

GREATER LONDON AUTHORITY

[REDACTED]
[REDACTED]

Our Ref: MGLA290419-1407

14 June 2019

Dear [REDACTED]

Thank you for your request for information which the GLA received on 26 April 2019. Your request has been dealt with under the Environmental Information Regulations (EIR) 2004.

In relation to the Stage 2 decision letter and associated planning reports (GLA/4491a/02 – Proposed development at Heythrop college), you asked for;

- a) any information or evidence supporting the Stage 2 Decision; and*
- b) any internal emails or advice that informed the Stage 2 Decision*

Our response to your request is as follows:

We have identified the following information within scope of your request. The [Stage 2](#) cover letter informed the deputy mayor's decision on the case. The [Stage 1](#) letter and report is also relevant to your request in addition to the following published information available on [the RBKC website](#):

- Planning Committee Memorandum 27/11/2018
- Report by the Executive Director, Planning and Borough Development (Ref C140 and C141)
- Pre-Committee Addendum Central
- Abridged version of [Decision notice full report](#)

Please find further information within scope of your request.

Some further information which falls within scope of this part of your request falls under the exception to disclose at Regulation 12 (5)(b) (The course of justice and inquiries exception). This exception is very wide in coverage, in this instance it is used to cover material covered by legal professional privilege (LPP). LPP is a principle on UK common law and exists to protect the exchange of legal advice between a lawyer and their client.

For the exception to be engaged, disclosure of the requested information must have an adverse effect on the course of justice. In this case, the information you have requested relates to a matter which is ongoing and for which the legal advice is still relevant and relates to various legal documents that are required for the decision making behind the Heythrop college planning

referral; the release of which would also undermine the public confidence in the efficacy of LPP generally.

Regulation 12(5)(b) constitutes a qualified exemption from our duty to disclose information under the EIR, and consideration must be given as to whether the public interest favouring disclosure of the information covered by this exemption outweighs the public interest considerations favouring maintaining the exemption and withholding the information.

In this case there is a strong public interest in the release of information that would inform and engage public debate on issues pertinent to this planning application. The release of this information would therefore help reassure the public that the most appropriate options had been considered.

The GLA acknowledges that there is a public interest in transparency in relation to planning and development matters, particularly in the decision making behind developments of this size, Disclosure would enable the local community to understand more fully the decision-making process.

However, it is a matter of significant public interest for the GLA to protect and uphold the wider common law principles of Legal Professional Privilege by allowing clients to have discussions with their lawyers in confidence. The best interest of the public – i.e. the public interest – is best served by ensuring that public authorities continue to debate robustly and comprehensively, considering all options and their potential impacts, for the best possible decisions to be taken.

There is also a strong public interest in favour of maintain the exception under 12(5)(b) for information which is legally privileged; an argument which is supported under common law.

Some content within the correspondence I have attached is exempt from disclosure under Regulation 13 (Personal information). Personal information relating to the names and contact details of staff members constitutes as personal data which is defined by Article 4(1) of the General Data Protection Regulation (GDPR) to mean any information relating to an identified or identifiable living individual.

It is considered that disclosure of this information would contravene the first data protection principle under Article 5(1) of GDPR which states that Personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject. It is considered that none of the conditions allow the processing of the information apply in this case as the subjects have not consented to the use of their data for an alternative purpose (namely disclosure under the EIR).

If you have any further questions relating to this matter, please contact me, quoting the reference at the top of this letter.

Yours sincerely


Information Governance Officer

If you are unhappy with the way the GLA has handled your request, you may complain using the GLA's FOI complaints and internal review procedure, available at:

<https://www.london.gov.uk/about-us/governance-and-spending/sharing-our-information/freedom-information>

Heythrop College – Detailed viability comments DRAFT 181218

The Financial Viability Assessment for this scheme was prepared by Knight Frank in August 2018 and reviewed by Gerald Eve in November 2018. Both reports were very high level for such a complex, large scheme and it is not possible to ascertain from the information provided that the offer of 5 affordable housing units is the maximum quantum that could be viably supported by this scheme.

Set out below are some more detailed comments which set out the GLA's concerns.

Proposed scheme and affordable housing offer

Knight Frank's report states that the development proposes 'Extra Care use, community hall and dwelling houses (three townhouses); made up of 142 Extra Care units with associated communal and wellbeing facilities and associated service areas, 5 Affordable Housing units, 3 residential houses, and a community centre.'

Their FVA sets out that 'on-site Affordable Housing is economically unviable at levels of 35%' but the applicant recognises the need to create a combined community and will be providing 35% of the proposed open market unrestricted uses as Affordable Housing. The element of the scheme used to calculate 35% affordable housing is the 3 private town houses and 5 intermediate affordable flats.

Both reports have carried out a financial appraisal of the whole of the proposed scheme based on current day costs and value and then compared this with the Benchmark Land Value of the site.

Benchmark Land Value

Both assessors have used Existing Use Value (EUV) plus a land owner's premium as the approach to assessing the BLV of the site in accordance with the Mayor's Affordable Housing and Viability SPG and the latest NPPG Viability Guidance issued in July 2018.

On the basis that there is a lack of evidence of sales of comparable C2 properties, which is the assumed existing use of the majority of the site, they have sought evidence from D1 (Non residential Institutional Use) to arrive at the EUV with Gerald Eve also considering evidence from student housing.

The approach to the assessment of EUV by both assessors is very high level and does not take into account the layout and condition of the buildings on site.

Knight Frank have analysed transactional evidence from the sale of a number of good quality college buildings that have been acquired by education institutions for use as schools and colleges. One example includes The Nuffield Building in Lincoln's Inn Fields that was acquired by LSE from the Royal College of Surgeons. Based on this evidence, they have then applied an overall rate per square foot to the existing buildings on site. It is not apparent that any allowance has been made for the fact that a substantial element of the existing buildings are currently fitted out as low quality student accommodation. Knight Frank arrive at the conclusion that the EUV of the site is c£84.6m but this approach is considered too high level to be accurate when applied to a complex existing use valuation.

Gerald Eve take a different more granular approach and arrive at a BLV of c£68m. They have taken an investment approach to valuing the non-residential buildings based on rents of £40-50 psf which they have capitalised at 4.25%. There is no evidence provided to support these figures and it is not

clear whether appropriate allowances have been made for voids and/or refurbishment costs. The value of this element of the scheme is therefore likely to be overstated. For the halls of residence they have taken the approach of valuing this element as student housing and this is appropriate but insufficient evidence is provided to support the proposed value of £172k per bed space. A figure of £1.74m has been included for a building known as 'The Cottage' but without supporting information

Neither advisor have added a landowner's premium although they reserve the right to do so. It would be correct to consider an incentive for the landowner to release the site for development and it is not clear why this is excluded.

The BLV does not include an assessment of the BLV of the air rights over the station although this is a part of the development site. The cost of acquiring the rights to build on this part of the site are included as a development cost based on the price agreed which is not in accordance with the NPPG guidance. (para 13)

Gross Development Value

Knight Frank have prepared a detailed pricing schedule for all the residential units and this has been agreed as broadly correct. However both assessors appear to under estimate the GDV of the scheme for the following reasons:

- The approach taken to assessing the value of the Extra Care Units is based on comparable evidence from C3 residential schemes in similar locations. However these schemes do not offer the additional facilities offered by the Heythrop proposal. The flats have also been valued on a per unit basis rather than directly applying a value per square foot which depresses the value as many of the Heythrop flats are significantly oversized. The rate of £2,650 psf which is used is significantly lower than some of the evidence presented.
- There is no value included for either the nursing care, personal care or leisure elements of the scheme. It is accepted that some parts of the proposal e.g. the pool and the gym are standard for the type of scheme on which the comparables are based but other parts such as the nursing care and the hair salon will be operated as separate businesses and so a rental element has presumably been included in business plans and this should be capitalised and added to the GDV. It is estimated that these areas account for c10% of the GIA of the scheme.
- There are 4 parking spaces that will be provided free to the owners of the chapel and so have no associated income and more information is required on this point. This would add £400k to the GDV.

Development Costs

The applicant provided a cost report prepared by Cast but this was only provided in hard copy at a very late stage and whilst it does provide a reasonable level of detail it has not yet been robustly reviewed by a suitably qualified cost consultant.

The cost plan was not initially provided to the borough and so has not been fully reviewed by their cost consultant, Veale & Sanders. However their initial comments, which we understand were based on a meeting with the applicant, indicate that the build costs are substantially above benchmarked rates. The rate for above ground element of the four main blocks range from £6,268 m2 to

£8,176m2 well above the BCIS Benchmark data. The cost review also identified 4 comparable schemes where the costs ranged from c£5,400 to £6,300m3.

V&S note some of the reasons behind this include the following:

- The base build costs are very high with particular mention of the general fit out costs. 'The rate for amenity areas is considerably higher than would be expected for a spa/leisure facility in a 5 star + hotel'
- The allowances for preliminaries, overheads and profits and site abnormals are much higher than would be expected. The combined allowance of 24% for preliminaries and overheads and profits is very high and unacceptable where significant abnormals such as £5m for the extended programme have also been included.
- The contingency allowance of 7% is above the standard allowance of 5%. Veale and Sanders note that this is considered on the robust side given the general levels of pricing.
- There is also little detail provided in support of the site abnormals such as non-recoverable VAT and insurance costs which seem to be included within a number of 'lump sums' in both appraisals

Although Gerald Eve have reduced the costs by 10% for the purposes of their report, it is likely that the costs are overstated by more than this amount and a full assessment of the cost plan is required to arrive at an accurate figure.

The costs relating to constructing the deck at c£50m are very high level and consist largely of contingency sums. The applicant suggests that they have been agreed by TfL but confirmation on the accuracy of these costs is required as they are likely to be overstated.

The finance costs of the scheme are very high due to the extended programme and very conservative assumptions based on sale rates that it is suggested are appropriate for this kind of product. This further impacts on the viability of the scheme.

GE have accepted the costs of the deck and a range of other costs totalling £28.48 m although there is no clear breakdown of these costs in either report. These costs are therefore considered unjustified at this stage without further information.

Overall viability

- Both KF and GE conclude that the scheme produces a RLV which is lower than the BLV and so is not able to support the delivery of additional affordable housing although in GE's view this deficit is only half that proposed by KF – c£40m compared with £80m.
- KF arrive at a RLV of £7.297m compared with the price that their client paid for this site in May 2017 for £110.25m.
- GE arrive at at RLV of £26.5m based on current day costs and values. As this scheme will take over 7 years to complete, GE have also modelled a number of growth scenarios.
'Given the Scheme has a programme of 7.5 years, it will be subject to growth and inflation throughout the development programme. To test the impact of growth and inflation on the Scheme, we have applied growth of 3.5% pa to the private residential units and inflation of 2.5% pa to the construction costs (excluding the deck costs). We have produced an appraisal applying growth and inflation to the Scheme on the basis of a RLV output against a return of 12.5% IRR. The appraisal indicates that when applying growth to the sales values of 3.5% pa and inflation is applied to the construction costs at 2.5% pa, the Scheme has the potential to be viable throughout the development Programme.'

- In other words, the RLV produced is the same as their proposed BLV of £67m
- If the costs and values were reviewed as suggested the whole scheme could potentially breakeven based on current day costs and values and produces a surplus based on growth.
 - At this stage we have assumed that it is appropriate to assess the whole scheme and a review of the town houses/affordable flats element of the scheme has not been carried out to ascertain the viability of that part of the scheme.

Note extract from KF report on C2/C3

13.8 We note as part of the Local Plan Partial Review, policy CH2 may apply to Extra Care floorspace once implemented which would result in a significantly larger contribution to affordable housing. We understand at the date of this FVA Review, RBKC are placing overriding weight on the existing policy CH2 (which does not apply to Extra Care floorspace) and therefore our conclusions are based on the existing planning policy. However, the results of our assessment conclude the Scheme cannot viably support any additional affordable housing irrespective of the application of policy maximums.

Officer recommendation – refuse planning permission

1 GLA officers have concluded that the specialised older persons accommodation proposed falls within Use Class C3 of the Use Classes Order 1987 therefore the proposal must deliver the maximum viable affordable housing contribution in relation to all Use Class C3 elements of the scheme in accordance with Policy 3.12 of the London Plan (2015) and Policies H5, H6 and H15 of the draft London Plan (2017) and the NPPF.

2 Accordingly, officers believe that to grant permission would be contrary to the London Plan and draft London Plan, would prejudice the implementation of the policies within the London Plan and draft London Plan to deliver affordable housing and would be contrary to good strategic planning in Greater London.

3 It is therefore recommended that the Mayor exercise his powers under Article 6 of the 2008 Order and direct refusal of the application for the following reason:

Affordable Housing: *'Affordable housing provision: The Use Class of the specialist extra care accommodation element of the proposal is considered to be C3 therefore affordable housing policies apply to this element in addition to three townhouses. The applicant has failed to demonstrate that the scheme would deliver the maximum reasonable amount of affordable housing and the proposals are therefore contrary to London Plan Policy 3.12, draft London Plan Policies H5 and H6 and the Mayor's Affordable Housing and Viability SPG.'*

Outstanding issues

4 Further to the above reason for refusal, an assessment of the outstanding strategic planning issues on this case is set out below. The applicant is strongly advised to have regard to the issues discussed below if a revised application is to be submitted.

Principle of development

5 At consultation stage, the principle of the redevelopment of the site to provide market and affordable housing and specialist older persons housing was supported. The Mayor's Stage 1 report set out that it was considered that as the proposed specialised older persons housing afforded the facilities required for day to day private domestic use, the proposal must be considered as C3 Use under the Use Class Order 1987.

6 Given the evolution of the scheme and the Section 106 negotiations that have been undertaken by Kensington and Chelsea Council following their decision to approve the scheme, GLA officers have robustly assessed the proposal including draft Section 106 clauses against the Use Class Order 1987 and relevant case law and this assessment is set out in further detail below.

Extra Care Use

7 The Town and Country Planning (Use Classes) Order 1987 sets out that Use Class C2 (Residential Institutions) consist of 'Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwelling houses)), use as a hospital or nursing home, use as a residential school, college or training centre'. The Use Class Order 1987 sets out that Use Class C3 (Dwellinghouses) consists of 'Use as a dwellinghouse (whether or not as a sole or main residence) – a) by a single person or by people living together as a family, or b) by not more than 6 residents living together as a single household (including a household where care is provided for residents).

8 There is considerable case law (at planning appeals and in the courts) on the definitions of both Use Classes C2 and Use Class C3. There is no government guidance on which use class 'extra care housing' falls into. It is for the decision maker to decide, depending on the individual circumstances of each case, which class a particular use falls into.

9 The key points to consider when determining the Use Class of specialist older persons accommodation is whether the development would include the '*provision of residential 'accommodation and care'* will be occupied by '*people in need of care*' and will any of part of the proposal fall within Use Class C3 (dwellinghouse)'.

10 Move extra care up here...think about what are the actual characteristics of C2? – does this meet them?

Residential care home

- Residents unable to make decisions independently, rely on staff to make decisions around level of care...does this hinge on paying for a certain level of care?? No choice in level of care?
- Meals and other basic day to day living included in communal eating facilities
- Still might have separate units
- Independent medical assessment??
- Can have partners/co-dependents live with who don't need care

Heythrop

- Residents make decisions as to the type of care received and amount?? Just have to sign p to minimum package

- Meals not included though does appear that residents have to sign up to 1 meal a day...both café and restaurant open to public and don't appear to be covered in service charge.
- Medical assessments tied to care package – however you also have to pay...what happens if the medical assessment say's you need 10 hours of care but you only want to pay the minimum 2.5? or can you bring your own care in?
- Can have partners/co-dependents live with who don't need care – not clear what happen when those that need care pass assume they stay in the unit
- Cafe/restaurant open to public

11 The DCLG definition of self-containment for the purposes of determining whether a unit should be included in more general housing numbers is where all the rooms (including kitchen, bathroom and toilet) in a household's accommodation are behind a single door which only that household can use. As set out in the Stage 1 report, the proposed specialist older persons accommodation would meet the DCLG definition of self-containment as they comprise self-contained units with distinct kitchens, bathrooms, reception and bedrooms. There scheme includes a wide range of communal facilities at ground and basement including swimming pool, sauna, exercise rooms, gym, hair room, café/restaurant, library and dog grooming parlour. GLA officers have calculated that of the 3,971 sq.m. GIA of ancillary floorspace, 59% of it would be for non-care related elements including the dog grooming salon, cinema and wine room all of which are considered typical of a high end unrestricted residential development. In coming to this conclusion, officers have not included the GIA of the accessible swimming and vitality pools as it is acknowledged that these could be used for therapeutic reasons. In addition, these calculations do not take into account the 'back of house' which includes refuse, circulation, plant, car and bike parking, and loading as it is considered that this floorspace would be required for both uses. In addition to the above the units will be for sale and owner-occupied, where it is considered that residents would primarily live self-contained lives. In this regard, the proposals are not dissimilar to blocks of Class C3 flats.

