of the strategy and the ability to gain sufficient information from the aforementioned sources. In the course of producing the Habitat Management and Monitoring Plan (HMMP) a site visit would be carried out to verify the assumptions made in this strategy.

1.3 Biodiversity Net Gain Assessment

1.3.1 Good Practice Principles

1.3.2 Biodiversity net gain is defined as 'development that leaves biodiversity in a measurably better state than before. It is also an approach where developers work with local governments, wildlife groups, landowners and other stakeholders in order to support their priorities for nature conservation' (BS 8683, 2021).

1.3.3 Good practice principles for biodiversity net gain include the following (BS 8683, 2021).

- Apply the 'Mitigation Hierarchy' in line with CIEEM Guidelines for Ecological Impact Assessment (EclA) (CIEEM, 2018) and be 'additional' by achieving outcomes that exceed existing obligations.
- Avoid losing biodiversity which cannot be off-set elsewhere. For example, irreplaceable habitats which may not be accounted for in the metric with the exception of enhancement.
- Address risk such as difficulty of achieving habitat creation or enhancement within a certain time frame. Condition assessments must be realistic and based on formal surveys by competent individuals.
- Net gain contribution must be 'measurable' and calculated using an appropriate metric. Calculations should aim to be consistent and transparent, identifying any limitations and assumptions and providing justifications for any 'work arounds' or bespoke solutions
- Ensure that net gain design achieves the best outcome for biodiversity through both quantitative and qualitative assessment. All devised solutions should aim to create a net gain legacy for long-term benefits.

2 THE IMPACT SITE

2.1 Location

2.1.1 The proposed impact site is shown approximately at **Figure 1** below:

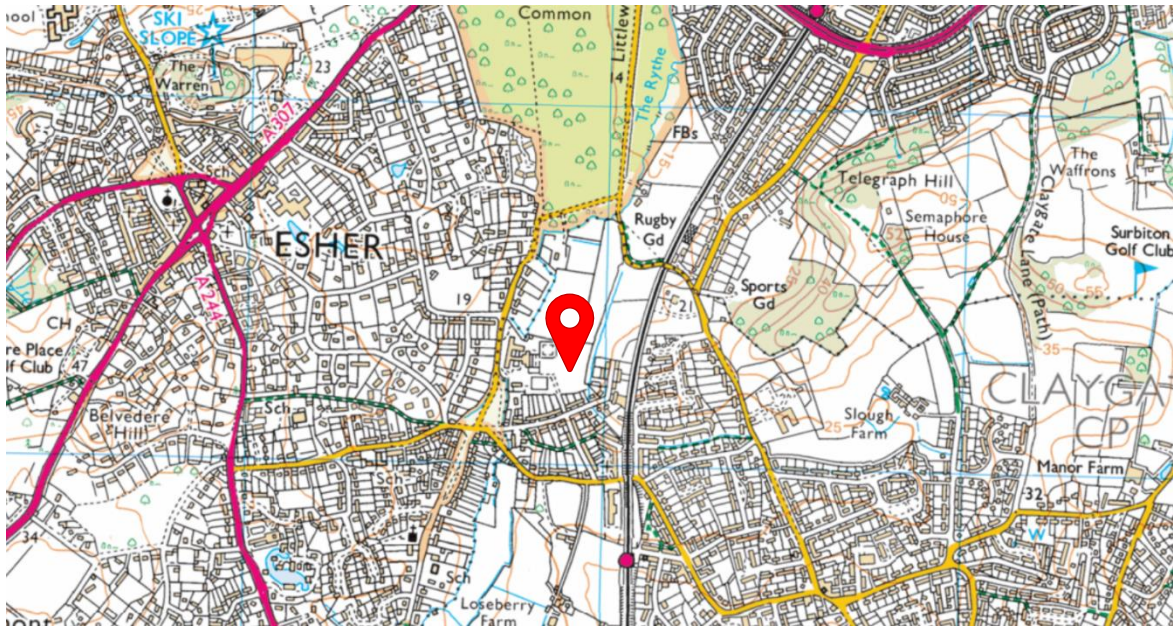


Figure 1: Impact site location (Microsoft Bing Maps)

