

# Public Document Pack

Legal and Democratic Services



## PLANNING COMMITTEE

Thursday 17 June 2021 at 7.30 pm

Place: Council Chamber, Epsom Town Hall

Link for public online access to this meeting:

<https://attendee.gotowebinar.com/rt/4531345119176335115>

Webinar ID: 724-939-715

Telephone (listen-only): 0330 221 9922, Telephone Access code: 784-577-104

The members listed below are summoned to attend the Planning Committee meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

Councillor Monica Coleman (Chair)  
Councillor Steven McCormick (Vice-Chair)  
Councillor Kate Chinn  
Councillor Nigel Collin  
Councillor Neil Dallen  
Councillor David Gulland  
Councillor Previn Jagutpal

Councillor Jan Mason  
Councillor Lucie McIntyre  
Councillor Phil Neale  
Councillor Humphrey Reynolds  
Councillor Clive Smitheram  
Councillor Clive Woodbridge

Yours sincerely

A handwritten signature in black ink that reads 'J.C. Beldan'.

Chief Executive

For further information, please contact Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk).

## Public information

### Information & Assistance:

**Please note that this meeting will be held in the Town Hall, Epsom and will be available to observe live on the internet.**

This meeting will be open to the press and public to attend as an observer using free GoToWebinar software, or by telephone.

A link to the online address for this meeting is provided on the first page of this agenda and on the Council's website. A telephone connection number is also provided on the front page of this agenda as a way to observe the meeting, and will relay the full audio from the meeting as an alternative to online connection. A limited number of seats will also be available in the public gallery at the Town Hall. For further information please contact Democratic Services, email: [Democraticservices@epsom-ewell.gov.uk](mailto:Democraticservices@epsom-ewell.gov.uk) , telephone: 01372 732000.

Information about the terms of reference and membership of this Committee are available on the [Council's website](#). The website also provides copies of agendas, reports and minutes.

Agendas, reports and minutes for the Committee are also available on the free Modern.Gov app for iPad, Android and Windows devices. For further information on how to access information regarding this Committee, please email us at [Democraticservices@epsom-ewell.gov.uk](mailto:Democraticservices@epsom-ewell.gov.uk).

### Exclusion of the Press and the Public

There are no matters scheduled to be discussed at this meeting that would appear to disclose confidential or exempt information under the provisions Schedule 12A of the Local Government (Access to Information) Act 1985. Should any such matters arise during the course of discussion of the below items or should the Chairman agree to discuss any other such matters on the grounds of urgency, the Committee will wish to resolve to exclude the press and public by virtue of the private nature of the business to be transacted.

### Public speaking

Public speaking in support or objection to planning applications is permitted at meetings of our Planning Committee. **You must register in advance if you wish to speak.**

To register to speak at this Planning Committee meeting, please contact Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk) tel: 01372 732000 in advance of the deadline for registration, which is given below.

We will ask you to submit a written statement that can be read out at the meeting in the event of any technical issues during the meeting. The statement must be of no more than 3 minutes in length when read aloud.

If a number of people wish to speak on a particular application, public speaking will normally be allocated in order of registration. If you fail submit your written statement, then your place may be allocated to those on speakers waiting list. Further information is available by contacting Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk), tel: 01372 732000.

**Deadline for public speaking registration: Noon, 14 June.**

## **Guidance on Predetermination /Predisposition**

The Council often has to make controversial decisions that affect people adversely and this can place individual members in a difficult position. They are expected to represent the interests of their constituents and political party and have strong views but it is also a well established legal principle that members who make these decisions must not be biased nor must they have pre-determined the outcome of the decision. This is especially in planning and licensing committees. This Note seeks to provide guidance on what is legally permissible and when members may participate in decisions. It should be read alongside the Code of Conduct.

### **Predisposition**

Predisposition is lawful. Members may have strong views on a proposed decision, and may have expressed those views in public, and still participate in a decision. This will include political views and manifesto commitments. The key issue is that the member ensures that their predisposition does not prevent them from consideration of all the other factors that are relevant to a decision, such as committee reports, supporting documents and the views of objectors. In other words, the member retains an “open mind”.