12 Based on the physical characterises of the scheme it can be concluded that the specialist older persons accommodation proposed affords the facilities for day to day private domestic use. As discussed above, this was the conclusion reached in the Stage 1 report. Following the Stage 1 report and the Council's resolution to grant the scheme a draft Section 106 has been prepared which secures a baseline level of care to be delivered in the scheme based on the applicants submitted Extra Care Accommodation Operation Policy. It is this provision of care that the Council state in their committee report and addendum that

establishes whether or not the specialist older persons accommodation is considered Use Class C2 or Use Class C3.

13 The draft Section 106 secures the following restrictions in relation to the level of care:

- Restriction for use as extra care accommodation;
- Restrictions on age (55 -65 (restricted to 10% of residents) and 65 and over); - medical need
- Restrictions on occupancy in accordance with care assessment and requirement and subscription to at least a minimum care level;
- Restriction on occupancy of extra care homes by anyone not in genuine need of medical care, except for companions living with a person in need of care;
- Requirement for an extra care accommodation management plan;
- Requirement to appoint a CQC regulated health provider; and
- Annual monitoring clause.

14 In addition, in relation to the level of care, the floorplans indicate that the proposal would include medical service areas including matron's offices, nurses' stations, nurses' storage, treatment rooms, medical waste storage, linen store and hoist stores. Nurses' stations will be located within each of the buildings that contain the extra care units, on all floors from ground to sixth floor level.

15 GLA officers have given consideration to the level of care proposed by the applicant and secured by the Council and have the following comments:

- Age restriction: It is acknowledged that the proposed age restrictions would restrict occupancy to older persons however this is not directly related to the need for a certain level of care. It is also not clear whether age restrictions apply to companions...
- Care needs: The minimum portion of care that a resident must sign up to is 2.5 hours a week. Care is defined as nursing and personal care which could include the promotion of health and prevention and/or treatment of illness and physical assistance given to a person including eating and drinking, toileting, washing or bathing, dressing, oral care and care of the skin. The provision of 2.5 hours care a week equates to less than 30 minutes a day and could be as simple as housework or getting your hair done. It is not considered that the flexible nature of the care offered

is sufficient enough to justify the scheme being considered a residential care home. The scheme does not offer a significant level of care that differentiates itself from a care package that could be purchased by anyone else living in their own home. The care package doesn't seem tied to the medical need.

- Genuine medical need: this is not defined in either the applicant's documents or the draft Section 106. This is a very open restriction and one that could enable someone to live in their scheme that does not require care/treatment for the identified medical need. In addition, with regard to the companion who do not need to sign up to a care package or have a defined medical need it is not clear what happens if the primary occupant moves out or passes away if the companion can remain in the unit even if they didn't need any care.
- Extra care accommodation management plan: Not too sure how this would work and what it would secure...seems reasonable so not a lot that can be said about this.
- CQC health provider: tied to the care package, this doesn't differentiate from a provider who would provide care to someone in their home. It is noted that the CQC regulated activity appears to be personal care in which agreements covering accommodation and care are separate. Again, this is not dissimilar from a health care provider who would visit a person's home to provide care. Care and accommodation not intrinsically linked (though should they be?)

16 It should be made clear that as proposed the provision of the care as described above and the accommodation elements of the scheme would be run separately and are therefore not reliant on each other. Care is designed to be provided to residents in their own home—It is considered that care and accommodation would be provided as a single package under one agreement in a care home that was classified as Use Class C2 and that residents would have a choice as to the level of care they receive.

17 While the proposed level of care and support for older persons is welcomed, particularly as it supports older persons to remain independent as long as possible it is considered that the flexible nature of the level of care offered by the applicant and proposed to be restricted in the Section 106 and is not considered to provide a sufficient level of care required for the proposal to be considered a care home under Use Class C2... (which can and will be tailored to suit individual occupants) will be different for each individual occupant of each dwelling and is likely to change over time. It is therefore not considered appropriate to link the Use Class to the development to the level of care provided in this instance.

18 Based on the above, GLA officers conclude that the proposed specialist older persons accommodation falls within Use Class C3 as the building affords the facilities for day to day private domestic existence.

Affordable Housing

Background

19 The application consists of 142 specialist extra care dwellings, three five-bedroom townhouses and a block of five affordable intermediate rent residential units. At Stage 1, the Mayor expressed the view that an affordable housing offer must be made in relation to all residential elements of the scheme and that the applicants viability assessment would be robustly scrutinised to ensure the maximum contribution is secured.

20 The applicant's viability report has been subject to independent review on behalf of the Council by Gerald Eve LLP. Given the Council's position that the specialist extra care accommodation fell within Use Class C2 of the use classes order, it is understood that Gerald Eve LLP were instructed to ensure the maximum reasonable portion of affordable housing was delivered in relation to the three five bedroom townhouses only.

Viability Comments – Key Points

Benchmark Land Value

- The approach to the assessment of EUV by both assessors is very high level and does not take into account the layout and condition of the buildings on site.
- The BLV does not include the air rights over the station although this is a part of the development site. The cost of acquiring the rights to build on this part of the site are included as a development cost based on the price agreed which is not in accordance with guidance.

GDV

- The approach taken to assessing the value of the Extra Care Units is based on comparable evidence from C3 residential schemes in similar locations. However these schemes do not offer the additional facilities offered by the Heythrop proposal. The flats have also been valued on a per unit basis rather than directly applying a value per square foot which depresses the value as many of the Heythrop flats are significantly oversized.
- There is no value included for either the nursing care, personal care or leisure elements of the scheme. It is accepted that some parts of the proposal e.g. the pool

and the gym are standard for the type of scheme on which the comparables are based but other parts such as the nursing care and the hair salon will be operated as separate businesses and so a rental element has presumably been included in business plans and this should be capitalised and added to the GDV

- There are 4 parking spaces that will be provided free to the owners of the chapel and so have no associated income and more information is required on this point.

Development Costs

- The Cost Plan has not been fully reviewed by the borough's cost consultant but initial comments indicated that the build costs are substantially above benchmarked rates. GE have reduced the costs by 10% for the purposes of their report but it is likely that the costs are overstated by more than this amount taking into account the fact that the allowances for preliminaries, overheads and profits, site abnormals and risk/contingency are also much higher than would be expected. There is also little detail provided in support of the site abnormals such as non-recoverable VAT and insurance costs.
- The costs relating to the deck of c£50m are very high level and consist largely of contingency sums. The applicant suggests that they have been agreed by TfL but confirmation on the accuracy of these costs is required as they are likely to be overstated.
- The finance costs of the scheme are very high due to the extended programme and very conservative assumptions on sale rates that it is suggested are appropriate for this kind of product

Overall viability

- Both KR and GE conclude that the scheme produces a RLV which is lower than the BLV and so is not able to support the delivery of additional affordable housing although in GE's view this deficit is only half that proposed by KR – c£40m v £80m
- As this scheme will take over 7 years to complete GE have also modelled a number of growth scenarios which with relatively conservative assumptions increase their RLV in line with their BLV. If the costs and values were reviewed as suggested the scheme could potentially breakeven based on current day costs and values and produce a surplus based on growth.

DATED _____ 2019

- (1) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
 - (2) LEOPARD UK KENSINGTON PROPCO LIMITED
 - (3) THE TRUSTEES FOR THE SOCIETY OF JESUS TRUST OF 1929 FOR ROMAN CATHOLIC PURPOSES AND THE TRUSTEES FOR THE CONGREGATION OF THE RELIGIOUS OF THE ASSUMPTION
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DEED

Made pursuant to Section 106 of the Town and Country Planning Act 1990 as amended and Section 16 of the Greater London Council (General Powers) Act 1974 as amended

Land at Heythrop College, 23-24 Kensington Square, London W8 5HN

Planning application reference: PP/18/05313

The Royal Borough of Kensington and Chelsea
The Town Hall
Hornton Street
London W8 7NX
Ref: LB/40000003

THIS DEED is made the day of Two Thousand and Nineteen
BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of the Town Hall Hornton Street London W8 7NX ("the **Council**")
- (2) **LEOPARD UK KENSINGTON PROPCO LIMITED** (Company Registration Number 10662780) whose registered office address is 18 Culford Gardens, London SW3 2ST ("the **Owner**")
- (3) **THE TRUSTEES FOR THE SOCIETY OF JESUS TRUST OF 1929 FOR ROMAN CATHOLIC PURPOSES** care of The Treasurer, 114 Mount Street, London W1K 3AH **AND THE TRUSTEES FOR THE CONGREGATION OF THE RELIGIOUS OF THE ASSUMPTION** care of The Provincial and the Provincial Bursar, Convent of the Assumption, 20 Kensington Square, London W8 5HH ("the **Mortgagee**")

WHEREAS

- (A) The Council is the local planning authority for the purposes of the 1990 Act and the highway authority for the purposes of the 1980 Act for the area of the Royal Borough of Kensington and Chelsea in which the Land is situated.
- (B) The Owner is registered at the Land Registry with freehold title absolute in respect of the Land under title numbers BGL71085, BGL71086 and BGL99330.
- (C) The Mortgagee has the benefit of a charge over the Land dated 5 May 2017 which is registered under title numbers BGL71085, BGL71086 and BGL99330.
- (D) The Planning Application was made to the Council and registered on 5 September 2018.
- (E) The Council resolved at a meeting of its Planning Committee on 27 November 2018 that planning permission could be granted in respect of the Development subject to conditions and following the completion of this Deed for the purpose of making acceptable arrangements for the carrying out of the Development.

NOW THIS DEED WITNESSES AS FOLLOWS:-

1 **INTERPRETATION**

1.1 In this Deed the following words and expressions shall unless the context otherwise requires have the following meanings:-

"the 1980 Act" means the Highways Act 1980 (as amended);

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

"Affordable Housing" means housing provided by a Registered Provider to eligible households whose needs are not met by the market (which for the purpose of this Deed shall comprise Intermediate Housing) and which housing should (a) meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local housing prices, and (b) include provision for the housing to remain at an affordable price for future eligible households, or, if these restrictions are lifted for the subsidy (if any) to be recycled for alternative affordable housing provision;

"Affordable Housing Land" means that part of the Land on which the Affordable Housing Units are to be provided as shown shaded yellow on Plan 2:

"Affordable Housing Units" means the Intermediate Rented Housing Units which are to be provided for rent by way of assured tenancies on the Affordable Housing Land;

"Air Quality Contribution" means the sum of £145,120 (one hundred and forty five thousand, one hundred and twenty pounds) Index Linked to be paid to the Council by the Owner towards Air Quality Provision;

"Air Quality Provision" means the provision of air quality monitoring equipment and/or provision of other assistance or support in respect of projects relating to air quality monitoring and management within the Council's administrative area;

"Building 1" means the building marked 1A and 1B on Plan 3;

"Building 2" means the building marked 2 on Plan 3;

"Building 3" means the building marked 3 on Plan 3;

"Building 4" means the building marked 4 on Plan 3;

"Building 5" means the building marked 5 on Plan 3;

"Building 6" means the building marked 6 on Plan 3;

"Building 7" means the building marked 7 on Plan 3;

“Buildings” means any of Buildings marked 1A, 1B and 2 to 7 on Plan 3;

“Carbon Offsetting Contribution” means the sum of £419,906 (four hundred and nineteen thousand, nine hundred and six pounds Index Linked to off-set the shortfall in terms of meeting the London Plan’s requirement for major development to achieve zero carbon emissions;

“Café” means the café to be provided within Building 6 which shall be made available for use by the general public in addition to Occupiers of the Residential and Facilities Units, in accordance with the provisions of the approved Café Management Plan;

“Café Management Plan” means a management plan to be submitted to the Council pursuant to paragraph 13.1 of Schedule 2 which shall contain details of how the café will be managed and operated by the Owner, including details of how and when the Café will be made available for use by the general public;

“Care Package” means a package of Nursing Care and/or Personal Care;

“Children’s Play Area” means a dedicated area of children’s play space including play equipment for use by children under the age of [*to complete*] which is to be provided as part of the Public Open Space in the location shown shaded blue on Plan 4;

“Commencement” means the carrying out of any act pursuant to the Planning Permission which constitutes a material operation within the meaning of Section 56 of the 1990 Act and material operations shall be construed as being carried out at the earliest date on which any material operation is begun and the terms **“Commences”** and **“Commenced”** shall be construed accordingly;

“Community Hall” means the new community hall within use class D1 with a gross internal area of not less than 125 (one hundred and twenty five) square metres comprising a main hall, meeting room, storage and toilet facilities, to be provided on the Land in Building 4 in accordance with the provisions of paragraph 12 of Schedule 2;

“Community Hall Management Plan” means a management plan to be submitted to the Council pursuant to paragraph 12.3 of Schedule 2 which shall contain details of how the Community Hall will be managed and operated by the Owner, including how the Community Hall (or part thereof) can be booked and used by members of the public and Local Community Groups, the charges for booking the Community Hall, and details of when the Community Hall will be available for use by the general public and Local Community Groups, including opening hours;

“Community Hall Specification” means the specification to be provided by the Owner at its own cost pursuant to paragraph 12.1 of Schedule 2 to secure the provision of the Community Hall;

“Companion” means any additional person residing in an Extra Care Facilities Unit with an Extra Care Customer (who may be of any age and who may or may not be a dependent of the Extra Care Customer) who does not require, and who has not entered into a contract to receive, Extra Care Provision;

“Construction Period” means the period of construction of the Development from Commencement until Practical Completion of the Development;

“Construction Traffic Management Plan” means any construction traffic management plan submitted to the Council for approval pursuant to the terms of the Planning Permission;

“Construction Traffic Management Plan Assessment Fee” means the sum of £2,800 (two thousand eight hundred pounds) Index Linked to be paid to the Council by the Owner for each Construction Traffic Management Plan submitted to the Council for approval such fee being payable again for each subsequent new version or material revision of the Construction Traffic Management Plan;

“Construction Training” means the provision of appropriate construction training for Local Residents as described in the Council’s Planning Obligations SPD adopted in August 2010 the nature and extent of which shall be determined by the Council in its absolute discretion;

“Construction Training Contribution” means the sum of £682,500 (six hundred and eighty two thousand, five hundred pounds) Index Linked to be paid to the Council by the Owner and to be applied by the Council towards Construction Training;

“Deck” means the deck to be constructed by the Owner at its own cost over the adjacent London Underground Circle/District line as shown edged blue on Plan 4;

“Demolition Traffic Management Plan” means any demolition traffic management plan required to be submitted to the Council for approval pursuant to the terms of the Planning Permission;

“Demolition Traffic Management Plan Assessment Fee” means the sum of £2,800 (two thousand eight hundred pounds) Index Linked to be paid to the Council by the Owner for each Demolition Traffic Management Plan submitted to the Council for approval such fee being payable again for each subsequent new version or material revision of the Demolition Traffic Management Plan;

“Development” means the development of the Land referred to in the Planning Application and described in Schedule 1;

“Development Agreement” means the development agreement to be entered into between the Owner and London Underground Limited to make provision for construction of the Deck, construction on the Deck and the related grant of proprietary rights;

“Development Costs” means the total cost of constructing the Development which is estimated to be [£to be confirmed) at the date of the Planning Permission;

“Director” means the Council’s Director of Planning and Place and shall be deemed to mean the officer for the Council from time to time holding that appointment or (if no officer holds that appointment) carrying out the duties of that appointment;

“Dyslexia Training Centre Contribution” means the sum of £100,000 (ONE HUNDRED THOUSAND POUNDS) Index Linked to be paid to the Council by the Owner and applied by the Council in accordance with paragraph 1.5 of Schedule 4 towards the relocation of the Dyslexia Training Centre to another location within the Council’s administrative area;

“Early Stage Review Cap” means the sum of £661,478 (six hundred and sixty one thousand, four hundred and seventy eight pounds);

“Early Stage Review Contribution” means the financial contribution to be paid by the Owner to the Council in lieu of changing the tenure of the Affordable Housing as a result of the Early Stage Review Surplus and which shall be used by the Council for the provision of off-site Affordable Housing in the Council’s administrative area;

“Early Stage Review Date” means the date of Implementation of the Development in the event that Development has not been Implemented within 2 years of the grant of the Planning Permission;

“Early Stage Review Surplus” means the surplus profit available at the Early Stage Review Date (if any) for the provision of an Early Stage Review Contribution, calculated in accordance with Formula 1b;

“Early Stage Viability Assessment” means a revised viability assessment prepared by or on behalf of the Owner in connection with the Market Housing Units to establish the Early Stage Surplus, such assessment to be prepared using the same methodology as the Original Viability Assessment;

“Employment and Training Contribution” means the sum of £24,379 (twenty four thousand, three hundred and seventy nine pounds) Index Linked to be paid to the Council by the Owner and to be applied by the Council towards Employment and Training Provision;

“Employment and Training Plan” means a plan produced by the Owner developed in consultation with the Council’s Economic Development Team outlining a scheme for the provision

of construction training for Local Residents and an agreed approach to target employment, apprenticeship outcomes and engagement with schools and education providers during the Construction Period which shall include:

- (a) the approach to be adopted in delivering target employment, apprenticeship outcomes and engagement with schools and education providers;
- (b) a single point of contact (workplace co-ordinator where appropriate) to manage demand and to provide regular skills forecasting updates;
- (c) details regarding the arrangements for notification of vacancies to the Council's Economic Development Team and/or any other agency nominated by the Council;
- (d) trainee/apprenticeship education programmes which shall offer as a minimum, an average of one work based training opportunity/apprenticeship for every 10 construction workers over the life time of a construction contract. These work-based placements will be to candidates nominated by the Council (or another agency as agreed by the Council) who are seeking recognised Level 2 or above NVQ qualifications. The Council is willing to consider developments adopting recognised models, such as the Client Based Approach from The Construction Industry Training Board (CITB), which provides an approach to defining apprenticeship and trainee numbers along with other performance indicators; and
- (e) accredited training opportunities which must follow an accredited framework, to provide trainees with the right level of skills to enter and sustain employment within the construction sector – generally a minimum of NVQ Level 2 (e.g. CITB Construction Skills Modern Apprenticeship) for trainees will be sought, which will require the developer (either directly or via the build contract and supply chain) to employ trainees and support day release arrangements until attainment of their qualification;

“Employment and Training Provision” means the provision of support to Local Residents to develop the skills to enable access to newly created employment opportunities arising from the Development and/or other employment and training schemes within the Council's administrative area or such other initiatives as the Council shall determine in its absolute discretion;

“External Consultant” means the external consultant(s) who may be appointed by the Council to assess the Development Viability Information;

“Extra Care Facilities” means units of accommodation for Extra Care Customers comprising the Extra Care Facilities Units on the Land and including a wide range of medical services and

communal and wellbeing facilities which are designed and managed to meet the individual needs of the Extra Care Customers and which shall include as a minimum for all Extra Care Customers:

- A minimum of 2.5 hours of Extra Care Provision per week;
- 24 hour, 7 days a week emergency support;
- Treatment rooms
- 6 monthly care package review;
- At least 1 meal a day;
- Accessible pool and vitality pool
- A daily group exercise session;
- Restaurant and lounge;
- Access to a range of open and garden spaces;

“Extra Care Facilities Management Plan” means a management plan to be submitted by the Owner to the Council for its approval detailing how the Extra Care Facilities Units shall be managed and which demonstrates compliance with staff arrangements and staffing ratios as included in the Council’s “Older People’s Housing Design Guidance” and which shall include detailed arrangements for the detailed assessment of care needs for the Extra Care Customers;

“Extra Care Facilities Units” means the 142 (one hundred and forty two) units of Extra Care Facilities to be provided on the Land pursuant to the Planning Permission comprising 70 (49%) one bedroom units and 72 (51%) two bedroom units unless otherwise agreed by the Council through the approval of a non-material amendment application under section 96A of the 1990 Act;

“Extra Care Provision” means (for the purpose of this Deed) a package of Nursing Care and/or Personal Care provided for Extra Care Customers subject to payment of a care charge which reflects the level of care being provided;

“Extra Care Customer” means customers contracted into a Care Package and residing permanently in an Extra Care Facilities Unit as their main residence following an assessment by a trained healthcare professional whom that trained healthcare professional has determined, based on their age and health, would benefit materially from Extra Care Provision and who are either:

- (a) 55 years in age or older who are contracted into a Care Package following an assessment by a trained healthcare professional who has determined that based on their age and health they would benefit materially from either a Medium Level of Care or a High Level of Care; or

(b) 65 years in age or older who are contracted into a Care Package following an assessment by a trained healthcare professional who has determined that based on their age and health they would benefit materially from at least a Low Level of Care;

and the term **“Extra Care Customers”** shall be construed accordingly;

“Formula 1b” means the formula used to calculate the Early Stage Review Surplus (if any) available at the Early Stage Review Date as shown in the Annex to Schedule 3 to this Deed;

“Formula 3” means the formula used to calculate the amount of any Late Stage Review Contribution at the Late Stage Review Date, as shown in the Annex to Schedule 3 to this Deed;

“Formula 4” means the formula used to calculate the Late Stage Review Cap at the Late Stage Review Date, as shown in the Annex to Schedule 3 to this Deed;

“GDV” means the total gross development value of the Market Housing Units which is estimated to be [TBC] at the date of the Planning Permission;

“Health Care Provider” means a provider of onsite services for the Extra Care Facilities who is regulated by the Care Quality Commission;

High Level of Care” means 15 or more hours of Extra Care Provision per week;

“Highway Repair Works” means the works required to return the area of public highway shown shaded [] on the Highway Repair Works Area Plan to a condition that is no worse than its condition prior to Commencement. Such works may include (but not be limited to) footway repaving, carriageway resurfacing, replacement of kerbstones, replacement or repair of street furniture including street lighting equipment, replacement of street trees and repair of the highway drainage system, and at the Council’s discretion may include any repairs to highway structures adjacent to the Highway Repair Works Area. For the avoidance of doubt such works shall not include permanent changes to the layout of the public highway;

“Highway Repair Works Contribution” means the sum of £100,000 (one hundred thousand pounds) Index Linked to be paid to the Council by the Owner in accordance with paragraph 11 of Schedule 2 and which shall be used by the Council towards the cost of carrying out the Highway Repair Works within the Highway Repair Works Area as a result of the demolition of the existing buildings on the Land and subsequent construction of the Development;

“Highway Repair Works Area” means that part of the public highway in the vicinity of the Land shown shaded [] on the Highway Repair Works Area Plan;

“Highway Repair Works Area Plan” means Plan [] attached to this Deed entitled “Highway Repair Works Area Plan” showing the extent of the Highway Repair Works Area;

“Homes England” means the executive non-departmental public body, sponsored by the ministry of Housing, Communities and Local Government or any successor body thereto;

"Implementation" means the carrying out of any act pursuant to the Planning Permission which constitutes a material operation within the meaning of Section 56 of the 1990 Act (which for the avoidance of doubt includes any works to trees on the land) and material operations shall be construed as being carried out at the earliest date on which any material operation is begun save that the term “material operation” shall not include operations:

- (a) works for the diversion of services;
- (b) fencing, gates, hoarding;
- (c) installation of services including construction of culverts;
- (d) creation of construction access points and routes;
- (e) groundwork;
- (f) site clearance;
- (g) environmental investigation;
- (h) archaeological investigation;
- (i) site and soil surveys;
- (j) erection of contractors work compound;
- (k) erection of site office or the erection of any temporary means of enclosure;

and the terms **"Implement"** and **"Implemented"** shall be construed accordingly;

"Index Linked" means the recalculation of any payment specified in this Deed by applying the following formula:

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

Where:

A = the payment specified in this Deed in pounds sterling;

B = the figure shown in the RPIX for the period last published prior to the date of the payment to be made under this Deed;

C = the figure shown in the RPIX for the period immediately prior to the date of this Deed; and

D = the recalculation sum in pounds sterling payable under this Deed or if the RPIX shall cease to be compiled or the formula shall otherwise be incapable of operation then such other equivalent means as shall be proposed by the Owner to recalculate such payment with the intent that it shall have like effect and be approved by the Council;

“Information Return” means a return relating to the Extra Care Facilities Units in the form of the document attached to this Deed at Appendix 4 which is to be completed and provided to the Council in accordance with the provisions of paragraph 1.11 of Schedule 2;

“Intermediate Rented Housing” means affordable housing at prices and rents above those of social housing but below market price or rents and which meet the criteria of Affordable Housing and which for the purposes of this Deed shall comprise the Intermediate Rented Housing Units which shall be provided at the Intermediate Rent levels;

“Intermediate Rented Housing Units” means the five (5) dwellings of Affordable Housing which are to be provided on the Land as Intermediate Rented Housing and comprising (unless otherwise agreed by the Council through the approval of a non-material amendment application under section 96A of the 1990 Act):

- a) two (2) x one (1) bedroom units;
- b) two (2) x two (2) bedroom units; and
- c) one (1) x three (3) bedroom unit

“Intermediate Rent” means weekly rent charges set in accordance with the Council's Intermediate Rent Tenancy Policy from time to time (the Council's policy at the date hereof being the policy dated January 2017) at no greater than thirty per cent (30%) of the lowest figure in each of the following gross household income bands. Thus by way of example based on the figures in the January 2017 policy, should a gross household income fall with Band 2, the weekly rent will be charged at no greater than 30% of £31,000:

Band 1	£20,000 to £30,999
Band 2	£31,000 to £45,999
Band 3	£46,000 to £60,999
Band 4	£61,000 to £70,999

Band 5 £71,000 to £85,000

"Land" means land at Heythrop College, 23-24 Kensington Square, London W8 5HN which is registered at the Land Registry under Title Numbers BGL71085, BGL71086 and BGL99330 and which for identification purposes only is shown edged in bold black on Plan 1;

"Late Stage Review Cap" means [the maximum Late Stage Review Contribution that will be payable as a result of the Late Stage Review calculated in accordance with Formula 4];

"Late Stage Review Contribution" means the financial contribution payable by the Owner to the Council for the provision of off-site Affordable Housing in the Council's administrative area PROVIDED THAT the Contribution shall not exceed the Late Stage Review Cap;

"Late Stage Review Date" means the date on which 50 per cent of the Market Housing Units are Occupied;

"Late Stage Viability Assessment" means a revised viability assessment prepared by or on behalf of the Owner in connection with the Market Housing units such assessment to be prepared using the same methodology as the Original Viability Assessment;

"Local Community Groups" means organisations operating within the Council's administrative area including (but not limited to) residents' associations, tenant groups, amenity societies, parents' groups, local charities, social groups and other parties requiring the use of the Community Hall from time to time;

"Local Procurement Code" means the Council's policy document on local procurement annexed at Appendix 2;

"Local Procurement Schedule" means a document setting out how the Owner and its contractors intend to comply with the Local Procurement Code;

"Local Residents" means persons resident in the administrative area of the Council;

"London Housing Design and Quality Standards" means the design standards for new homes set out in the London Plan and the Mayor of London's Housing Supplementary Planning Guidance published in March 2016;

"Low Level of Care" means at least 2.5 hours of Extra Care Provision per week;

"Market Housing Units" means the three proposed townhouses at 23 and 24 Kensington Square (Class C3 use) forming part of the Development which are not Affordable Housing Units or Extra Care Facilities Units and the term **"Market Housing Unit"** shall be construed accordingly;

“Medium Level of Care” means between 2.5 and 15 hours of Extra Care Provision per week;

"Monitoring Fee" means the financial contribution in the sum of £36,587 thirty six thousand, five hundred and eighty seven pounds to be paid to the Council by the Owner to monitor compliance with or default of the covenants and obligations contained within this Deed by the Planning Obligations Monitoring Officer;

"Nomination Agreement" means an agreement substantially in the form of the draft appended to this Deed at Appendix 3 for the nomination of tenants for the Intermediate Rented Housing Units to be entered into pursuant to paragraph 2.2.2 of Schedule 2;

“Nursing Care” means the promotion of health and prevention and/or treatment of illness;

"Occupation" means occupation for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the terms **"Occupy", "Occupied" and "Occupiers"** shall be construed accordingly;

“Original Viability Assessment” means the viability assessment undertaken by Knight Frank dated [to be confirmed];

"Parking Permit" means a permit issued by the Council to residents allowing the parking of a vehicle in a residents parking bay on the highway within the area of the Council but not including a disabled person's "purple badge" issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970 as amended;

“Personal Care” means physical assistance given to Extra Care Customers including eating and drinking, toileting, washing or bathing, dressing, oral care and the care of skin;

"Plan 1" means the plan attached to this Deed at Appendix 1 showing the Land;

"Plan 2" means the plan attached to this Deed at Appendix 1 showing the location of the Affordable Housing Units;

“Plan 3” means the plan attached to this Deed at Appendix 1 showing the location of the buildings on the Land;

“Plan 4” means the plan attached to this Deed at Appendix 1 showing the extent of the Public Open Space;

“Plan 5” means the plan attached to this Deed at Appendix 1 showing the extent of the Highway Repair Works Area;

"Planning Application" means the application for planning permission submitted to the Council for the Development as described in Schedule 1 under the Council's reference number PP/18/05313;

"Planning Obligations Monitoring Officer" means any officer of the Council from time to time allocated to deal with monitoring of planning obligations and covenants in this Deed;

"Planning Permission" means the planning permission which may be granted pursuant to the Planning Application;

"Practical Completion" means, in relation to any works of construction forming part of the Development or any works required pursuant to this Deed completed in all material respects such that a certificate of practical completion in relation to building works can be issued under industry standard construction contracts for such works and the term **"Practically Completed"** shall be construed accordingly;

"Public Art" means any permanent works of art on the Land visible to the general public whether part of (but not incorporated inside) a building or freestanding and which may include but shall not be limited to sculpture, lighting effects, street furniture, landscaping, and the incorporation of features into the external façade of buildings;

"Public Art Strategy" means a strategy to be submitted pursuant to paragraph 10 of Schedule 2 which will identify:

- a) timescales for the provision of Public Art as part of the Development; and
- b) proposals for commissioning high-quality Public Art from an artist or artists;

"Public Open Space" means the publicly accessible open spaces to be provided as part of the Development in the locations shown edged yellow on Plan 4 in accordance with the provisions of paragraph 14 of Schedule 2 and which for the avoidance of doubt includes the Children's Play Area shaded blue and the Safeguarded Public Route shaded purple on Plan 4;

"Public Open Space Specification" means the specification providing details of the Public Open Space (including for the avoidance of doubt a specification for the Children's Play Area) forming part of the Development to be submitted by the Owner to the Council for its approval pursuant to paragraph 14.1 of Schedule 2;

"RP Target Rent" means rent levels set by the Government following a rent restructuring regime where rents are set in line with a national formula which is used to calculate a target/formula rent for each property, with (i) the limitation that no rent shall increase by more than the Consumer Price Index issued by the Office for National Statistics plus one per cent and (ii) a national rent cap

set to ensure that no tenant pays over a maximum rent for any particular size of property regardless of its value;

"Registered Provider" means an organisation registered by Homes England in accordance with the Housing Act 1996 and/or the Housing and Regeneration Act 2008 whose objectives include the provision of Affordable Housing;

"Residential and Facilities Units" means the units of residential accommodation (whether house or flat or otherwise) to be constructed on the Land as part of the Development including all Intermediate Rented Housing Units and the Market Housing Units together with all of the Extra Care Facilities Units and **"Residential and Facilities Unit"** shall be construed accordingly;

"RPIX" means the definition afforded from time to time by the Office for National Statistics and for the avoidance of doubt is the figure shown as the Retail Prices Index All Items Excluding Mortgage Interest Payments (**RPIX**) published by the Office for National Statistics every month;

"Safeguarded Public Route" means the public route to be provided over the Deck from the Land to the retaining wall on the western side of the London Underground Circle/District line adjacent to the Copthorne Tara Hotel as shown shaded purple on Plan 4 and which is to be safeguarded as a proposed future link from the Land to Scarsdale Place for use by the general public in accordance with the provisions of paragraph 15 of Schedule 2;

"Step Free Access Contribution" means the sum of £4,000,000 (Four Million Pounds) Index Linked to be paid to the Council by the Owner as a contribution towards the delivery of step free access at High Street Kensington Underground Station;

"Travel Plan" means the travel plan for the Development to be submitted to the Council for approval pursuant to the terms of the Planning Permission;

"Travel Plan Monitoring Fee" means the sum of £1,000 (One Thousand Pounds) Index Linked to be paid to the Council by the Owner for the purposes of enabling the Council to monitor and review the Travel Plan in accordance with any targets within the Travel Plan;

"Undertakes" means undertakes pursuant to Section 16 of the Greater London Council (General Powers) Act 1974 as amended and **"Undertakings"** shall be construed accordingly;

"Use Classes Order" means the Town and Country Planning (Use Classes) Order 1987 (as amended); and

"Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday and the term "Working Days" shall be construed accordingly.

- 1.2 Words in this Deed importing the singular meaning shall where the context so admits include the plural meaning and vice versa.
- 1.3 Words in this Deed of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa.
- 1.4 References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under the 1990 Act or deriving validity from it, save that references to the Use Classes Order are and shall be construed as references to such use classes as at the date of this Deed and such construction shall not be affected by changes to the Use Classes Order after the date of this Deed.
- 1.5 Covenants and Undertakings made hereunder if made by more than one person are made jointly and severally.
- 1.6 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or knowingly suffer any infringement of the restriction.
- 1.7 Headings in this Deed are for reference purposes only and are not incorporated into this Deed and shall not be deemed to be an indication of the meaning of the parts of this Deed to which they relate.
- 1.8 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council to the successors to its respective statutory functions.
- 1.9 Where in this Deed reference is made to any clause paragraph schedule recital plan or Appendix such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule recital plan or Appendix in this Deed.

2 LEGAL EFFECT

- 2.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 16 of the Greater London Council (General Powers) Act 1974 as amended, Section 1 of the Localism Act 2011 and all other powers so enabling.
- 2.2 The Undertakings covenants restrictions and requirements contained in this Deed create planning obligations pursuant to Section 106 of the 1990 Act and Undertakings pursuant to Section 16 of

the Greater London Council (General Powers) Act 1974 and are enforceable by the Council as local planning authority against the Owner and successors in title and assigns and which bind each and every part of the Land.