2.2 Baseline ecological value and conditions

2.2.1 Based on a UKHab survey completed by CSA Environmental, the site is understood to comprise a disused grass field which is managed to prevent habitat succession. Habitats are recorded within section 4.0 of the EclA provided by CSA Environmental (CSA/3230/04). Relevant extracts describing the habitats present are reproduced below:

Grassland

2.2.2 “While formerly species-poor and intensively managed as a golf pitch-and putt practice area, the grassland dominating the Site has developed in floristic diversity and structure in recent years. The sward is dominated by grasses including Yorkshire fog *Holcus lanatus*, annual meadow grass *Poa annua*, sweet vernal *Anthoxanthum odoratum*, brome *Bromus* sp., rough meadow grass *Poa trivialis*, cocks-foot *Dactylus glomerata*, crested dogs tail *Cynosurus cristatus* and Timothy *Phleum pratense*. Herb species are also frequent in the sward, and those recorded include creeping buttercup *Ranunculus repens*, meadow buttercup *Ranunculus acris*, dandelion *Taraxacum officinale*, yarrow *Achillea millefolium*, Lady’s bedstraw *Galium verum*, daisy *Bellis perennis*, common field speedwell *Veronica persica*, cuckoo flower *Cardamine pratensis*, lesser stitchwort *Stellaria graminea*, common mouse ear *Cerastium fontanum* and white clover *Trifolium repens*.”

It should be noted that the above species are by no means uniformly distributed across the Site. Species counts were generally c. six species per representative 1m²; a diversity more consistent with poorer modified grassland (g4). However, the species composition is not consistent with this classification.”

“A former bowling green set out as a square of grassland in the north west corner of the Site is notably different in species diversity and composition from the surrounding grassland. This grassland is species poor with a uniform composition and sward height throughout, including Yorkshire fog, fescue *Festuca* sp., meadow grass *Poa* sp., and perennial rye grass *Lolium perenne*. Herb species are limited to daisy, clover *Trifolium* sp. and cat’s-ear *Hypochaeris radicata*.”

Trees

- 2.2.3 “The northern and eastern boundaries of the Site are marked by significant, mature and outgrown tree lines dominated by oak *Quercus robur*, horse chestnut *Aesculus hippocastanum*, ash *Fraxinus excelsior*, willow *Salix* sp. and mature hawthorn *Crataegus monogyna*, with further hawthorn, holly *Ilex aquifolium* and hazel *Corylus avellana* present as an understorey. Ground flora is dominated by patches of dense bramble, common nettle *Urtica dioica* and ground elder *Aegopodium podagraria*. The southern boundary, west of the access, is dominated by a linear row of Lombardy poplar *Populus nigra*.”

Scrub

- 2.2.4 “Sporadic scattered shrubs at fenced boundaries to the south and west include immature cherry plum *Prunus cerasifera*, buddleja *Buddleja* sp., and willow. The southern boundary, east of the access, is formed by a dense mosaic of scrub, shrubs and ruderals, including immature hazel, plum and oak, with dense stands of bramble, creeping thistle, wisteria, snowberry *Symphoricarpos albus*, buddleja and common nettle. A parcel of low bramble scrub is present in the north-west corner of the Site and borders the former bowling green on all aspects.”

Other

- 2.2.5 “A tennis court and pavement leading up from the access point at Raleigh Drive at the south of the Site are present. These features are of negligible intrinsic ecological value.”

2.3 Proposed development

- 2.3.1 Outline planning permission is sought for residential development at the impact site. The proposed development comprises construction of 60 residential dwellings with associated gardens, parking, play area and access infrastructure (based on the Illustrative Masterplan prepared by OSP Architecture 22071-SK08F). Elmbridge Borough Council planning reference: 2023/0962.

2.4 Biodiversity net gain requirement

- 2.4.1 In the Biodiversity Net Gain Assessment provided by CSA Environmental using the Statutory Metric, a gross loss of 10.05 habitat units is calculated. On-site mitigation, which outlines the creation of 'moderate' condition modified grassland, other neutral grassland and mixed scrub, alongside tree planting and scrub enhancement (CSA/3230/106), lessens the net loss to 3.51 habitat units. Based on this, 4.94 units need to be secured off-site to achieve the targeted 10% overall net gain in biodiversity. However, as explained in paragraph '4.1.1', 9.22 units will need to be secured off-site to satisfy the trading rules.