Section 25 of the Localism Act 2011 confirms this position by providing that a decision will not be unlawful because of an allegation of bias or pre-determination “just because” a member has done anything that would indicate what view they may take in relation to a matter relevant to a decision. However, if a member has done something more than indicate a view on a decision, this may be unlawful bias or predetermination so it is important that advice is sought where this may be the case.

### **Pre-determination / Bias**

Pre-determination and bias are unlawful and can make a decision unlawful. Predetermination means having a “closed mind”. In other words, a member has made his/her mind up on a decision before considering or hearing all the relevant evidence. Bias can also arise from a member’s relationships or interests, as well as their state of mind. The Code of Conduct’s requirement to declare interests and withdraw from meetings prevents most obvious forms of bias, e.g. not deciding your own planning application. However, members may also consider that a “non-pecuniary interest” under the Code also gives rise to a risk of what is called apparent bias. The legal test is: “whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Committee was biased”. A fair minded observer takes an objective and balanced view of the situation but Members who think that they have a relationship or interest that may raise a possibility of bias, should seek advice.

This is a complex area and this note should be read as general guidance only. Members who need advice on individual decisions, should contact the Monitoring Officer.

## **AGENDA**

### **1. DECLARATIONS OF INTEREST**

Members are asked to declare the existence and nature of any Disclosable Pecuniary Interests in respect of any item of business to be considered at the meeting.

### **2. MINUTES OF THE PREVIOUS MEETING (Pages 5 - 24)**

The Committee is asked to confirm as a true record the Minutes of the Meeting of the previous meeting held on the 22 April, the Minutes of the reconvened meeting held on 27 April (both attached) and the Minutes of the Meeting of the Committee held on 12 May (to follow) and authorise the Chairman to sign them.

### **3. SOUTH HATCH STABLES BURGH HEATH ROAD EPSOM SURREY KT17 4LX (Pages 25 - 60)**

Proposed amendments to S106 Agreement, attached to planning permission 18/00308/FUL.

**Minutes of the Meeting of the PLANNING COMMITTEE held on 22 April 2021**

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**PRESENT -**

Councillor Clive Woodbridge (Chair); Councillor Monica Coleman (Vice-Chair); Councillors Alex Coley, Neil Dallen, David Gulland, Previn Jagutpal, Colin Keane, Jan Mason, Steven McCormick, Lucie McIntyre, Debbie Monksfield, Peter O'Donovan and Clive Smitheram

In Attendance: Councillor Liz Frost

Officers present: Amardip Healy (Chief Legal Officer), Viv Evans (Interim Head of Planning), Mehdi Rezaie (Interim Planning Development Manager), Virginia Johnson (Planner), Sarah Keeble (Democratic Services Officer) and Tim Richardson (Committee Administrator)

**43 DECLARATIONS OF INTEREST**

The following declarations were made in relation to Items of business to be discussed at the meeting:

Councillor Neil Dallen: In the interests of openness and transparency, Councillor Neil Dallen declared that he is a member of Epsom Civic Society and that he came to the meeting with a clear and open mind. Councillor Neil Dallen also declared that he is a candidate in the upcoming Surrey County Council Elections.

Councillor Previn Jagutpal: In the interests of openness and transparency, Councillor Previn Jagutpal declared that he is a member of Woodcote Residents Association and that he came to the meeting with a clear and open mind.

Councillor Steven McCormick: In the interests of openness and transparency, Councillor Steven McCormick declared that he is a member of Epsom Civic Society, Epsom and Ewell Tree Advisory Board and Woodcote (Epsom) Residents Society and that he came to the meeting with a clear and open mind. Councillor Steven McCormick also declared that he is a candidate in the upcoming Surrey County Council Elections.

Epsom General Hospital, Dorking Road, Epsom, Surrey, KT18 7EG

Councillor Clive Woodbridge, Other Interest: In the interests of openness and transparency, Councillor Clive Woodbridge declared on behalf of all Councillors that all Councillors had received a number of correspondence from the Applicant and rejectors regarding this Item. Councillor Clive Woodbridge also stated that all

Councillors came to the meeting with a clear and open mind, and without predetermination.

Councillor Liz Frost MSc, Other Interest: In the interests of openness and transparency, Councillor Liz Frost declared that she is a member of the Woodcote Millennial Green Trust.