- 2.3 The terms of this Deed shall come into effect on the date of this Deed other than clause(s) [] which will come into effect upon the grant of the Planning Permission.
- 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 its rights, powers, duties and obligations under all public and private statutes, byelaws and regulations may be as fully and effectually exercised.
- 2.5 Insofar as any provision in this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 2.6 No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the Undertakings, covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said Undertakings, covenants, terms or conditions or from acting upon any subsequent breach or default.
- 2.7 Nothing in this Deed shall be construed as a grant of planning permission.
- 2.8 The covenants and Undertakings in this Deed shall be enforceable without any limit of time against the Owner and its successors in title and assigns and any person claiming title through or under the Owner to the Land or any part thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person

PROVIDED THAT:

- a) no person shall be liable for any breach of the covenants, Undertakings, restrictions or obligations contained in this Deed occurring after he has parted with the whole of his interest in the Land or the part in respect of which such breach occurs save and without prejudice to the rights of the Council in relation to any subsisting antecedent breach of those covenants, Undertakings, restrictions or obligations prior to the parting of such interest;
- b) the Council shall not enforce the covenants, Undertakings, restrictions and obligations in this Deed against owners or Occupiers of individual Residential and Facilities Units on the Land save for any obligations prohibiting or restricting Occupation of any part of

the Land in which they have a legal interest and save also for the Undertakings given in paragraph 3 of Schedule 2;

- c) the Council shall not enforce the covenants, Undertakings, restrictions and obligations in this Deed against any Chargee until such Chargee, has entered into possession of the Land or the part thereof to which such covenants, Undertakings, restrictions and obligations relate or the Development is continued by or at the instigation of a receiver, administrator, liquidator or other agent appointed by any Chargee or with its consent; and
- d) the Council shall not enforce the covenants, Undertakings, restrictions and obligations in this Deed against any statutory undertaker.

2.9 In accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 it is hereby declared that none of the terms of this Deed shall in the absence of any express provision to the contrary be construed as being enforceable by any third party.

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

3 THE OWNER'S AND COUNCIL'S COVENANTS

3.1 The Owner hereby covenants with the Council as follows:-

3.1.1 subject to clause 2.8 of this Deed to observe and perform and cause to be observed and performed the Undertakings obligations covenants and restrictions contained in Schedules 2 and 3; and

3.1.2 to pay the Council's reasonable legal costs incurred in the negotiation, preparation and execution of this Deed; and

3.1.3 prior to Commencement of the Development to pay the Monitoring Fee to the Council.

3.2 The Council covenants as set out in Schedule 4.

4 FURTHER TERMS

4.1 The covenants and Undertakings in this Deed shall be treated and registered as local land charges for the purposes of the Local Land Charges Act 1975.

- 4.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.
- 4.3 The Mortgagee consents to the Owner entering into the obligations contained in this Deed and acknowledges that the Land shall be bound by the restrictions and obligations contained in this Deed and that its security shall take effect subject to this Deed PROVIDED THAT the Mortgagee (and any other person who acquires an interest in the Land only as a mortgagee) shall not be liable in respect of any breach of the terms of this Deed unless and until it takes possession of the Land or the Development is continued by or at the instigation of a receiver, administrator, liquidator or other agent appointed by the Mortgagee (or other mortgagee) or with its consent and FOR THE AVOIDANCE OF DOUBT the Mortgagee shall not be liable for any breaches of the terms of this Deed that occur after it has parted with the whole of its interest in the Land.

5 **NOTICE PROVISIONS**

5.1 The Owner covenants as follows:

- 5.1.1 not to Commence Development unless not less than ten (10) Working Days' prior written notice of the intention to Commence Development has been given by the Owner to the Director and the Director has acknowledged receipt; and
- 5.1.2 to notify in writing the Director no later than ten (10) Working Days after the Development has been Commenced; and
- 5.1.3 to provide the Director with immediate written notice of any change in ownership of any of the interests in the Land (SAVE FOR any changes in ownership of the Residential and Facilities Units but SUBJECT ALWAYS TO the obligations relating to the Extra Care Facilities Units contained in paragraphs 1.11 and 1.12 of Schedule 2) and such notice shall give details of the transferee's or lessee's full name and registered office (if a company or usual address if not).

5.2 Any notice agreement or approval required under this Deed shall be in writing and delivered either personally or by recorded delivery post and shall be addressed to:-

- 5.2.1 in the case of the Council to the Director at The Royal Borough of Kensington and Chelsea the Town Hall Hornton Street London W8 7NX;
- 5.2.2 in the case of the Owner to the address at party Recital (2);

5.2.3 in the Mortgagee to the address at party Recital (3).

6 **INTEREST**

Where any sum or amount which the Owner is obliged to pay to the Council pursuant to the obligations set out in this Deed is not paid on the date on which it is due and remains unpaid for a period exceeding thirty (30) days then (and without prejudice to any other right of the Council) interest thereon at the interest rate of three per cent (3%) per annum above the base lending rate of National Westminster Bank plc as amended from time to time shall immediately be paid on the sum outstanding by the Owner to the Council from the date on which the payment (or part thereof) became due to the date of actual receipt by the Council in addition to the outstanding balance of the payment.

7 **OWNERS' CAPACITY TO ENTER INTO THIS DEED**

The Owner hereby warrants that it has full power to enter into this Deed and that it has obtained all necessary consents from any mortgagee chargee or any other person having a title or right in the Land.

8 **INDEXATION**

Any sum payable pursuant to this Deed shall be Index Linked in an upward direction only and shall accordingly be increased by the amount calculated in accordance with the definition of Index Linked in this Deed.

9 **CONSENTS**

Where any notice, agreement, approval consent or satisfaction of the Council (including by the Director) or any other party included in this Deed is required under the terms of this Deed that notice, agreement, approval, consent or satisfaction shall be in writing and shall not be unreasonably withheld or delayed.

10 **VAT**

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

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 to the extent that VAT had not previously 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 **REVOCATION**

- 11.1 This Deed shall cease to have effect (insofar as it has not already been complied with and save for any obligations which are already outstanding) if the Planning Permission shall be quashed or revoked or if the Planning Permission shall expire prior to Commencement.
- 11.2 If this Deed is determined pursuant to clause 11.1 above, the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this Deed.

12 **DISPUTE RESOLUTION**

- 12.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England to such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 12.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 12.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 12.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation.
- 12.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.

12.5 The provisions of this clause 12 shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, and any other means of enforcing this Deed and consequential and interim orders and relief.

12.6 This clause 12 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed, which will be subject to the jurisdiction of the courts.

13 **COMMUNITY INFRASTRUCTURE LEVY REGULATIONS 2010**

For the purposes of the Community Infrastructure Levy Regulations 2010 (“the Regulations”), the Owner hereby affirms that the obligations imposed in this Deed are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development, so as to satisfy the tests in Regulation 122(2) of the Regulations.

14 **DATA PROTECTION ACT 2018**

Where any obligations contained within this Deed requires personal details or information to be submitted to the Council the requirement shall be subject to compliance with data protection principles and the Data Protection Act 2018 PROVIDED ALWAYS THAT the requirement to provide such information shall not apply where data protection legislation deems the requirement to be unlawful.

SCHEDULE 1

DESCRIPTION OF THE DEVELOPMENT

Reinstatement of three townhouses (Class C3), (part of 23 and 24 Kensington Square); refurbishment of college building (part of 23 Kensington Square) and use as an extra care facility (Class C2). Demolition of all other buildings on site. Erection of deck over adjacent London Underground line and construction of 5 buildings (ranging between 1 and 8 storeys in height) for use as an extra care facility including units, communal facilities and service areas, community hall and on-site affordable housing and associated access parking, servicing and landscaping (MAJOR DEVELOPMENT).

SCHEDULE 2

OWNER'S OBLIGATIONS

The Owner hereby covenants with and Undertakes to the Council as follows:-

1 EXTRA CARE FACILITIES

- 1.1 Notwithstanding any other provision of the Use Classes Order, the Extra Care Facilities shall only be used or Occupied as an extra care facility in accordance with Class C2 of the Use Classes Order and the Planning Permission and for no other purpose and not to permit nor allow the use or Occupation of the Extra Care Facilities for any other category within Class C2 of the Use Classes Order other than as an extra care facility in accordance with the Planning Permission.
- 1.2 To ensure that all the elements of the definition of Extra Care Facilities in this Deed are provided for the Extra Care Facilities Units and the Extra Care Customers.
- 1.3 To ensure that each of the Extra Care Facilities Units are only used as Extra Care Facilities and are only Occupied by Extra Care Customers and their Companion (if any) and not to permit any of the Extra Care Facilities Units to be used other than as Extra Care Facilities or to be Occupied otherwise than by at least one Extra Care Customer and their Companion (if any) PROVIDED THAT:
 - (a) For the avoidance of doubt it is agreed this means that (subject to paragraph (b) below in the case of Extra Care Facilities Units which are leased) a single Companion may remain in Occupation of an Extra Care Facilities Unit if the Extra Care Customer with whom they reside dies notwithstanding that the said Companion may be younger than 55 years of age or 65 years of age (as the case may be) and without any physical or mental impairment but that the said Extra Care Facilities Unit may not then be Occupied by the Companion and another person unless either or both the Companion and that other person fall within the definition of Extra Care Customer; and
 - (b) (in the case of an Extra Care Facilities Unit that is leased) the terms of any lease granted, assigned, transferred or otherwise provided in respect of each of the Extra Care Facilities Units within the Development shall include a covenant requiring that if an Extra Care Customer dies then any Companion living with the Extra Care Customer in the Extra Care Facilities Unit at the date of the Extra Care Customer's death shall be

permitted to remain in the Extra Care Facilities Unit for no longer than (i) the remaining term of the lease or (ii) 6 months (whichever shall be the longer)

- 1.4 To ensure at all times for the lifetime of the Development that no more than 10% of the total number of Extra Care Customers Occupying the Extra Care Facilities Units are less than 65 years of age, and not to permit more than 10% of the total number of Extra Care Customers Occupying the Extra Care Facilities Units at any one time to be less than 65 years of age.
- 1.5 That the terms of any lease granted, assigned, transferred or otherwise provided in respect of each of the Extra Care Facilities Units within the Development shall be for a minimum term of 12 months (subject only to a 6 month break clause in favour of the Occupier(s) of the Extra Care Facilities Units) and granted, assigned, transferred or otherwise provided on a permanently renewable basis (for either that Extra Care Facilities Unit or another Extra Care Facilities Unit) thus giving the Occupier(s) the option to renew their lease each year.
- 1.6 That all material used for advertising or marketing any of the Extra Care Facilities Units for letting or sale will notify prospective Occupiers of the matters set out in paragraph 1.3 of this paragraph 1 of Schedule 2.
- 1.7 To submit an Extra Care Facilities Management Plan to the Council for its written approval prior to Occupation of any of the Extra Care Facilities Units and not to Occupy or to permit the Occupation of any of the Extra Care Facilities Units until the Extra Care Facilities Management Plan has been approved in writing by the Council.
- 1.8 To operate and manage the Extra Care Facilities Units in accordance with the approved Extra Care Facilities Management Plan for the lifetime of the Development and not to Occupy or permit Occupation of any of the Extra Care Facilities Units otherwise than in accordance with the approved Extra Care Facilities Management Plan (unless otherwise agreed in writing by the Council).
- 1.9 To appoint a Health Care Provider to manage the Extra Care Facilities Units and not to Occupy or permit the Occupation of the Extra Care Facilities Units otherwise than where they are being managed by a Health Care Provider in accordance with the terms of the approved Extra Care Facilities Management Plan.
- 1.10 Upon reasonable request to provide evidence to the Council of ongoing compliance with the provisions of this paragraph 1 of Schedule 2 by providing copies of any legal agreements or leases or other documents (with the commercial terms and any personal details redacted) which formalise the requirements of this paragraph 1 of Schedule 2 with the details being provided to the Council on a confidential basis.

- 1.11 To submit an Information Return to the Council on an annual basis (but no more often than once each calendar year) with the details being provided to the Council on a confidential basis.

2 AFFORDABLE HOUSING

- 2.1 To construct or procure the construction of the Affordable Housing Units on the Affordable Housing Land.
- 2.2 Subject to paragraphs 2.5 and 2.6 below, not at any time to Occupy or permit the Occupation of any of the Intermediate Rented Housing Units:
- 2.2.1 other than as Affordable Housing by a tenant or tenants of a Registered Provider; and
- 2.2.2 until the Registered Provider has entered into a Nomination Agreement with the Council.
- 2.3 To ensure all the Affordable Housing Units shall be designed and built to meet the London Housing Design and Quality Standards to the extent compatible with the Planning Permission.
- 2.4 Not to Occupy or permit the Occupation of Building 5, Building 6 or Building 7 until:
- 2.4.1 the Intermediate Rented Housing Units have been constructed and are ready for Occupation as Affordable Housing by a tenant or tenants of a Registered Provider; and
- 2.4.2 it has transferred or granted a lease with a term of at least 125 years of the Intermediate Rented Housing Units to a Registered Provider and a certified copy of such transfer or lease has been provided to the Council; and
- 2.4.3 the Owner has served notice on the Director advising that the Intermediate Rented Housing Units are ready for Occupation and allowing the Council to inspect the Intermediate Rented Housing Units at any time between 9am and 5pm Monday to Friday during the 10 Working Days following service of the notice or such other time as may be agreed with the Council; and
- 2.4.4 the Director has confirmed in writing to the Owner, following the Council's inspection pursuant to paragraph 2.4.3 above, that the Intermediate Rented Housing Units have been constructed and are ready for Occupation in accordance with the covenants contained in this Deed.
- 2.5 The covenants contained in this paragraph 2 of Schedule 2 shall not be binding:

- 2.5.1 in respect of any Intermediate Rented Housing Unit where its Occupier has exercised a statutory right to acquire the whole of the freehold or of a leasehold estate under the Housing Act 1996; nor
- 2.5.2 on the mortgagee of a Registered Provider who seeks to dispose of the Land or any part thereof (as to such part) pursuant to its power of sale exercised pursuant to default of the terms of the mortgage or any receiver appointed by such mortgagee or person deriving title under them PROVIDED THAT such mortgagee (or receiver) has first complied with the provisions of paragraph 2.6 of this paragraph 2 of Schedule 2.
- 2.6 Any mortgagee or receiver appointed by such mortgagee or person deriving title under them claiming protection granted by paragraph 2.5.2 above must first:
- 2.6.1 give written confirmation and provide evidence to the Council of a default by the Registered Provider of any obligation under the terms of its mortgage or charge as soon as reasonably practicable after any notice is served on the Registered Provider;
- 2.6.2 give at least three months' prior written notice to the Council of its intention to exercise its statutory powers of sale (the "**Notice**");
- 2.6.3 give the Council the option to purchase the relevant part of the Land from the chargee or receiver or alternatively nominate another Registered Provider to purchase the relevant part of the Land for a period commencing on the date the Council received the Notice from the chargee or receiver and ending three months after the date of receipt (the "**Moratorium Period**");
- 2.6.4 cooperate in good faith with the arrangements made by the Council pursuant to this paragraph 2.6 of and use reasonable endeavours to complete such transfer by the end of the Moratorium Period; and
- 2.6.5 if such a disposal has not yet completed within the Moratorium Period the chargee or receiver may dispose of the relevant part of the Land free from the obligations and restrictions contained in this paragraph 2 of Schedule 2.
- 2.7 The price payable by the Council (or its nominated Registered Provider) for the relevant part of the Land pursuant to paragraph 2.6 above shall be a consideration representing the best price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the relevant Intermediate Rented Housing Units contained in this paragraph 2 of Schedule 2.
- 2.8 The Council (or its nominated Registered Provider) and the chargee or receiver shall use reasonable endeavours to agree the purchase price for the relevant part of the Land but in the event of failure

to agree the purchase price the matter shall be determined by an independent surveyor having at least 10 years' experience in the valuation of Affordable Housing within the London area and will be appointed by agreement between the parties or failing such agreement and upon the application by either party by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy, due regard being had to all the restrictions imposed upon the Intermediate Rented Housing Units by this Deed.

2.9 INTERMEDIATE RENTED HOUSING SERVICE CHARGE

In respect of the Intermediate Rented Housing Units, the Owner hereby covenants with the Council:

- 2.9.1 that the tenants of the Intermediate Rented Housing Units shall be permitted access to the Public Open Space but no other communal facilities other than those available to the public at large;
- 2.9.2 that the Service Charges shall be levied only on costs and services associated with the Affordable Housing Units and a proportionate cost of the maintenance of the Public Open Space;
- 2.9.3 the amount of the Service Charges shall not be more than the actual costs of the services provided and shall adhere to statutory controls regarding setting reasonable levels of Service Charge;
- 2.9.4 none of the Intermediate Rented Housing Units shall be Occupied until the amount of the Service Charges in relation to those Intermediate Rented Housing Units has been approved in writing by the Council; and
- 2.9.5 not to increase the amount of the Service Charges in relation to the Intermediate Rented Housing Units until the amount of the increase in relation to those Intermediate Rented Housing Units has been approved in writing by the Council.

3 PARKING PERMITS

3.1 From Commencement of the Planning Permission:-

- 3.1.1 Not to apply to the Council for a Parking Permit in respect of any of the Residential and Facilities Units nor to knowingly permit any owner or Occupier of the Residential and Facilities Units to apply to the Council for a Parking Permit and if such a permit is issued in respect of any of the Residential and Facilities Units it shall be surrendered to the Council within 7 days of written receipt.