3 THE DELIVERY SITE

3.1 Location

3.1.1 The proposed off-site delivery location is shown approximately at **Figure 2** below:

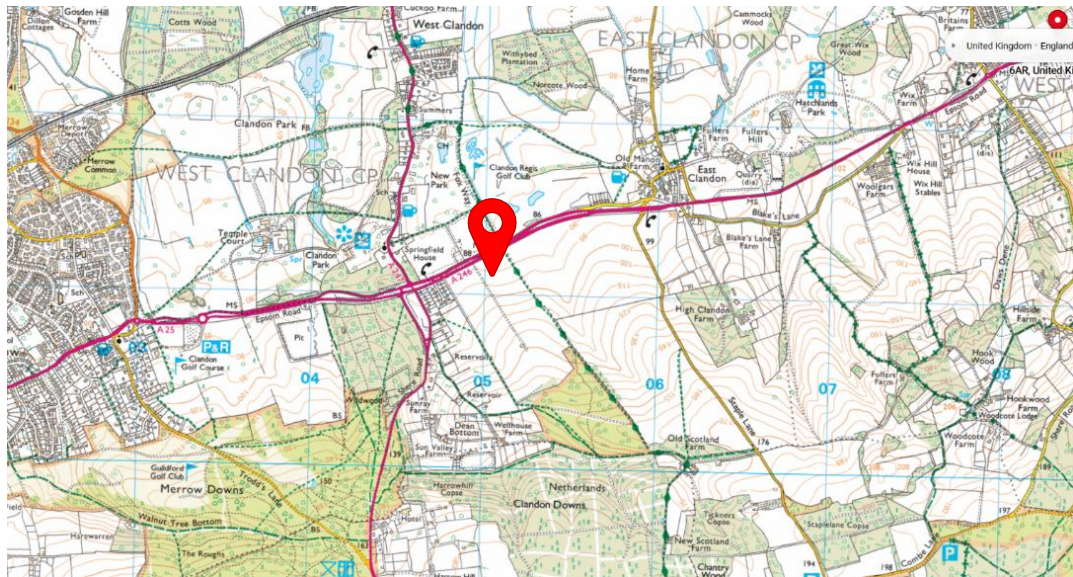


Figure 2: Delivery site location (Microsoft Bing Maps)

- 3.1.2 The total available landholding of the proposed delivery site comprises approximately 33.1ha of cropland to the east of the settlement of Guildford in west Surrey around central grid reference TQ 05076 51104.
- 3.1.3 The landholding is split across two National Character Areas (NCAs), with the area north of the boundary sitting within the Thames Basin Lowlands NCA (c. 4.93ha), and the area to the south falling into North Downs NCA (28.64ha). The impact site and offset site lie within separate Local Planning Authorities, with the former being in Elmbridge Borough and the latter in Guildford Borough. However, by using a 1.42ha area within the northern part of the delivery site, both the impact and offset habitat creation would fall within the same National Character Area - The Thames Basin Lowlands NCA. Despite the distance between the two sites, the nil effect spatial risk multiplier is therefore applicable (**Figure 3**).