#### 44 MINUTES OF THE PREVIOUS MEETING

The Minutes of the previous meeting of the Committee held on 1 April were agreed as a true record and the Committee authorised the Chairman to sign them.

#### 45 EPSOM GENERAL HOSPITAL, DORKING ROAD, EPSOM, SURREY, KT18 7EG

The Committee was informed that this Item had been withdrawn from the Agenda for the Meeting at the request of Officers, to allow for additional consultation to take place.

#### 46 EPSOM GENERAL HOSPITAL, DORKING ROAD, EPSOM, SURREY, KT18 7EG

##### Description

Demolition of the existing hospital buildings, accommodation block and associated structures and redevelopment of the site to provide a new care community for older people arranged in two buildings, comprising 267 care residences, 10 care apartments and 28 care suites providing transitional care, together with ancillary communal and support services Use Class C2, 24 key worker units Use Class C3, childrens nursery Use Class E, as well as associated back of house and service areas, car and cycle parking, altered vehicular and pedestrian access, landscaping, private amenity space and public open space.

##### Decision

The Committee was adjourned for 15 minutes to ensure all Members had sufficient time to read the Update Report and Addendums which were published the evening of the Committee meeting.

The Committee noted a presentation from the Planning Officer.

The Committee was addressed by Councillor Liz Frost, Ward Member, who spoke in objection to the Application. The Committee also heard from a supporter, an objector on behalf of Woodcote Epsom Residents Society, and an agent to the Applicant.

The following matters were raised by the Committee:

- a) **Height and massing:** Members raised concerns regarding the height, mass, bulk and design of the proposal. Members noted the size and scale

of the proposal and its materials and spoke about whether it would adversely impact the character and appearance of the surrounding area. The Officer confirmed that the proposed material palette had been carefully considered to ensure longevity of materials.

- b) **Housing density:** Members noted the shortage of delivery of housing land supply within the Borough and how the proposed development would be of substantial benefit in fulfilling need.
- c) **Impact on neighbouring amenity:** Members raised concerns regarding the size and scale of the proposed development and its adverse impact on neighbouring amenity. The Officer noted that steps had been taken to reduce adverse neighbouring impact, including the reduction of car-parking spaces.
- d) **Trees and landscaping:** Members raised concerns regarding the proposed trees, and whether they may provide suitable coverage year-round. The Officer confirmed that the nature of the trees could be determined as part of a Planning Condition to ensure they would be appropriate for all seasons. It was noted that the trees planted across the frontage of Woodcote Green Road would be planted at 6m in height, and would grow to at least 10m in height.
- e) **Affordable housing:** Members noted the Applicant's £1.5 million contribution towards affordable housing, in addition to the re-provision of 24 key worker housing units on site. Following a question from a Member, the Officer confirmed that as part of the s106 agreement, these key worker units would come under the control of the Council through the Housing team regarding who may occupy them. The Officer also confirmed that the £1.5 million contribution would be allocated to the Council's Housing department for the delivery of affordable housing.

A refusal was proposed by Councillor Steven McCormick, and seconded by Councillor Neil Dallen. The reason for this refusal was based on concerns raised by the Committee, including those regarding:

- Scale and design of buildings
- Harm to character and appearance of area
- Landscaping and design
- Loss of amenity to neighbouring residents.

Following consideration, the Committee resolved with 7 Members voting for, 4 Members voting against, 1 abstention and the Chair not voting that:

The Application be REFUSED based on the concerns raised by the Committee. These reasons included:

- (1) The proposed development by reason of its height, mass, scale and design would adversely impact and harm the character and appearance of the area (including the built environment and landscape setting), failing to comply with Policy CS5 of the Core Strategy (2007), Policies DM9, DM10 and DM11 of the Development Management Policies Document (2015) and paragraphs 122 and 127 of the NPPF (2019).
- (2) The siting of the development leaves insufficient landscaping opportunities to the frontage of Woodcote Green Road and along the south-western boundary with neighbouring residential property to mitigate the impact of the proposed development, presenting an over-developed and hard edge to the appearance to the development, which would cause harm to the character and appearance of the area. Causing harm to the character and appearance of the area fails to comply with Policy DM5 of the Development Management Policies Document (2015) and the NPPF (2019).
- (3) The proposed development by reason of its height, massing and design would adversely impact on the neighbouring amenities of the occupiers at 40 and 46 Woodcote Green Road, by means of overbearing, loss of privacy and loss of outlook, failing to comply with Policy DM10 of the Development Management Policies Document (2015).
- (4) In the absence of a completed legal obligation under Section 106 of the Town and Country Planning Act 1990 (as amended), to secure an affordable housing contribution, the applicant has failed to comply with Policy CS9 (Affordable Housing and meeting Housing Needs) of the Core Strategy (2007) and the NPPF (2019).