3.1.2 That all material used for advertising or marketing any of the Residential and Facilities Units for letting or sale will notify prospective owners and Occupiers that they will not be entitled to apply for a Parking Permit in respect of any of the Residential and Facilities Units.

3.1.3 That in respect of every lease granted assigned transferred or otherwise provided after the date of this Deed in respect of any of the Residential and Facilities Units the following covenant or a covenant of substantially the same nature of it shall be imposed (or a covenant of substantially the same nature in respect of any transfer or any tenancy agreement licence or other instrument entitling Occupation of any of the Residential and Facilities Units) and for the purposes of the covenant set out below, "premises" shall relate to the relevant Residential and Facilities Unit:

"the lessee for himself and his successors in title being the owner or owners for the time being of the terms of years hereby granted hereby covenant with the lessor and separately with the Mayor and Burgesses of the Royal Borough of Kensington and Chelsea ("the Council") not to apply for nor knowingly permit an application to be made by any person residing in the premises to the Council for a resident's parking permit (save for a disabled person's "purple badge" and (where available) "blue badge" issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970) as amended in respect of such premises and if such a permit is issued then it shall be surrendered within 7 days of written receipt to do so from the Council and this covenant shall also be enforceable by the Council under the Contracts (Rights of Third Parties) Act 1999, section 1".

3.1.4 Upon reasonable request to send to the Director a certified copy of such parts of the transfers, leases tenancies or licences as provide evidence that the above provisions of this paragraph 3 have been complied with in respect of the Residential and Facilities Units.

4 CONSTRUCTION TRAFFIC MANAGEMENT PLAN ASSESSMENT FEE

4.1 To pay the Construction Traffic Management Plan Assessment Fee to the Council for each Construction Traffic Management Plan submitted to the Council no later than 10 Working Days prior to Commencement.

4.2 Not to Commence the Development until the Construction Traffic Management Plan Assessment Fee has been paid to the Council for each Construction Traffic Management Plan submitted to the Council and its receipt has been acknowledged in writing by the Director.

5 DEMOLITION TRAFFIC MANAGEMENT PLAN ASSESSMENT FEE

- 5.1 To pay the Demolition Traffic Management Plan Assessment Fee to the Council for each Demolition Traffic Management Plan submitted to the Council no later than 10 Working Days prior to Commencement.
- 5.2 Not to Commence the Development until the Demolition Traffic Management Plan Assessment Fee has been paid to the Council for each Demolition Traffic Management Plan submitted to the Council and its receipt has been acknowledged in writing by the Director.

6 CONSTRUCTION TRAINING CONTRIBUTION AND EMPLOYMENT AND TRAINING CONTRIBUTION

- 6.1 To pay the Construction Training Contribution and the Employment and Training Contribution to the Council no later than 10 Working Days prior to Commencement.
- 6.2 Not to Commence the Development until the Construction Training Contribution and the Employment and Training Contribution have been paid to the Council and its receipt has been acknowledged in writing by the Director.
- 6.3 To submit an Employment and Training Plan to the Council for its written approval prior to Commencement and not to Commence the Development until an Employment and Training Plan has been submitted to the Council and approved in writing by the Council and (if such approval is declined) to resubmit the Employment and Training Plan until such time as the Council is able to approve the same.
- 6.4 To implement and comply with the approved Employment and Training Plan during the Construction Period.
- 6.5 To notify the Council in writing as soon as possible of any of the following:
 - 6.5.1 employment or training vacancies at the Development arising directly from the construction contracts associated with the Development; and
 - 6.5.2 employment or training vacancies at the Development arising from the contractors and sub-contractors working on the construction of the Development.
- 6.6 To work consistently with the Council to promote and advertise employment and training opportunities at the Development to Local Residents throughout the Construction Period by informing the Council of employment and training opportunities at the Development and by issuing quarterly updates to the Director on such opportunities.

6.7 To promote construction employment at the Development to Local Residents via job fairs, career talks and workshops.

6.8 To monitor and record or procure the monitoring and recording of the following and make available the said records for inspection by the Council or submit the same to the Council within fourteen days of receiving any such request:

6.8.1 the full details and number of all persons and businesses recruited during the construction of the Development and identify the number and percentage of those who are Local Residents; and

6.8.2 the names of any third parties that have secured contracts for the carrying out of the construction of the Development

subject to compliance with data protection principles and the Data Protection Act 2018 and PROVIDED THAT the information required to be made available as referred to in this paragraph 6.8 shall be requested in accordance with data protection requirements and in such a way that the person or business is made aware that the information provided is to be disclosed to a third party for monitoring purposes and in a manner which gives the person or business the ability to agree or refuse to agree to the information being disclosed PROVIDED ALWAYS THAT this paragraph 6.8 shall not apply where data protection legislation deems the provisions of this paragraph 6.8 to be unlawful.

7 LOCAL PROCUREMENT OBLIGATIONS

7.1 To submit a Local Procurement Schedule to the Council for its written approval prior to the Commencement of Development.

7.2 Not to Commence any part of the Development until a Local Procurement Schedule has been submitted to the Council and until it has been approved in writing by the Council and (if such approval is reasonably declined) to resubmit the Local Procurement Schedule until such time as the Council (acting reasonably) is able to approve the same.

7.3 To implement the Development in accordance with the approved Local Procurement Schedule.

7.4 During the Construction Period:

7.4.1 to provide opportunities for local businesses to bid/tender for the provision of goods and services required for the Development as envisaged in the Local Procurement Schedule;

- 7.4.2 to meet with the Council or its nominee (either the Council's Economic Team or its Local Procurement Team) in advance of tendering contracts to clarify how the Local Procurement Schedule will work and what actions may be expected;
- 7.4.3 to ensure that throughout the Construction Period the Development shall be carried out in accordance with the requirements of the Local Procurement Schedule; and
- 7.4.4 to provide opportunities for local businesses to bid/tender for the provision of facilities, management services and other post construction supplies of goods and services required for the Development.

8 DYSLEXIA TRAINING CENTRE CONTRIBUTION

To pay to the Council the Dyslexia Training Centre Contribution at least 1 year prior to the date projected for the Dyslexia Training Centre to vacates their premises on the Land or (if earlier) within 7 days after either the Owner has received written notice from the Dyslexia Training Centre, or the Owner has served written notice on the Dyslexia Training Centre, that they are exercising their respective right to terminate the lease by giving one month's notice to the other party.

9 STEP FREE ACCESS CONTRIBUTION

- 9.1 To pay to the Council the Step Free Access Contribution in the following instalments:-
 - 9.1.1 50% (fifty per cent) prior to commencement of the Deck; and
 - 9.1.2 50% (fifty per cent) prior to Practical Completion of the Deck
- 9.2 Not to Occupy any of the Buildings until the Step Free Access Contribution has been paid in full to the Council and its receipt (in full) has been acknowledged in writing by the Director.

10 PUBLIC ART STRATEGY

- 10.1 To consult with the Council's Public Art Panel on the contents of the Public Art Strategy before submitting it to the Council for approval pursuant to paragraph 10.2 below and prior to commissioning the Public Art from an artist or artists.
- 10.2 Not later than six (6) months prior to Occupation of any of the Extra Care Facilities Units, to submit a Public Art Strategy to the Council for its written approval and, if such approval is reasonably refused, to resubmit the Public Art Strategy until such time as the Council is able to approve the same.

- 10.3 To implement and comply with the Public Art Strategy in accordance with the approved details and to provide the Public Art to the Council's reasonable satisfaction prior to Occupation of any of the Extra Care Facilities Units.
- 10.4 To spend not less than £175,000 (one hundred and seventy five thousand pounds) on the provision of Public Art and the implementation of the Public Art Strategy.
- 10.5 Not later than twenty one (21) Working Days of receiving a written request from the Council, to provide to the Council such documentary evidence or information necessary to demonstrate compliance with paragraphs 10.3 and 10.4 above.

11 HIGHWAY REPAIR WORKS CONTRIBUTION

- 11.1 To pay to the Council the Highway Repair Works Contribution prior to Commencement.
- 11.2 Not to Commence the Development until the Highway Works Contribution has been paid to the Council and its receipt has been acknowledged in writing by the Director.

12 COMMUNITY HALL

- 12.1 To submit the Community Hall Specification to the Council for its approval prior to the Implementation of the Development and not to Implement the Development or permit the Implementation of the Development unless and until the Community Hall Specification has been approved by the Council in writing.
- 12.2 At its own cost to provide the Community Hall in accordance with the approved Community Hall Specification such that it is available for use by the general public prior to Occupation of any of the Extra Care Facilities Units and not to Occupy or permit Occupation of any of the Extra Care Facilities Units unless and until the Community Hall has been provided in accordance with the Community Hall Specification and to the reasonable satisfaction of the Council.
- 12.3 To submit a Community Hall Management Plan to the Council prior to Occupation of any of the Extra Care Facilities Units and not to Occupy any of the Extra Care Facilities Units unless and until the Community Hall Management Plan (including the charges for booking the Community Hall and details of how it will be advertised) has been approved by the Council in writing.
- 12.4 To make the Community Hall available for use by the general public and Local Community Groups in accordance with the approved Community Hall Management Plan PROVIDED THAT:
- (i) the Community Hall Management Plan shall not contain any obligation to provide public access to the Community Hall otherwise than by licence to the general public and Local Community Groups and it shall not give rise to any public rights of way;

- (ii) the Owner may levy a reasonable charge for the use of the Community Hall in accordance with the approved Community Hall Management Plan;
- (iii) the Owner may submit to the Council revised details of proposed charges and opening times for the general public and Local Community Groups but shall not implement any proposed changes until the revised Community Hall Management Plan has been approved in writing by the Council.

- 12.5 To ensure that bookings for the use of the Community Hall are allocated on a “first come first served” basis.
- 12.6 To advertise details of the availability of and charges for the use of the Community Hall and in public libraries within the vicinity of the Land in accordance with the approved Community Hall Management Plan.
- 12.7 To submit a report every 3 (three) years to the Director, the first report to be submitted on the date 3 (three) years after the date on which the Community Hall is first made available to the general public and Local Community Groups, setting out the previous 3 (three) year’s usage of the Community Hall.

13 CAFÉ MANAGEMENT PLAN

To submit a Café Management Plan to the Council prior to Occupation of any of the Extra Care Facilities Units and not to Occupy any of the Extra Care Facilities Units unless and until the Café Management Plan has been approved by the Council in writing.

14 PUBLIC OPEN SPACE (INCLUDING CHILDREN’S PLAY AREA AND SAFEGUARDED PUBLIC ROUTE)

- 14.1 To submit the Public Open Space Specification to the Council for its approval at least 6 months prior to first Occupation of any part of the Development.
- 14.2 Not to first Occupy or permit first Occupation of any part of the Development unless and until the Public Open Space Specification has been submitted to the Council in accordance with paragraph 14.1 above and has been approved by the Council in writing.
- 14.3 To undertake and complete the Public Open Space to the reasonable satisfaction of the Council and in accordance with the Public Open Space Specification as approved in writing by the Council prior to first Occupation of the first Extra Care Facilities Unit.

- 14.4 Not to first Occupy or permit first Occupation of any part of the Development unless and until the Public Open Space has been Practically Completed to the reasonable satisfaction of the Council and in accordance with the Public Open Space Specification.
- 14.5 To be responsible at its own expense for the due and proper maintenance and management of the Public Open Space including the approved scheme of lighting of the Public Open Space and shall:-
- (a) keep the Public Open Space clean and tidy and free from deposits of waste, rubbish or refuse;
 - (b) keep the Public Open Space in such secure and sound condition generally as will afford to the general public the free unobstructed and safe use thereof; and
 - (c) effect and maintain full and adequate insurance cover in respect of any claims for injury that may be made by the general public.
- 14.6 Unless otherwise agreed by the Council through the approval of a non-material amendment application under section 96A of the 1990 Act and subject to the provisions of paragraph 14.9 of this Schedule 2, to allow the general public who may or may not live or work on any part of the Development to have free access on foot or by wheelchair to and over the Public Open Space at all times every day throughout the year from the date of Practical Completion of the Public Open Space and not to gate off any part of the Public Open Space, or erect any signs or notices to discourage the general public from accessing or using the Public Open Space, or otherwise restrict access by members of the public to the Public Open Space.
- 14.7 That all material used for advertising or marketing any of the Residential and Facilities Units for letting or sale, and every transfer or lease granted, assigned, transferred or otherwise provided in respect of each of the Residential and Facilities Units shall inform the Occupiers or prospective Occupiers of the Residential and Facilities Units:
- (i) that the general public shall have free right of access on foot or by wheelchair to and over the Public Open Space (including the Safeguarded Public Route) at all times every day throughout the year (subject to closure permitted pursuant to paragraph 14.9); and
 - (ii) of the intention to provide a future publicly accessible link from the Development to Scarsdale Place across the London Underground Circle/District line via the Safeguarded Public Route.
- 14.8 To allow the Council by its officers, workmen or agents access to the Public Open Space in order to ensure that the provisions of this paragraph 14 of Schedule 2 are being complied with and if there is a breach by the Owner of any of their obligations under this paragraph 14 the

Council may serve a default notice upon the Owner requiring any breach to be remedied within a period of 21 (twenty one) days or such longer time period from the date of the said notice as the Council may agree acting reasonably in view of the nature of the breach and the Owner shall either remedy the breach accordingly to the Council's satisfaction, or if the Owner does not accept the requirements of the said default notice they shall notify the Council in writing whereupon a dispute shall be deemed to have arisen to be remedied in accordance with the dispute resolution procedure as set out at Clause 12 of this Deed.

14.9 It is agreed between the Owner and the Council that there is no intention to create any public rights of way over the Public Open Space and that the access of the general public to and over the Public Open Space shall be in common with the rights of all persons having rights over the same for the purpose of access to the Development or part or parts thereof and that notwithstanding anything contained in this Deed the Owner may from time to time prevent or restrict access to the Public Open Space or part or parts thereof (but only for as long as is reasonably necessary) for the following purposes:-

- (a) the maintenance of the Public Open Space;
- (b) the laying, construction, inspection, maintenance, repair or renewal of any building or buildings immediately adjoining the Public Open Space (including the erection of scaffolding), or any services or service media serving such building or buildings;
- (c) closure for no more than 24 hours in any calendar year to prevent the creation of any public rights of way over the Public Open Space PROVIDED THAT access is maintained during any such closure for occupiers of and visitors to the Residential and Facilities Units;
- (d) in cases of emergency or some danger to the public or in the interests of security;

PROVIDED THAT the Owner shall give not less than 5 (five) Working Days' prior written notice to the Council before closing the Public Open Space (or any part thereof) in the circumstances referred to in paragraphs 14.9(a) to (c) above AND FURTHER PROVIDED THAT the area to be closed shall be the minimum area reasonably practicable for the stated purpose and the Owner shall use reasonable endeavours to re-open any area of land closed pursuant to this paragraph 14 of Schedule 2 as soon as reasonably practicable.

15 SAFEGUARDED PUBLIC ROUTE

15.1 Not to construct or permit the construction of any building of a temporary or permanent nature on or over the Safeguarded Public Route for the lifetime of the Development.

- 15.2 (Subject to closure for purposes permitted by paragraph 14.9) to permit the general public and Occupiers of the Residential and Facilities Units free access on foot or by wheelchair to and over the Safeguarded Public Route at all times every day throughout the year from the date of Practical Completion of the Public Open Space (which includes the Safeguarded Public Route) and not to gate off any part of the Safeguarded Public Route, or erect any signs or notices to discourage the general public from accessing or using the Safeguarded Public Route, or otherwise restrict access by the general public or Occupiers of the Residential and Facilities Units to or over the Safeguarded Public Route unless otherwise approved in writing by the Council.
- 15.3 Not to preclude the provision of a public link across the London Underground Circle/District line from the Land to Scarsdale Place via the Safeguarded Public Route if the opportunity to do arises within the lifetime of the Development.

16 TRAVEL PLAN MONITORING FEE

- 16.1 To pay the Travel Plan Monitoring Fee to the Council prior to Occupation of any part of the Development.
- 16.2 Not to Occupy or permit the Occupation any part of the Development until the Travel Plan Monitoring Fee has been paid to the Council and its receipt has been acknowledged in writing by the Director.

17 CARBON OFFSETTING CONTRIBUTION

- 17.1 To pay the Carbon Offsetting Contribution to the Council prior to Implementation of the Development.
- 17.2 Not to Implement the Development until the Carbon Offsetting Contribution has been paid to the Council and its receipt has been acknowledged in writing by the Director.

18 AIR QUALITY CONTRIBUTION

- 18.1 To pay the Air Quality Contribution to the Council prior to Implementation of the Development.
- 18.2 Not to Implement the Development until the Air Quality Contribution has been paid to the Council and its receipt has been acknowledged in writing by the Director.

19 PROVISION OF MARKET HOUSING

Not to Occupy any of the Market Housing Units unless and until the Deck has been Practically Completed to the Council's reasonable satisfaction.