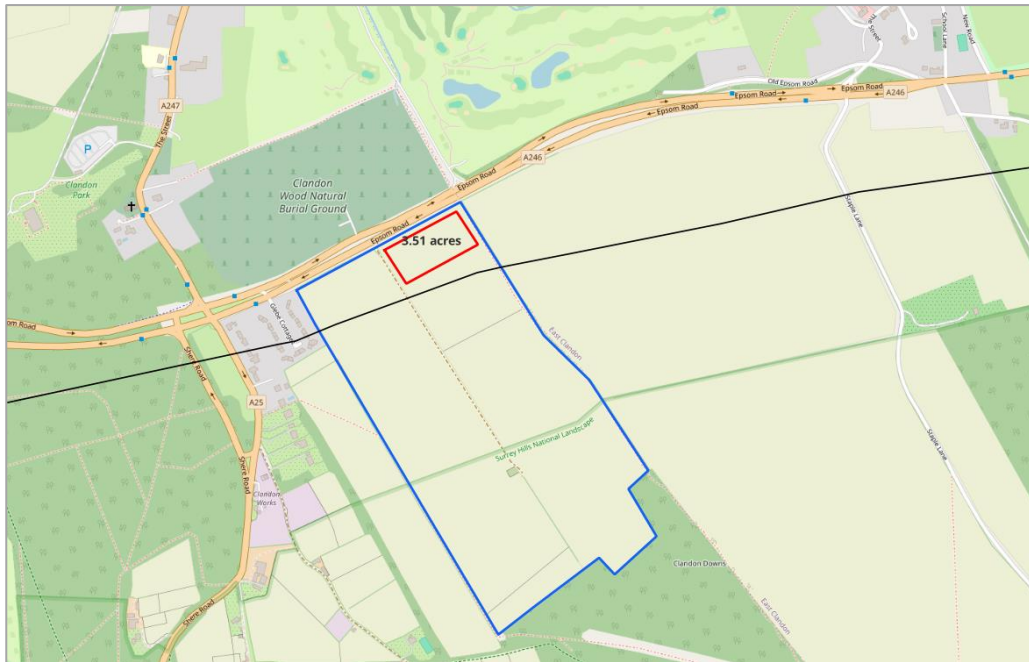


Figure 3: The delivery site (red) within the total landholding (blue). The southern boundary of the NCA boundary is shown in black.

3.2 Nature Designations and Strategic Significance

- 3.2.1 A search of MAGIC confirmed that the delivery site has no statutory nature conservation designation such as Site of Special Scientific Interest (SSSI). The nearest statutory sites are sufficiently distant to be beyond the reach of influence from any land use changes occurring on the site and should not therefore present any constraint to activities on the delivery site.
- 3.2.2 The delivery site lies directly adjacent to land formally identified in the ‘Surrey Biodiversity Opportunity Area (BOA) ND02: North Downs Scarp and Dip; Guildford to the Mole Gap’ (Figure 4). The BOA identifies some of the most important areas for wildlife conservation remaining in Surrey, and therefore although the delivery site itself is not incorporated into a formally identified area, it may have significance by serving as a buffer, or network expansion zone to these priority areas.
- 3.2.3 The delivery site is also bordered by two Sites of Conservation Interest (SNCI), Clandon Wood Site of Conservation Interest (SNCI) which fronts the western border of the landholding and Clandon Downs SNCI which adjoins the southern border and includes stands of mapped ancient woodland. Due to its spatial relationship with formally identified areas, and in reference to The Statutory Biodiversity Metric User Guide (gov.uk) in the absence of a published LNRS, we deem the delivery site locally ecologically desirable as a site for habitat creation, with ‘medium’ strategic significance (1.10).

¹ NCA Profile 114 – [NCA Profile:114 Thames Basin Lowlands - NE571 \(naturalengland.org.uk\)](https://naturalengland.org.uk/nca-profile/114-thames-basin-lowlands-n571)

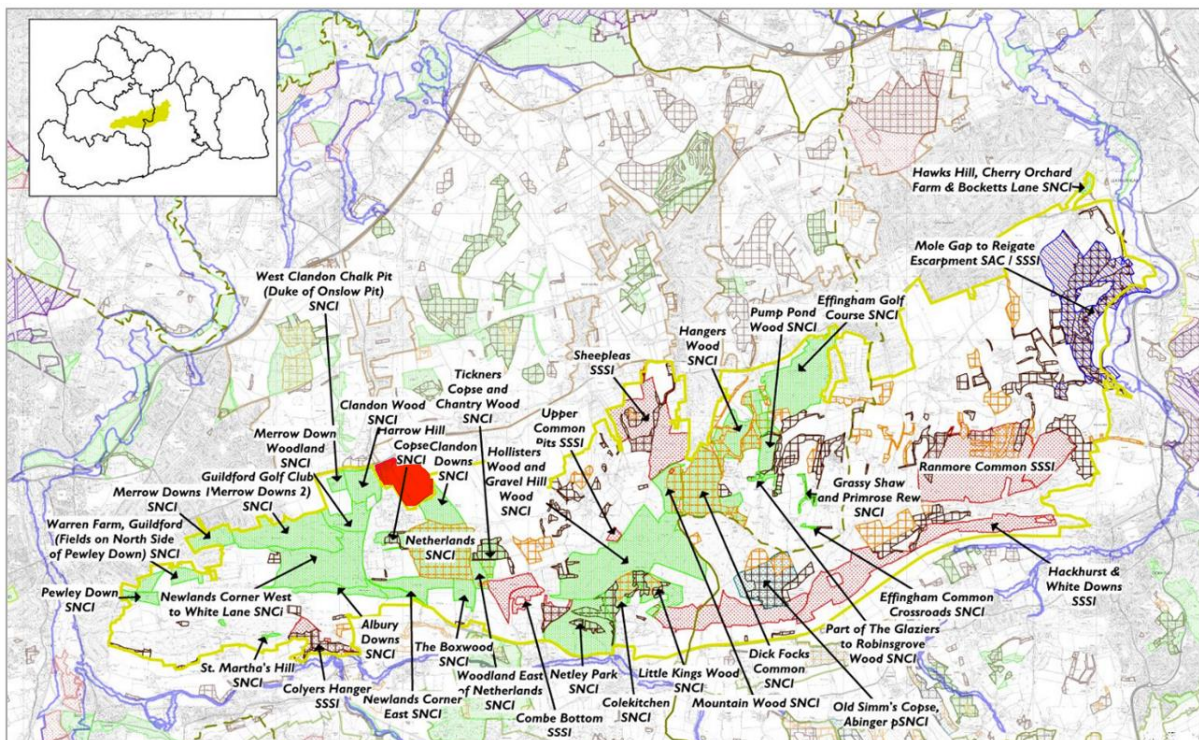


Figure 4: Surrey Biodiversity Opportunity Area ND02: North Downs Scarp and Dip; Guildford to the Mole Gap (Surrey Nature Partnership). The available landholding containing the delivery site is highlighted in red.

3.2.4 MAGIC does not identify any 'Priority habitats' mapped within the landholding.

3.3 Funding and responsibilities

3.3.1 Biofarm will have an interest in the land via a 33-year lease, and corresponding Section 106 Agreement, and will be responsible for the delivery and monitoring of habitat units.

3.3.2 Fulfilment of the HMMP may be carried out by the landowner, however, if they act antagonistically to the strategy, Biofarm can exercise step-in rights and perform the required services.

3.3.3 Habitat creation, management and monitoring are funded by the unit sales price.

3.3.4 The party, which remains responsible for habitat management, shall be entitled to draw down the relevant funds from a ring-fenced Management & Monitoring Fund Account. These funds remain accessible to the landowner in a situation where Biofarm are no longer a going concern.

4 BIODIVERSITY NET GAIN DELIVERY STRATEGY

4.1 Worked and explained calculation

- 4.1.1 As outlined in paragraph '2.4.1' above, the number of units required to secure a 10% net gain has been determined as 4.94 habitat units. As shown within CSA Environmental's calculations using the Statutory Biodiversity Metric, the on-site losses are primarily generated from a deficit of 9.22 'medium distinctiveness' I grassland units. This means an off-site compensation strategy will need to provide 9.22 'medium distinctiveness' grassland units to satisfy trading rules.
- 4.1.2 Biofarm rounds up to the nearest whole habitat unit, therefore the solution presented below is for 10 habitat units.
- 4.1.3 Attached at **Appendix 1** is a readout from the Statutory Biodiversity Metric calculator tool setting out how this off-site solution meets the requirement arising from CSA Environmental's on-site calculations. An interactive Excel version is available on request.
- 4.1.4 **Appendix 1** shows how the calculator has been populated with numerical inputs relating to the delivery site (Tab D-1), with a 1.42 ha area, and the existing habitat type as cropland. This generates a baseline score of 3.12 habitat units (**Figure 5**).
- 4.1.5 Tab D-2 has been populated with what is considered to be achievable and realistic assumptions about what could be obtained by way of 'creation' on the delivery site, based on what is known or can readily be supposed about its baseline condition, and given sufficient time, labour and resources. With suitable management over an extended time frame (to be demonstrated within the HMMP), 'standard time to target condition' for 'good' condition other neutral grassland is calculated by The Statutory Metric at 10 years. A more specific timeframe will be provided using information from soil, botanical and hydrological surveys to be conducted as part of the HMMP. In the event that detailed analyses such as this reveal any issues with the targeted habitat creation, then sufficient land is available at the delivery site to generate the required number of units while targeting a lower (i.e. moderate) condition of grassland. Presently, we are confident based on current accessible data, including readily available soil data (Soilscape, BGS), that the time until target condition will not exceed the 10-year timeframe (**Figure 6**).
- 4.1.6 Given the above, this strategy generates an off-site post-intervention score of 13.13. This reflects a net change of 10 'medium distinctiveness' grassland habitat units and a project-wide net change, including all on-site and off-site habitat retention, creation and enhancement, of 45.41%.