20 DEVELOPMENT AGREEMENT

To enter into the Development Agreement prior to the date of Occupation of any part of the Development (other than the Affordable Housing Units) and not to Occupy or permit Occupation of any part of the Development (other than the Affordable Housing Units) unless and until the Development Agreement has been completed and the Owner has given written confirmation of such completion to the Council.

21 WORKS TO TREES

21.1 For the avoidance of doubt, any works to any trees on the Land shall constitute Implementation of the Development.

21.2 Not to carry out or permit any work to be carried out to any of the trees on the Land unless and until a contractor has been appointed to construct the Deck and the Council has received not less than 7 Working Days' prior written notice of the date that construction of the Deck is to commence.

SCHEDULE 3

VIABILITY REVIEW

1. EARLY STAGE VIABILITY REVIEW

- 1.1 In the event Implementation has not occurred within 2 (two) years of the grant of the Planning Permission, the Owner shall:
- (a) notify the Council in writing of the anticipated Early Stage Review Date not less than 20 Working Days in advance of that date; and
 - (b) notify the Council in writing of the actual Early Stage Review Date no later than 5 Working Days after that date.

2. SUBMISSION OF EARLY STAGE VIABILITY ASSESSMENT AND OTHER INFORMATION

No later than 20 Working Days after the Early Stage Review Date notified to the Council pursuant to paragraph 1.1(b) of this Schedule 3, the Owner shall submit to the Council the following information on the basis that the Council may make such information publicly available:

- (a) the Early Stage Viability Assessment; and
- (b) a written statement that applies the applicable figures in the Early Stage Viability Assessment to Formula 1b (PROVIDED ALWAYS THAT if the result produced by Formula 1b is less than zero it shall be deemed to be zero) thereby confirming whether in the Owner's view there is an Early Stage Review Surplus and whether any Early Stage Review Contribution is payable and, if so, how much.

3. ASSESSMENT OF THE EARLY STAGE VIABILITY ASSESSMENT AND OTHER INFORMATION

- 3.1 The Council shall assess the information submitted pursuant to paragraph 2 of this Schedule 3 and assess whether in its view an Early Stage Review Contribution is payable in accordance with Formula 1b and, if so, how much and the Council will be entitled to rely on its own evidence in determining inputs into Formula 1b subject to such evidence also being provided to the Owner.
- 3.2 The Council may appoint an External Consultant to assess the information submitted pursuant to paragraph 2 of this Schedule 3 PROVIDED THAT any External Consultant so appointed will report

to the Council within 20 Working Days after the date of receipt by the External Consultant of the information submitted pursuant to paragraph 2 of this Schedule 3.

- 3.3 In the event that the Council and/or an External Consultant requires further information or supporting evidence in relation to the Early Stage Viability Assessment then the Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other party) within ten Working Days of receiving the relevant request and this process may be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether in its view there is an Early Stage Review Surplus in accordance with Formula 1b, and whether any Early Stage Review Contribution is required.
- 3.4 If the Council and/or External Consultant determines following receipt of the information submitted pursuant to paragraph 2 of this Schedule 3 that the Early Stage Review Date has not occurred, the Council may require the Owner to promptly submit additional information pursuant to paragraph 2 of this Schedule 3 or to re-submit the information required under paragraph 2 of this Schedule 3 upon the occurrence of the Early Stage Review Date (as determined by the Council).
- 3.5 When the Council or its External Consultant has completed its assessment of the information submitted pursuant to paragraph 2 of this Schedule 3, the Council shall notify the Owner in writing of its intended decision as to whether any Early Stage Review Contribution is required and, if so, how much.
- 3.6 The Owner shall not Occupy more than [] per cent of the Extra Care Facilities Units until the Council has notified the Owner in writing of its decision as to whether any Early Stage Review Contribution is required pursuant to paragraph 3.5 of this Schedule.
- 3.7 If the Council notifies the Owner pursuant to paragraph 3.5 of this Schedule 3 that an Early Stage Review Contribution is required:
- (a) the Owner shall pay the Early Stage Review Contribution (as determined by the Council) to the Council within 10 Working Days of the date on which such notice is received; and
- (b) the Owner shall not Occupy more than [] per cent of the Extra Care Facilities Units until the Early Stage Review Contribution (as determined by the Council) has been paid in full to the Council.
- 3.8 The Owner shall pay the Council's costs which are reasonably and properly incurred in assessing the information submitted pursuant to paragraph 2 of this Schedule 3 including those of the External Consultant within 20 Working Days of receipt of a written request for payment.

- 3.9 Any party may refer the matter to dispute resolution pursuant to clause 12 of this Deed to determine whether an Early Stage Review Contribution is payable (and, if so, how much).

4. LATE STAGE VIABILITY REVIEW

- 4.1 The Owner shall:

- (a) notify the Council in writing of the anticipated Late Stage Review Date not less than 20 Working Days in advance of that date; and
- (b) notify the Council in writing of the actual Late Stage Review Date no later than 5 Working Days after that date.

5. SUBMISSION OF LATE STAGE VIABILITY ASSESSMENT AND OTHER INFORMATION

No later than 20 Working Days after the Late Stage Review Date notified to the Council pursuant to paragraph 4.1(b) of this Schedule 3, the Owner shall submit to the Council the following information on the basis that the Council may make such information publicly available:

- (a) the Late Stage Viability Assessment ; and
- (b) a written statement that applies the applicable figures in the Late Stage Viability Assessment to Formula 3 (PROVIDED ALWAYS THAT if the result produced by Formula 3 is less than zero it shall be deemed to be zero) thereby confirming whether in the Owner's view any Late Stage Review Contribution is payable and, if so, how much.

6. ASSESSMENT OF THE LATE STAGE VIABILITY ASSESSMENT AND OTHER INFORMATION

- 6.1 The Council shall assess the information submitted pursuant to paragraph 5 of this Schedule 3 and assess whether in its view a Late Stage Review Contribution is payable in accordance with Formula 3 subject to the Late Stage Review Cap as calculated in accordance with Formula 4 and, if so, how much and the Council will be entitled to rely on its own evidence in determining inputs into Formula 3 and Formula 4 subject to such evidence also being provided to the Owner.
- 6.2 The Council may appoint an External Consultant to assess the information submitted pursuant to paragraph 5 of this Schedule 3 PROVIDED THAT any External Consultant so appointed will report to the Council within 20 Working Days after the date of receipt by the External Consultant of the information submitted pursuant to paragraph 5 of this Schedule 3.
- 6.3 In the event that the Council and/or an External Consultant requires further information or supporting evidence in relation to the Late Stage Viability Assessment then the Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other party) within ten Working Days of receiving the relevant request and this process

may be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether in its view any Late Stage Review Contribution is required in accordance with Formula 3 subject to the Late Stage Review Cap as calculated in accordance with Formula 4.

- 6.4 If the Council and/or External Consultant determines following receipt of the information submitted pursuant to paragraph 5 of this Schedule 3 that the Late Stage Review Date has not occurred, the Council may require the Owner to promptly submit additional information pursuant to paragraph 5 of this Schedule 3 or to re-submit the information required under paragraph 5 of this Schedule 3 upon the occurrence of the Late Stage Review Date (as determined by the Council).
- 6.5 When the Council or its External Consultant has completed its assessment of the information submitted pursuant to paragraph 5 of this Schedule 3, the Council shall notify the Owner in writing of its intended decision as to whether any Late Stage Review Contribution is required and, if so, how much.
- 6.6 The Owner shall not Occupy more than [] per cent of the Market Housing Units until the Council has notified the Owner in writing of its decision as to whether any Late Stage Review Contribution is required pursuant to paragraph 6.5 of this Schedule 3.
- 6.7 If the Council notifies the Owner pursuant to paragraph 6.5 of this Schedule 3 that a Late Stage Review Contribution is required:
- (a) the Owner shall pay the Late Stage Review Contribution (as determined by the Council) to the Council within 10 Working Days of the date on which such notice is received; and
 - (b) the Owner shall not Occupy more than [] per cent of the Market Housing Units until the Late Stage Review Contribution (as determined by the Council) has been paid in full to the Council.
- 6.8 The Owner shall pay the Council's costs which are reasonably and properly incurred in assessing the information submitted pursuant to paragraph 5 of this Schedule 3 including those of the External Consultant within 20 Working Days of receipt of a written request for payment.
- 6.9 Any party may refer the matter to dispute resolution pursuant to clause 12 to determine whether a Late Stage Review Contribution is payable in accordance with Formula 3 (and, if so, how much).

ANNEX TO SCHEDULE 3

Defined terms in this Annex shall (unless the context otherwise requires) bear the same meanings as in the remainder of this Agreement.

FORMULA 1b: Early Stage Review Date – Calculation of Early Review Surplus

X = Surplus profit available (to be shared between the Council and the Owner with 50 per cent used for an off-site Affordable Housing contribution in lieu of additional on-site Affordable Housing (subject to the Early Stage Review Cap).

$$X = (A - B) - (C - D) - P$$

A = Estimated GDV of development as determined at the time of review (£)

B = Estimated GDV of development as determined at the grant of Planning Permission (£)

C = Estimated Development Costs as determined at the time of review (£)

D = Estimated Development Costs as determined at grant of Planning Permission (£)

P = $(A - B) * Y$; Developer profit on change in GDV (£)

Y = Developer profit as a percentage of GDV as determined at the application stage (%)

Notes:

$(A - B)$ = Change in GDV from the date of planning permission to the date of review (£)

$(C - D)$ = Change in Development Costs from the date of Planning Permission to the date of review (£)

Formula 3: Late Stage Review Contribution

X = Late Stage Review Contribution

$$X = (((A + B) - C) - ((D + E) - F) - P) \times 0.5$$

A = GDV achieved on sale/ lease of 75 per cent of Market Housing Units and GDV from other parts of the Development sold / let and other income receipts (£)

B = Estimated GDV for parts of the Development that are yet to be sold/ let and other income sources (£)

C = GDV determined as part of the assessment of viability at the time Planning Permission was granted (or as determined in previous review) (£)

D = Development Costs incurred at the time of review (£)

E = Estimated Development Costs for remainder of the Development (£)

F = Total Development Costs determined as part of the assessment of viability at the time Planning Permission was granted (or as determined in previous review) (£)

P = $(A + B - C) \times Y$; Developer profit on change in GDV (£)

Y = Developer profit as a percentage of GDV as determined at the time Planning Permission was granted (%)

Notes:

$(A + B) - C$ = The change in GDV from the grant of Planning Permission (or previous review) to the late stage review (£)

$(D + E) - F$ = The change in Development Costs from the grant of Planning Permission (or previous review) to the late stage review (£)

P = Developer profit on change in GDV (£)

0.5 = Any surplus profit, after deducting the developer profit (P), will be shared between the LPA and the developer with 50 per cent used for an off-site Affordable Housing contribution in lieu of additional on-site Affordable Housing (subject to the Late Stage Review Cap).

Formula 4: Late Stage Review Cap

X = Late Review Cap

$$X = (((A * D) - (B * D)) * E) + (((A * D) - (C * D)) * F)$$

A = Average value of Market Housing Units per m² (£)

B = Average value of local cost rent housing per m² (£)

C = Average value of Intermediate Rented Housing Units per m² (£)

D = Average habitable room size for scheme (m²)

E = Low cost rent shortfall on-site (habitable rooms)
(Determined at the time Planning Permission was granted or as updated following previous review)¹

F = Intermediate Rented Housing shortfall on-site (habitable rooms)
(Determined at the time Planning Permission was granted or as updated following previous review)²

¹Shortfall in the relevant tenure of affordable housing by habitable room in the consented scheme, when compared with the policy target and local plan tenure split.

² Shortfall in the relevant tenure of affordable housing by habitable room in the consented scheme, when compared with the policy target and local plan tenure split.

SCHEDULE 4

THE COUNCIL'S COVENANTS

The Council hereby covenants with the Owner as follows:-

- 1 Where the Council receives any sum or amount pursuant to the obligations set out in this Deed the Council will:
 - 1.1 hold such sums or amounts separately and interest will accrue at the average monthly seven day NatWest Plc bank rate;
 - 1.2 use all sums or amounts received from the Owner for the purposes specified in this Deed and for which they are paid **PROVIDED THAT** for the avoidance of doubt the Council shall be entitled to treat and use any accrued interest thereon as if it were part of the principal sum paid by the Owner; and
 - 1.3 repay to the person who made any payment in accordance with this Deed (EXCEPT FOR the Step Free Access Contribution) any such sums or amounts remaining unexpended or committed upon the expiration of fifteen (15) years from the date of payment together with any interest accrued thereon as soon as reasonably practicable after receiving a request from the person who made the payment AND FOR THE AVOIDANCE OF DOUBT any payment or part of any payment shall for the purpose of this paragraph 1.3 be deemed to have been committed if any contract has been entered into or any undertaking given (whether enforceable at law or otherwise) the performance or fulfilment of which will require the expenditure of funds in the future in respect of the purposes for which the payment was made.
 - 1.4 repay to the person who paid the Step Free Access Contribution any part of it remaining unexpended or committed upon the expiration of twenty five (25) years from the date of payment together with any interest accrued thereon as soon as reasonably practicable after receiving a request from the person who made the payment AND FOR THE AVOIDANCE OF DOUBT the Step Free Access Contribution (or part thereof) shall for the purpose of this paragraph 1.4 be deemed to have been committed if any contract has been entered into or any undertaking given (whether enforceable at law or otherwise) the performance or fulfilment of which will require the expenditure of funds in the future in respect of the purposes for which the payment was made.

- 1.5 To keep the Dyslexia Training Centre Contribution in a separate interest account and to use it only towards the proposed relocation of the Dyslexia Training Centre from its premises on the Land to another location within the Council's administrative area, which may include securing a lease of new premises, fit-out costs and rental costs.

APPENDIX 1

PLANS

APPENDIX 2

LOCAL PROCUREMENT CODE

APPENDIX 3

NOMINATIONS AGREEMENT

APPENDIX 4

INFORMATION RETURN FOR EACH OF THE EXTRA CARE FACILITIES UNITS

Unit reference³	No. of Extra Care Customers in Unit	Is the Extra Care Customer(s) in this Unit aged: (i) 55-65, or (ii) >65?	Level of care received by Extra Care Customer(s) (low/medium/high)	No. of Companions residing with Extra Care Customer(s)

³ Not the actual unit number – otherwise the occupier’s confidentiality will be breached - but a neutral place-holder number from which the unit in question can be ascertained

IN WITNESS of which this Deed has been executed on the first date before written

THE COMMON SEAL of the MAYOR)

And Burgesses of The Royal)

BOROUGH of KENSINGTON AND)

CHELSEA was hereunto affixed)

in the presence of:-)

Execution block of **LEOPARD UK KENSINGTON PROPCO LIMITED**

Execution block of **THE TRUSTEES FOR THE SOCIETY OF JESUS TRUST OF 1929 FOR ROMAN CATHOLIC PURPOSES AND THE TRUSTEES FOR THE CONGREGATION OF THE RELIGIOUS OF THE ASSUMPTION**

DATED _____ 2019

(1) THE MAYOR AND BURGESSES OF THE ROYAL
BOROUGH OF KENSINGTON AND CHELSEA

(2) LEOPARD UK KENSINGTON PROPCO LIMITED

(3) THE TRUSTEES FOR THE SOCIETY OF JESUS TRUST OF 1929 FOR
ROMAN CATHOLIC PURPOSES AND THE TRUSTEES FOR THE CONGREGATION OF THE
RELIGIOUS OF THE ASSUMPTION

DEED

Made pursuant to Section 106 of the Town and Country Planning

Act 1990 as amended

Re: Land at Heythrop College, 23-24 Kensington Square, London W8 5HN

Planning application reference: PP/18/05313

The Royal Borough of Kensington and Chelsea

The Town Hall

Hornton Street

London W8 7NX

Ref: LB/40000003

From: [REDACTED]@london.gov.uk>
Sent: 18 December 2018 11:54
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Heythrop Draft Extra Care Obligations
Attachments: Draft s106 Definitions.pdf; Draft s106 Extra Care Obligations.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Perfect timing by RBKC, s106 attached. This is the first draft so hasn't been agreed by the applicant.

From: [REDACTED]@rbkc.gov.uk]
Sent: 18 December 2018 11:51
To: [REDACTED]
Cc: [REDACTED]
Subject: Heythrop Draft Extra Care Obligations

Hi [REDACTED],
Further to our discussion this morning please find attached the draft extra care obligations and relevant definitions. These are subject to change as the applicant is still reviewing our first draft of the s106.
[REDACTED], please direct any queries on Heythrop to [REDACTED] also copied.