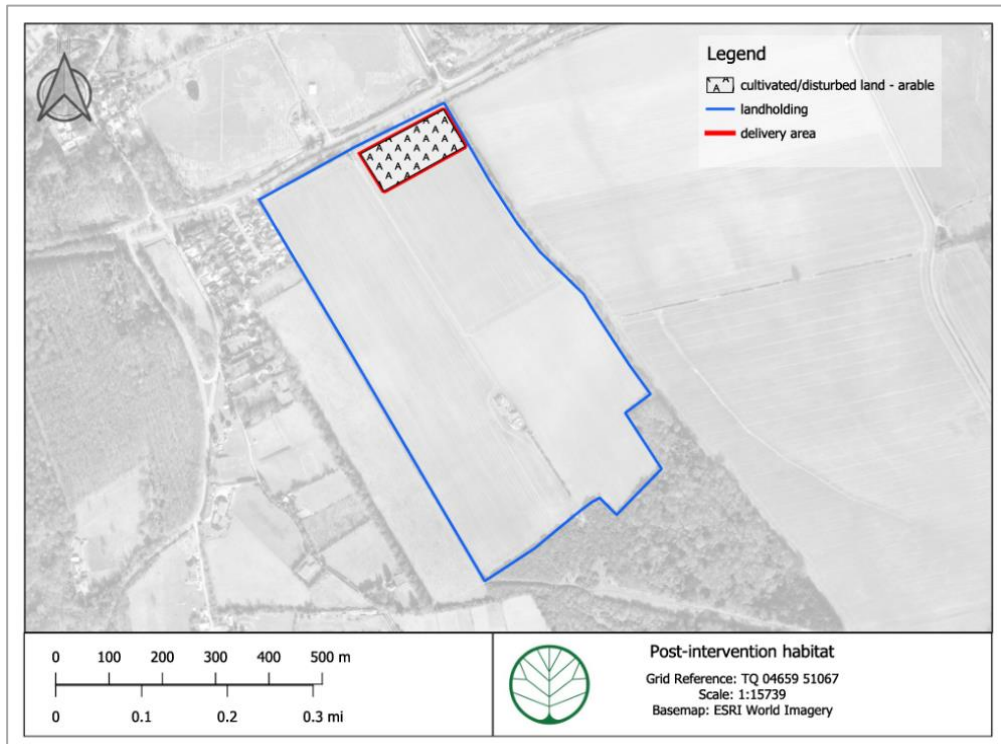


Figure 5: Baseline habitat (QGIS)