Kind regards,

[REDACTED] | Senior Planning Officer | Development Management
Planning and Borough Development | Royal Borough of Kensington and Chelsea

<http://www.rbkc.gov.uk/planning>

Register at MyRBKC to receive alerts about new planning applications and more:
www.rbkc.gov.uk/myRBKC/login.aspx

The Royal Borough of Kensington and Chelsea.
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Interpretation

1.1 In this Deed the following words and expressions shall unless the context otherwise requires have the following meanings:-

“Annual Return” means an annual return relating to the Extra Care Accommodation Units in the form of the document attached to this Deed at Appendix 4 which is to be completed and provided annually to the Council in accordance with the provisions of paragraph 1.11(b) of Schedule 2;

“Extra Care Accommodation” means residential accommodation for Extra Care Residents comprising the Extra Care Accommodation Units on the Land and including a wide range of medical services and communal and wellbeing facilities which are designed and managed to meet the individual needs of the Extra Care Residents and which shall include as a minimum for all Extra Care Residents:

- A minimum of 2.5 hours of Extra Care per week;
- 24 hour, 7 days a week emergency support;
- Treatment rooms
- 6 monthly care package review;
- At least 1 meal a day;
- Accessible pool and vitality pool
- A daily group exercise session;
- Restaurant and lounge;
- Access to a range of open and garden spaces;

“Extra Care Accommodation Management Plan” means a management plan to be submitted by the Owner to the Council for its approval detailing how the Extra Care Accommodation Units shall be managed and which demonstrates compliance with staff arrangements and staffing ratios as included in the Council’s “Older People’s Housing Design Guidance” and which shall include detailed arrangements for the detailed assessment of care needs for the Extra Care Residents;

“Extra Care Accommodation Units” means the 142 (one hundred and forty two) units of Extra Care Accommodation to be provided on the Land pursuant to the Planning Permission comprising 70 (49%) one bedroom units and 72 (51%) two bedroom units;

“Extra Care Provision” means (for the purpose of this Deed) a package of Nursing Care and/or Personal Care provided for Extra Care Residents subject to payment of a weekly care charge which reflects the level of care being provided;

“Extra Care Resident” means a resident (excluding any Companion(s) who do not themselves require Extra Care Provision) residing permanently in an Extra Care Accommodation Unit as their main residence who are either:

- (a) 55 years in age or older who are contracted into a care package following an assessment by a trained healthcare professional who has determined that based on their age and health they require either a Medium Level of Care or a High Level of Care; or

- (b) 65 years in age or older who are contracted into a care package following an assessment by a trained healthcare professional who has determined that based on their age and health they require at least a Low Level of Care;

and the term **“Extra Care Residents”** shall be construed accordingly;

“Health Care Provider” means a provider of onsite services for the Extra Care Accommodation who is regulated by the Care Quality Commission;

“High Level of Care” means 15 or more hours of Extra Care Provision per week;

“Low Level of Care” means at least 2.5 hours of Extra Care Provision per week;

“Medium Level of Care” means between 2.5 and 15 hours of Extra Care Provision per week;

“Nursing Care” means the promotion of health and prevention and/or treatment of illness;

“Personal Care” means physical assistance given to Extra Care Residents including eating and drinking, toileting, washing or bathing, dressing, oral care and the care of skin;

“Residential Units” means the units of residential accommodation (whether house or flat or otherwise) to be constructed on the Land as part of the Development including all of the Extra Care Accommodation Units, the Intermediate Rented Housing Units and the Market Housing Units, and **“Residential Unit”** shall be construed accordingly;

“Companion” means any additional person residing in an Extra Care Accommodation Unit with an Extra Care Resident (who may be of any age and who may or may not be a dependent of the Extra Care Resident) who does not require, and who has not entered into a contract to receive, Extra Care Provision;

The Owner hereby covenants with and Undertakes to the Council as follows:-

1 EXTRA CARE ACCOMMODATION

- 1.1 Notwithstanding any other provision of the Use Classes Order, the Extra Care Accommodation shall only be used or Occupied as a residential care home in accordance with Class C2 of the Use Classes Order and for no other purpose and not to permit nor allow the use or Occupation of the Extra Care Accommodation for any other category within Class C2 of the Use Classes Order other than as a residential care home.
- 1.2 To ensure that all the elements of the definition of Extra Care Accommodation in this Deed are provided for the Extra Care Accommodation Units and the Extra Care Residents.
- 1.3 To ensure that each of the Extra Care Accommodation Units are only used as Extra Care Accommodation and are only Occupied by Extra Care Residents and their Companion (if any) and not to permit any of the Extra Care Accommodation Units to be used other than as Extra Care Accommodation or to be Occupied otherwise than by at least one Extra Care Resident and their Companion (if any).
- 1.4 To ensure at all times for the lifetime of the Development that no more than 10% of the total number of Extra Care Residents Occupying the Extra Care Accommodation Units are less than 65 years of age, and not to permit more than 10% of the total number of Extra Care Residents Occupying the Extra Care Accommodation Units at any one time to be less than 65 years of age.
- 1.5 That the terms of every lease granted, assigned, transferred or otherwise provided in respect of each of the Extra Care Accommodation Units within the Development shall include a covenant restricting Occupation of the relevant Extra Care Accommodation Units to at least one Extra Care Resident and their Companion (if any);
- 1.6 That the terms of every lease granted, assigned, transferred or otherwise provided in respect of each of the Extra Care Accommodation Units within the Development shall be for a minimum term of 12 months (subject only to a 6 month break clause in favour of the Occupier(s) of the Extra Care Accommodation Units) and granted, assigned, transferred or otherwise provided on a permanently renewable basis thus giving the Occupier(s) the option to renew their lease each year.
- 1.7 That all material used for advertising or marketing any of the Extra Care Accommodation Units for letting or sale will notify prospective Occupiers of the matters set out in paragraph 1.5 (b) of this paragraph 1 of Schedule 2.
- 1.8 To submit an Extra Care Accommodation Management Plan to the Council for its written approval prior to Occupation of any of the Extra Care Accommodation Units and not to Occupy or to permit the Occupation of any of the Extra Care Accommodation Units until the Extra Care Accommodation Management Plan has been approved in writing by the Council.
- 1.9 To operate and manage the Extra Care Accommodation Units in accordance with the approved Extra Care Accommodation Management Plan for the lifetime of the Development and not to Occupy or permit

Occupation of any of the Extra Care Accommodation Units otherwise than in accordance with the approved Extra Care Accommodation Management Plan (unless otherwise agreed in writing by the Council).

1.10 To appoint a Health Care Provider to manage the Extra Care Accommodation Units and not to Occupy or permit the Occupation of the Extra Care Accommodation Units otherwise than where they are being managed by a Health Care Provider in accordance with the terms of the approved Extra Care Accommodation Management Plan.

1.11 To provide evidence to the Council of ongoing compliance with the provisions of this Paragraph 1 of Schedule 2 by:

- (a) providing copies of any legal agreements or leases or other documents which formalise the requirements of this Paragraph 1 of Schedule 2; and
- (b) submitting the Annual Return to the Council on or by the first day of December each year.

Interpretation

1.1 In this Deed the following words and expressions shall unless the context otherwise requires have the following meanings:-

“Annual Return” means an annual return relating to the Extra Care Accommodation Units in the form of the document attached to this Deed at Appendix 4 which is to be completed and provided annually to the Council in accordance with the provisions of paragraph 1.11(b) of Schedule 2;

“Extra Care Accommodation” means residential accommodation for Extra Care Residents comprising the Extra Care Accommodation Units on the Land and including a wide range of medical services and communal and wellbeing facilities which are designed and managed to meet the individual needs of the Extra Care Residents and which shall include as a minimum for all Extra Care Residents:

- A minimum of 2.5 hours of Extra Care per week;
- 24 hour, 7 days a week emergency support;
- Treatment rooms
- 6 monthly care package review;
- At least 1 meal a day;
- Accessible pool and vitality pool
- A daily group exercise session;
- Restaurant and lounge;
- Access to a range of open and garden spaces;

“Extra Care Accommodation Management Plan” means a management plan to be submitted by the Owner to the Council for its approval detailing how the Extra Care Accommodation Units shall be managed and which demonstrates compliance with staff arrangements and staffing ratios as included in the Council’s “Older People’s Housing Design Guidance” and which shall include detailed arrangements for the detailed assessment of care needs for the Extra Care Residents;

“Extra Care Accommodation Units” means the 142 (one hundred and forty two) units of Extra Care Accommodation to be provided on the Land pursuant to the Planning Permission comprising 70 (49%) one bedroom units and 72 (51%) two bedroom units;

“Extra Care Provision” means (for the purpose of this Deed) a package of Nursing Care and/or Personal Care provided for Extra Care Residents subject to payment of a weekly care charge which reflects the level of care being provided;

“Extra Care Resident” means a resident (excluding any Companion(s) who do not themselves require Extra Care Provision) residing permanently in an Extra Care Accommodation Unit as their main residence who are either:

- (a) 55 years in age or older who are contracted into a care package following an assessment by a trained healthcare professional who has determined that based on their age and health they require either a Medium Level of Care or a High Level of Care; or

- (b) 65 years in age or older who are contracted into a care package following an assessment by a trained healthcare professional who has determined that based on their age and health they require at least a Low Level of Care;

and the term **“Extra Care Residents”** shall be construed accordingly;

“Health Care Provider” means a provider of onsite services for the Extra Care Accommodation who is regulated by the Care Quality Commission;

“High Level of Care” means 15 or more hours of Extra Care Provision per week;

“Low Level of Care” means at least 2.5 hours of Extra Care Provision per week;

“Medium Level of Care” means between 2.5 and 15 hours of Extra Care Provision per week;

“Nursing Care” means the promotion of health and prevention and/or treatment of illness;

“Personal Care” means physical assistance given to Extra Care Residents including eating and drinking, toileting, washing or bathing, dressing, oral care and the care of skin;

“Residential Units” means the units of residential accommodation (whether house or flat or otherwise) to be constructed on the Land as part of the Development including all of the Extra Care Accommodation Units, the Intermediate Rented Housing Units and the Market Housing Units, and **“Residential Unit”** shall be construed accordingly;

“Companion” means any additional person residing in an Extra Care Accommodation Unit with an Extra Care Resident (who may be of any age and who may or may not be a dependent of the Extra Care Resident) who does not require, and who has not entered into a contract to receive, Extra Care Provision;

[REDACTED]

Sent: 30 May 2019 17:06
To: [REDACTED]
Subject: RE: Heythrop extra care

From: [REDACTED]
Sent: 14 December 2018 12:54
To: [REDACTED] <[REDACTED]@london.gov.uk>
Cc: [REDACTED] <[REDACTED]@london.gov.uk>
Subject: RE: Heythrop extra care

Hi [REDACTED]

I have now been back through Knight Frank's FVA and Gerald Eve's Review and will draft some detailed comments for Monday.

The key points I am planning to make are

Benchmark Land Value

- The approach to the assessment of EUV by both assessors is very high level and does not take into account the layout and condition of the buildings on site.
- The BLV does not include the air rights over the station although this is a part of the development site. The cost of acquiring the rights to build on this part of the site are included as a development cost based on the price agreed which is not in accordance with guidance.

GDV

- The approach taken to assessing the value of the Extra Care Units is based on comparable evidence from C3 residential schemes in similar locations. However these schemes do not offer the additional facilities offered by the Heythrop proposal. The flats have also been valued on a per unit basis rather than directly applying a value per square foot which depresses the value as many of the Heythrop flats are significantly oversized.
- There is no value included for either the nursing care, personal care or leisure elements of the scheme. It is accepted that some parts of the proposal e.g. the pool and the gym are standard for the type of scheme on which the comparables are based but other parts such as the nursing care and the hair salon will be operated as separate businesses and so a rental element has presumably been included in business plans and this should be capitalised and added to the GDV
- There are 4 parking spaces that will be provided free to the owners of the chapel and so have no associated income and more information is required on this point.

Development Costs

- The Cost Plan has not been fully reviewed by the borough's cost consultant but initial comments indicated that the build costs are substantially above benchmarked rates. GE have reduced the costs by 10% for the purposes of their report but it is likely that the costs are overstated by more than this amount taking into account the fact that the allowances for preliminaries, overheads and profits, site abnormalities and risk/contingency are also much higher than would be expected. There is also little detail provided in support of the site abnormalities such as non-recoverable VAT and insurance costs.
- The costs relating to the deck of c£50m are very high level and consist largely of contingency sums. The applicant suggests that they have been agreed by TfL but confirmation on the accuracy of these costs is required as they are likely to be overstated.
- The finance costs of the scheme are very high due to the extended programme and very conservative assumptions on sale rates that it is suggested are appropriate for this kind of product

Overall viability

- Both KR and GE conclude that the scheme produces a RLV which is lower than the BLV and so is not able to support the delivery of additional affordable housing although in GE's view this deficit is only half that proposed by KR – c£40m v £80m
- As this scheme will take over 7 years to complete GE have also modelled a number of growth scenarios which with relatively conservative assumptions increase their RLV in line with their BLV. If the costs and values were reviewed as suggested the scheme could potentially breakeven based on current day costs and values and produce a surplus based on growth.

Hope this is helpful in the meantime

Kind regards



[REDACTED]

From: [REDACTED]
Sent: 07 January 2019 15:43
To: [REDACTED]
Cc: [REDACTED]
Subject: 4491a Heythrop College Stage 2 energy comments

Hi [REDACTED] and Happy New Year,

I have put together the Stage 2 comments for Heythrop College in blue below.

We are still pushing back on the CHP as they knew all along that this is not a supported strategy.

Frankly, at this stage, a boiler only solution could even be considered more acceptable. Let's see what they come back with.

They are also not very helpful on their other responses.

3. The demand for cooling will be minimised through orientation, shading, fenestration, albedo and insulation and a number of other passive measures. However, the dynamic modelling undertaken shows that there is significant overheating within the dwellings and the applicant is proposing active cooling to combat this. The applicant is required to implement further passive measures to limit overheating, without active cooling, in all areas.
4. The applicant is required to undertake further overheating modelling using all TM49 weather design years (DSY2 and DSY3).

A further measure to limit overheating has been included in the modelling through the form of enhanced ventilation. The applicant has confirmed that the MVHR unit chosen can be run in boost mode at 2x Part F flowrates. Additional measures such as a reduced g-value were considered however the g-values have already been selected as a balance between achieving Part L compliance, maximising visual comfort through daylighting and limiting overheating. The performance of the internal blinds has also been maximised to achieve the greatest benefit to limiting solar gains. Modelling using DSY2 and DSY3 has also been completed. Although the results show that most bedrooms pass the criteria, there is complete failing in meeting the CIBSE criteria for living rooms. This is particularly disappointing for such a scheme. The applicant is required to provide further justification for such a poor overheating performance.

The applicant has stated that, at this time, the interior layouts and design remain subject to further design through design stages 2 to 4; during this time further interrogation of the living spaces will be undertaken to help minimise the risk of overheating. The response provided is not considered adequate for the disappointing performance of the site as all applications reviewed are at similar design stages. The applicant is required to investigate further passive measures to ensure compliance for all living rooms. A clear response on the site's constraints, which could lead to such a performance, should also be provided. For the avoidance of doubt, mechanical cooling is only supported when clearly demonstrated that it is necessary, not as an alternative to passive measures. **This item is still outstanding.**

10. The applicant has stated that the extra care use self-contained accommodation and the dwelling houses are referred to as the domestic elements. The applicant should confirm the Class Use of the Extra care units, as this is anticipated to be C2. If this is not C3, the extra care units should be modelled using SBEM rather than SAP software. Clarification is required and the revised carbon emissions should be submitted.

The applicant has stated that the extra care units are self-contained accommodation and therefore have been assessed using Part L1A and therefore SAP software. Confirmation from the planning consultant and the case officer should be provided on the class use of the extra care accommodation.

The applicant has stated that Part L1A 2013 allows for units that accommodate single households to be assessed under Part L1A 2013 using SAP as the compliance tool. As the extra care units are not communal and provide the occupant with their own cooking, washing and day to day living requirements (albeit in a supported and managed environment) this is considered the most appropriate method of assessment for building regulations compliance. A confirmation from Building Control should be submitted confirming that the calculation methodology is considered acceptable. Otherwise,

the applicant is required to submit the revised results using a dynamic thermal model analysis. **This item is still outstanding.**

15. The applicant is proposing to install a 133 kWe / 193 kWth gas fired CHP unit as the lead heat source for the site heat network. The estimated savings from the incorporation of the CHP are in the order of 264 tonnes p.a. (38% over Part L 2013). The savings reported are considered significantly high and the CHP efficiency is particularly challenging to achieve.

The CHP manufacturer's datasheet has been provided showing the achievable efficiencies. Confirmation from Hoval should be provided that the stated efficiencies indeed represent gross and not net figures, due to high anticipated carbon savings.

The applicant has obtained the gross efficiency figures from the manufacturer and has revised their calculations. However, by utilising higher efficiency boilers and MVHR units and allowing the CHP to contribute more to the base heat load (pool, BoH services, hot water generation etc) the carbon reduction remains in a similar order i.e. previous DER/TER variance was 36.71% and is now 37.03%. An updated summary sheet has been provided to reflect this. The applicant should explain the basis of increasing the CHP contribution as this should be down to the anticipated loads' analysis and not an arbitrary figure. Sample 'be clean' DER sheets should be provided to verify the savings stated. However, Item 16 below should first be addressed as the main principle. **This item is still outstanding.**

16. Given the site's location in an area where air quality limits are exceeded and following the drastic reduction in the number of residential units from the previous application, a CHP-led strategy is not considered the most appropriate heating strategy for the scheme. This is also in line with the GLA guidance suggestions. The applicant should provide a detailed base load breakdown and establish where the base load is coming from.