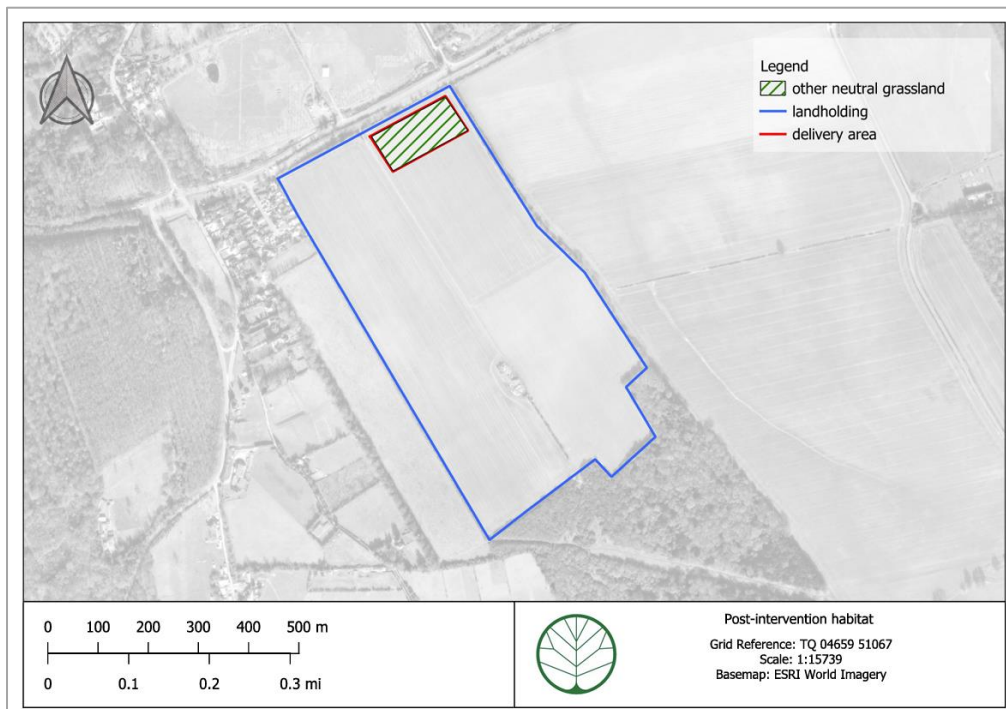


Figure 6: Post-intervention habitat (QGIS).

5 CLOSING STATEMENTS

- 5.1** The strategy outlined in this document seeks to demonstrate to Elmbridge Borough Council a deliverable solution to Claygate House Investments Ltd & MJS Investments Ltd's off-site biodiversity net gain requirement arising from the proposed development in Clandon³. The strategy provides a means for the development to achieve 10% net gain in line with the requirement under the Environment Act 2021 (noting that there is no statutory requirement for biodiversity net gain in this case, since the application predates the commencement of statutory biodiversity net gain).
- 5.2** The strategy is based around providing species-rich other neutral grassland in place of current arable land by means of a managed transition over a period of thirty years. Given the landscape context of the delivery site, creation of species-rich grassland and reversing the influence of intensive agriculture on the delivery site would contribute towards local ecological recovery objectives, as well as meeting the statutory requirement.
- 5.3** The strategy set out in this document will form the basis of a Habitat Management and Monitoring Plan (HMMP) to accompany the Biodiversity Offsetting Scheme secured through S106 legal agreement. This will provide further detail on specific long-term targets and their implementation, including further surveys, planned management activities including design principles, phasing strategies and condition targets. This strategy will also be used to inform the monitoring schedule to be executed by Biofarm, for which methods and intervals will be provided.
- 5.4** Biofarm are available to provide any points of clarification on the information set out herein, and will provide further explanation where required to aid with the Inspector's and Elmbridge's review of the planning appeal.

³ 2023/0962 – Land North of Rayleigh Drive Claygate Esher Surrey

APPENDIX 1

i) **Headline Results:**

Land north of Raleigh Drive, Claygate		Return to results menu		
Headline Results				
Scroll down for final results Δ				
On-site baseline	Habitat units	14.30		
	Hedgerow units	1.56		
	Watercourse units	0.51		
On-site post-intervention (Including habitat retention, creation & enhancement)	Habitat units	10.79		
	Hedgerow units	2.09		
	Watercourse units	0.95		
On-site net change (units & percentage)	Habitat units	-3.51	-24.56%	
	Hedgerow units	0.53	33.76%	
	Watercourse units	0.44	86.72%	
Un-site net gain is less than target set Δ				
Off-site baseline	Habitat units	3.12		
	Hedgerow units	0.00		
	Watercourse units	0.00		
Off-site post-intervention (Including habitat retention, creation & enhancement)	Habitat units	13.13		
	Hedgerow units	0.00		
	Watercourse units	0.00		
Off-site net change (units & percentage)	Habitat units	10.00	320.17%	
	Hedgerow units	0.00	0.00%	
	Watercourse units	0.00	0.00%	
Combined net unit change (Including all on-site & off-site habitat retention, creation & enhancement)	Habitat units	6.49		
	Hedgerow units	0.53		
	Watercourse units	0.44		
Spatial risk multiplier (SRM) deductions	Habitat units	0.00		
	Hedgerow units	0.00		
	Watercourse units	0.00		
FINAL RESULTS				
Total net unit change (Including all on-site & off-site habitat retention, creation & enhancement)	Habitat units	6.49		
	Hedgerow units	0.53		
	Watercourse units	0.44		
Total net % change (Including all on-site & off-site habitat retention, creation & enhancement)	Habitat units	45.41%		
	Hedgerow units	33.76%		
	Watercourse units	86.72%		
Trading rules satisfied?	Yes \checkmark			
Unit Type	Target	Baseline Units	Units Required	Unit Deficit
Habitat units	10.00%	14.30	15.73	0.00
Hedgerow units	10.00%	1.56	1.72	0.00
Watercourse units	10.00%	0.51	0.56	0.00
No additional area habitat units required to meet target \checkmark				
No additional hedgerow units required to meet target \checkmark				
No additional watercourse units required to meet target \checkmark				