The applicant has stated that, due to a high heat load coming from the swimming pool and the restaurant, together with the need for high hot water loads from the extra-care facilities it was deemed that a CHP-led strategy was the most appropriate heating strategy for this scheme. Further to this, due to massing and height constraints, along with a lack of available roof space for plant, air source heat pumps are not suitable for this scheme. In addition to this, ground source heat pumps are also not suitable due to the listed status of the existing buildings, limited site space and the numerous trees within the proposed development. As per comments 19&20 below, the roof's limitations for a heat pump installation should ideally be confirmed by the local authority.

Correspondence with the local authority has been provided on the concerns for additional roof plant and the relevant conditions. Although this is acknowledged, in line with original communications from Stage I due to the scheme's scale, a CHP-led strategy is not considered appropriate. This is also further supported by the updated GLA Energy Assessment Guidance (October 2018) and the SAP10 carbon factors introduction. The applicant is therefore required to review their proposals, as already requested. The additional load anticipated from an extra care unit is not considered sufficient to justify the use of a CHP. **This item is still outstanding.**

18. The applicant should ensure that the optimum heating solution has been chosen and that there will be no further impact on the local air quality levels from the proposed technology.

The applicant has stated that the CHP will be provided with catalytic converter and extended exhaust gas purification supported by high efficiency, low NOX boiler plant. The CHP NOX emissions will be as per the "upgraded emissions rate" from the manufacturer's data sheet. **(To be reviewed by Air Quality team).**

19. The applicant has investigated the feasibility of a range of renewable energy technologies but is not proposing to install any renewable energy technology for the development. A detailed roof layout has been provided indicating the roof's limitations. Confirmation from the council should be provided to back the overlooking argument.
20. As Policy 5.2 requires that carbon reduction be achieved as far as possible, the applicant is required to identify further opportunities for renewable energy.

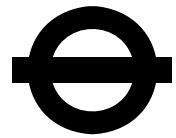
The applicant has stated that, during the pre-application meetings RBKC raised the concern that plant at roof level would impact on the townscape or amenity spaces. The Officer advised that RBKC would prefer plant to be located at the basement level. It has therefore been stated that there are a number of reasons why the roof space is not a suitable location for renewable technologies; these reasons are based around space limitations and the listed nature of the development. Again, it is considered particularly disappointing for such a scheme to not propose any renewable technologies on site. Robust justification and evidence of communication from the local authority should be provided for this approach to be considered acceptable.

Correspondence with the local authority has been provided on the concerns for additional roof plant and the relevant conditions. Nothing further required.

Many thanks



Transport for London



To: [REDACTED] - GLA Planning

From: [REDACTED] – TfL Spatial Planning

Our Ref: 18/3348

Your Ref: 4491a

Phone: [REDACTED]

Date: 17 Jan 2019

**RE: Heythrop College, 23-24 Kensington Square, London W8 5HH - TfL Stage 2
DRAFT comments. NEW APPLICATION**

Summary of key issues:

At stage 1 consultation stage TfL requested a number of conditions and section 106 obligations to mitigate the impact of the development, including a financial contribution towards step-free access at High Street Kensington station, a suite of management documents and confirmation of disabled persons parking.

During the determination of this application TfL commissioned a feasibility study looking at options for delivering step-free access at High Street Kensington station. The initial outcomes of this exercise suggest an overall cost of £10-15m. The Heads of Terms in RBKC's draft decision to approve include a contribution of £4m towards delivery of a step-free access scheme. This would support the Mayor's Transport Strategy and adopted and draft London Plan which set out the importance of delivering improved accessibility to the transport network for customers with mobility issues and this is of particular relevance to the proposed land use.

Car parking – should a revised scheme be submitted, adequate car parking for disabled persons occupying the affordable housing units must be provided. Otherwise the car parking is compliant with adopted and emerging London Plan policy.

The long stay cycle parking (142 spaces) meets the standards set out in the draft London Plan for C2 development. Clarification regarding provision of spaces for visitors, staff and the Community Hall has not been provided and should be included within any revised scheme, in accordance with the standards contained in draft London Plan policy T5, this matter could be dealt with by condition. If the development is being considered as C3 land use, the number of long stay cycle parking spaces would need to be increased to 250 spaces to meet draft London Plan standards.

LU Infrastructure Protection conditions will need to be attached to any future planning permission on this site. For any deck overbuild forming part of the development of this site, a requirement for

the applicant to enter into a Development Agreement with LU will need to be secured via s106 agreement.

In addition, it is noted that RBKC's Committee report includes the appropriate conditions to mitigate transport impacts as requested by TfL at Stage 1 consultation, including for: demolition and construction traffic management plans, car park management plan including EVCPs, delivery and servicing plan, mobility scooter and cycle parking and LU Infrastructure Protection. These conditions should similarly be attached if a revised scheme is submitted and subsequently approved.

Heythrop College – Detailed viability comments DRAFT 190211

The Financial Viability Assessment for this scheme was prepared by Knight Frank in August 2018 and reviewed by Gerald Eve in November 2018. Both reports were very high level for such a complex, large scheme. It is therefore not possible to ascertain from the information provided that the offer of 5 affordable housing units is the maximum quantum that could be viably supported by this scheme.

The analysis of the affordable housing offer is not considered to be correct. The element of the scheme that has been used by the applicant to calculate that the offer equates to 35% affordable housing is the 3 private town houses and 5 intermediate affordable flats. The percentage of affordable housing should be based on the total number of residential units in the scheme which is 150 giving a proposed affordable housing offer of just over 3%.

Viability Assessment

Both Knight Frank and Gerald Eve have carried out a financial appraisal of the whole of the proposed scheme based on current day costs and value and then compared this with the Benchmark Land Value (BLV) of the site. They both conclude that the scheme produces a Residual Land Value which is lower than the BLV and so is not able to support the delivery of additional affordable housing. The advisors do not however agree on the level of deficit - Gerald Eve's view is that this deficit is only half that assumed by Knight Frank c£40m compared with £80m.

Gerald Eve have also modelled a number of growth scenarios and they have applied growth of 3.5% pa to the private residential units and inflation of 2.5% pa to the construction costs (excluding the deck costs) and conclude that the has the potential to be viable throughout the 7 year development programme. In other words, with growth, the RLV produced is the same as the proposed BLV. If the costs and values were reviewed the whole scheme could potentially breakeven based on current day costs and values and produce a surplus based on growth.

There are a number of areas where the current day cost and value assumptions are not adequately supported and these are set out below.

Benchmark Land Value

Both assessors have used Existing Use Value (EUV) plus a land owner's premium as the approach to assessing the BLV of the site in accordance with the Mayor's Affordable Housing and Viability SPG and the latest NPPG Viability Guidance issued in July 2018. On the basis that there is a lack of evidence of sales of comparable C2 properties, which is the assumed existing use of the majority of the site, they have sought evidence from D1 (non-residential institutional use) to arrive at the EUV with Gerald Eve also considering evidence from student housing. The approach to the assessment of EUV by both assessors is very high level and does not take into account the layout and condition of the buildings on site.

Knight Frank have relied on evidence from the sale of a number of good quality college buildings that have been acquired by education institutions for use as schools and colleges. It is not apparent that any allowance has been made for the fact that a substantial element of the existing buildings are currently fitted out as low quality student accommodation. Knight Frank arrive at the conclusion that the EUV of the site is c£84.6m but this approach is considered too high level to be accurate when applied to a complex existing use valuation.

Gerald Eve take a different more granular approach and arrive at a BLV of c£68m. They have taken an investment approach to valuing the non-residential buildings based on rents of £40-50 psf which they have capitalised at 4.25%. There is little evidence provided to support these figures and it is not clear whether appropriate allowances have been made for voids and/or refurbishment costs. For the halls of residence they have taken the approach of valuing this element as student housing. This is appropriate but insufficient evidence is provided to support the proposed values.

The BLV does not include an assessment of the BLV of the air rights over the station although this is a part of the development site. The cost of acquiring the rights to build on this part of the site are included as a development cost based on the price agreed which is not in accordance with the NPPG guidance.

Gerald Eve conclude that in this case the landowner's premium would be nil due to site specific factors such as the presence of Japanese knotweed and this is supported.

Gross Development Value

Knight Frank have prepared a detailed pricing schedule for all the residential units and this has been agreed by Gerald Eve as broadly correct. However both assessors appear to under estimate the GDV of the scheme for the following reasons:

- The approach taken to assessing the value of the Extra Care Units is based on comparable evidence from C3 residential schemes in similar locations. However these schemes do not offer the additional facilities offered by the Heythrop proposal and the rate of £2,678 psf which is used is significantly lower than some of the evidence presented.
- There is no value included for the ancillary space. It is accepted that some parts of the proposal e.g. the pool and the gym are standard for this type of scheme but other parts such as the hair salon will be operated as separate businesses and so a rental element has presumably been included in business plans and this should be capitalised and added to the GDV.

Development Costs

The applicant produced a cost report prepared by Cast but this was only provided in hard copy at a very late stage. Whilst it does provide a reasonable level of detail, as far as we are aware it has not been fully reviewed by the borough's cost consultant, Veale & Sanders. Their initial comments, which we understand were based on a meeting with the applicant, indicate that the build costs are substantially above benchmarked rates. The rate for above ground element of the four main blocks range from £6,268 m² to £8,176m² well above the BCIS Benchmark data. The cost review also identified 4 comparable schemes where the costs ranged from c£5,400 to £6,300m³.

V&S note some of the reasons for this as:

- The base build costs are very high especially the general fit out costs noting the rate for amenity areas is considerably higher than would be expected for a spa/leisure facility in a 5 star + hotel.
- The allowances for preliminaries, overheads and profits and site abnormals are much higher than would be expected. The combined allowance of 24% for preliminaries and overheads and profits is very high and unacceptable where significant abnormals such as £5m for the extended programme have also been included.
- The contingency allowance of 7% is above the standard allowance of 5%.

Gerald Eve have accepted the costs of the deck at c£50m and a range of other costs totalling £28.48m although there is no clear breakdown of these costs in either report. The decking costs

would appear to consist mainly of contingency sums. These costs are therefore considered unjustified at this stage without further information.

Although Gerald Eve have reduced the applicant's base construction costs by 10% for the purposes of their report, it is likely that the total costs are overstated by more than this amount and a full assessment of the cost plan would be required to arrive at an accurate figure.

[REDACTED]

From: [REDACTED]
Sent: 10 April 2019 17:33
To: [REDACTED]
Subject: RE: 4491a Heythrop Stage 2 report.docx
Attachments: 4491a Heythrop Stage 2 report ([REDACTED] comments + [REDACTED] comments).docx

Hi [REDACTED]

Are you around tomorrow for a quick chat about this please.

I have reviewed the s106 and your report. I have made some changes to your report (attached) but it would be good to have a quick chat about the review mechanism and the deficit – is there any other information they have provided?

There is a figure for an Early Stage Cap (but I have no idea what this is based on) but I can't see any reference to deficits/breakeven. Generally the review mechanism is inconsistent and unclear e.g. the increase in GDV at the Early Stage is on the houses only (not the affordable if you base this on the definition of GDV) whereas the increase in 'Development Costs' (that they have substituted for our Build Costs) is on the whole Development including the extra care and there is no definition so it could be everything! The Late stage seems to pick up the whole Development both in term of GDV and Costs. There are no figures for the application stage GDV or Build Costs or the profit assumptions. The developer retains 50% of the surplus.

In addition

- It looks as though they could do all the intermediate units based on the highest income threshold
- Provisions for Implementation are not strong enough and at para 21 p38 it seems to say that tree works are implementation although this might be a typo
- There are gaps in the review provisions in respect of the occupancy requirements

Thanks [REDACTED]

From: [REDACTED]
Sent: 10 April 2019 11:28
To: [REDACTED] <[REDACTED]@london.gov.uk>
Cc: [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>
Subject: FW: 4491a Heythrop Stage 2 report.docx

Hi [REDACTED]

When reviewing can you please review this version?

[REDACTED] not sure if have any comments on this as we have now received a stage 2 referral for Heythrop College in RBKC.

Thanks

From: [REDACTED]
Sent: 10 April 2019 10:45
To: [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@tfl.gov.uk>

Cc: [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@tfl.gov.uk>
Subject: RE: 4491a Heythrop Stage 2 report.docx

Hi [REDACTED]

Attached are my comments, happy to discuss.

Yes I think we need a reason on the review mechanism if we are not happy with it.

Thanks,
[REDACTED]

From: [REDACTED]
Sent: 09 April 2019 18:17
To: [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED]
<[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@tfl.gov.uk>
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I am not sure about adding a review mechanism reason for refusal and would appreciate any thoughts around this.

Can you get any initial comments back Thursday if possible as I will aim to send to QC Friday if I can.

[REDACTED] copying you in as I am aware [REDACTED] is on leave (I think this is your area?).

Thanks!
[REDACTED]
[REDACTED]

Team Leader, Development Management, Planning
GREATER LONDON AUTHORITY
City Hall, The Queen's Walk, London SE1 2AA
020 7983 [REDACTED]

www.london.gov.uk/what-we-do/planning
[REDACTED]@london.gov.uk

[REDACTED]

Sent: 30 May 2019 17:06
Subject: Re: 4491a Heythrop Stage 2 report.docx

From: [REDACTED]
Sent: 11 April 2019 17:59
To: [REDACTED] <[REDACTED]@london.gov.uk>
Cc: [REDACTED] <[REDACTED]@london.gov.uk>
Subject: RE: 4491a Heythrop Stage 2 report.docx

Hi [REDACTED]

This is the updated report with my changes just to the viability sections.

In terms of the size of the units GE said as justifying a lower value per sq ft

6.8 Through undertaking an analysis of the sales matrix provided by the Advisor, given the large size of the units, GE are of the view that if the units within the proposed Scheme were to be sold in current market conditions a discount would be made to reflect the maximum price a willing purchaser would be willing to be prepared to pay for a 1 or 2 bedroom flat.

Thanks [REDACTED]

From: [REDACTED]
Sent: 10 April 2019 17:33
To: [REDACTED] <[REDACTED]@london.gov.uk>
Subject: RE: 4491a Heythrop Stage 2 report.docx

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Cc: [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@tfl.gov.uk>
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[REDACTED]

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Subject: 4491a Heythrop Stage 2 report.docx

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[REDACTED] copying you in as I am aware [REDACTED] is on leave (I think this is your area?).

Thanks!

■

■

Team Leader, Development Management, Planning

GREATERLONDONAUTHORITY

City Hall, The Queen's Walk, London SE1 2AA

020 7983 ■

www.london.gov.uk/what-we-do/planning

■ london.gov.uk

[REDACTED]

From: [REDACTED]
Sent: 17 April 2019 20:11
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Final (hopefully!) Heythrop report
Attachments: 4491a Heythrop Stage 2 report.docx RCS.docx

Hello

Have had a quick look at this- tracked the odd amend and have put thoughts in comment boxes- [REDACTED] or [REDACTED] can you have a look from a Ldn Plan perspective please? There is a bit of a cluster of Ldn Plan related bits around paras 28-30.

Main points for me:

- I would be happier if we referred to the extra care element as 'specialist older persons housing' not 'accommodation' (throughout doc). This is in accordance with how it is described in the draft Plan, but also emphasises that this is housing (the word accommodation is more often used for C2 or care homes)
- I am struggling with 'the circumstances of the occupiers' being a key consideration (para 20)- have tried to explain in a text box. However it is one point and is diluted/ put in perspective by the others surrounding it so I could live with it.
- Do you want a para on on s.149 of the Equality Act showing we are aware of our duties and obligations as a public body? Might be an idea given McCarthy and Stone case etc. Let me know if you think it would be appropriate.

[REDACTED] or [REDACTED] can you text me if I need to look at this again or dip back into my emails please?
Thanks

[REDACTED]
Principal Advisor- Access and Inclusion
Tel. 020 7983 [REDACTED]

Greater London Authority
City Hall, The Queen's Walk, London SE1 2AA

From: [REDACTED]
Sent: 17 April 2019 16:51
To: [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@tfl.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>
Cc: [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>
Subject: Final (hopefully!) Heythrop report

Hi all,

I have incorporated [REDACTED] comments into the Heythrop report along with [REDACTED] [REDACTED] I have also tweaked the refusal reasons to simplify them. Please find the final draft attached for final comments/changes.

[REDACTED] there are a couple of comments [REDACTED] has made regarding the build cost and the realism of the development programme which I have yet to incorporate as was hoping we could discuss tomorrow. There is also an outstanding comment from [REDACTED] (set out in the viability report) that I also need you to confirm.

Reports need to be off to planning support by 11 tomorrow (apologies for the tight turn around) however we should be ok to tweak minor bits Tuesday morning if needed.

Thanks for all your help!



Team Leader, Development Management, Planning

GREATERLONDONAUTHORITY

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020 7983



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[REDACTED]

From: [REDACTED]
Sent: 24 April 2019 18:09
To: [REDACTED]
Subject: Heythrop

RBKC conclude existing use is C2 as the whole site is as a residential college with 24 Kensington Square being D1. The C2 definition comes from the SPD.

[REDACTED]

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[REDACTED]

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