ii) Off-site Baseline Habitat Scores (Tab D-1)

Project Name: Land north of Raleigh Drive, Claygate Map Reference: D-1 Off-Site Habitat Baseline		Area habitat summary	
Cookless / Show Columns		Total Net Use Change	0.43
Cookless / Show Rows		Total Net % Change	48.65%
Map Menu		Trading Rules Satisfied	Yes /

Ref	Existing area habitats				Distinctiveness		Condition		Strategic significance			Required Action to Meet Trading Rules	Spatial risk multiplier		Ecological baseline
	Broad habitat	Habitat type	Irreplaceable habitat	Area (hectares)	Distinctiveness	Score	Condition Assessment	Score	Strategic significance	Strategic significance multiplier	Strategic significance multiplier		Spatial risk category	Total habitat units	
1	Cropland	Cereal crops	No	1.42	Low	2	Assessment N/A	1	Location ecologically sensitive but not in local strategy	1.1	1.1	Some distinctiveness or better habitat required	Compensation inside LPA boundary or NEA of impact site	3.12	
2															
3															
4															
5															
6															
7															
8															

iii) Off-site Post-creation Habitat Scores (Tab D-2)

Project Name: Land north of Raleigh Drive, Claygate Map Reference: D-2 Off-Site Habitat Creation		Area habitat summary	
Cookless / Show Columns		Total Net Use Change	1.48
Cookless / Show Rows		Total Net % Change	48.40%
Map Menu		Trading Rules Satisfied	Yes /

Ref	Broad Habitat	Proposed Habitat	Area (hectares)	Distinctiveness	Score	Condition	Score	Post-disturbance habitat				Prevented risk multiplier				Disturbance risk multiplier				Spatial risk multiplier	Ecological baseline
								Strategic significance	Strategic significance multiplier	Strategic significance multiplier	Strategic significance multiplier	Strategic significance multiplier	Strategic significance multiplier	Strategic significance multiplier	Strategic significance multiplier	Strategic significance multiplier	Strategic significance multiplier	Strategic significance multiplier	Strategic significance multiplier		
1	Grassland	Other natural grassland	1.42	Medium	4	Good	3	Location ecologically sensitive but not in local strategy	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	0.50	
2																					
3																					
4																					
5																					
6																					
7																					
8																					

IN WITNESS whereof this Deed has been executed the day and year first before written

EXECUTED AS A DEED by)
affixing **THE COMMON SEAL** of)
ELMBRIDGE BOROUGH COUNCIL)

was hereunto affixed in the presence of

(Signature)

(Print Name)
Legal Services

EXECUTED AS A DEED by)
affixing **THE COMMON SEAL** of)
SURREY COUNTY COUNCIL)
)

in the presence and attested by

(Signature)

(Print Name)
Director of Law and Governance / Authorised Signatory

EXECUTED as a **DEED** by

CLAYGATE HOUSE INVESTMENTS LTD

.....
Name of Company acting by a Director and its' Secretary or by two Directors

.....
Print Name of Director

.....
Signature of Director

.....
Print Name of Second Director
or Secretary

.....
Signature of Second Director
or Secretary

EXECUTED as a **DEED** by

MJS INVESTMENTS LTD

.....
Name of Company acting by a Director and its' Secretary or by two Directors

.....
Print Name of Director

.....
Signature of Director

.....
Print Name of Second Director
or Secretary

.....
Signature of Second Director
or Secretary