**47 DEVELOPMENT SITE AT 65 LONDON ROAD EWELL SURREY KT17 2BL**

Due to time constraints, the Committee were unable to discuss this Item. It has been deferred to be discussed at a future meeting.

**48 MONTHLY APPEALS REPORT**

The Committee noted the Appeal Decisions from 18 December 2020 to 8 April 2021.

*The meeting began at 7.30 pm and ended at 10.16 pm*

COUNCILLOR CLIVE WOODBRIDGE (CHAIR)



## Minutes of the Meeting of the PLANNING COMMITTEE held on 27 April 2021

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### PRESENT -

Councillor Clive Woodbridge (Chair); Councillor Steven McCormick (Vice-Chair); Councillors Alex Coley, Neil Dallen (Joined the meeting when the discussion for Item 2 was taking place, therefore was unable to partake in the vote for this Item), David Gulland, Previn Jagutpal, Colin Keane, Jan Mason, Lucie McIntyre (Joined the meeting when the discussion for Item 2 was taking place, therefore was unable to partake in the vote for this Item), Debbie Monksfield, Peter O'Donovan and Clive Smitheram (Joined the meeting when the discussion for Item 2 was taking place, therefore was unable to partake in the vote for this Item)

Absent: Councillor Monica Coleman

Officers present: Amardip Healy (Chief Legal Officer), Viv Evans (Interim Head of Planning), Mehdi Rezaie (Interim Planning Development Manager), Sarah Keeble (Democratic Services Officer) and Tim Richardson (Committee Administrator)

### 49 DECLARATIONS OF INTEREST

The following declarations of interest were made in relation to Items of business on the Agenda for the meeting:

Councillor David Gulland: In the interests of openness and transparency, Councillor David Gulland declared that he is a candidate in the upcoming Surrey County Council Elections.

Councillor Jan Mason: In the interests of openness and transparency, Councillor Jan Mason declared that she is a candidate in the upcoming Surrey County Council Elections.

Councillor Steven McCormick: In the interests of openness and transparency, Councillor Steven McCormick declared that he is a member of Epsom Civic Society, Epsom and Ewell Tree Advisory Board and Woodcote (Epsom) Residents Society and that he came to the meeting with a clear and open mind. Councillor Steven McCormick also declared that he is a candidate in the upcoming Surrey County Council Elections.

Item 05 of the Agenda of the Planning Committee held on 22 April 2021

In the interests of openness and transparency, Councillor Clive Woodbridge declared on behalf of all Councillors that all Councillors had received a number

of correspondence from rejectors regarding this Item. Councillor Clive Woodbridge also stated that all Councillors came to the meeting with a clear and open mind, and without predetermination.

50 ITEM 05 OF THE AGENDA OF THE PLANNING COMMITTEE HELD ON 22 APRIL 2021

Description

Construction of a three to six storey building comprising 45 flats (Use Class C3) with associated car and cycle parking, refuse storage and ancillary works.

Decision

The Committee noted a presentation from the Planning Development Manager, in which he made note of the Update Report which was initially published the evening of the original meeting, and subsequently re-published alongside the Agenda for this reconvened meeting.

The Committee was addressed by Councillor John Beckett, Surrey County Council Division Member, who spoke in objection to the application. The Committee was also addressed by Councillor Hannah Dalton, Ward Member, who also spoke in objection to the application. Finally, the Committee heard from the Agent to the applicant.

The following matters were raised by the Committee:

- a) **Density:** Members raised concerns regarding the high density of the proposed development. The Officer noted that the density had been distinguished by factors including internal design e.g. the number of habitual bedspaces and external space. The Officer confirmed that they deemed the balance appropriate and not an over-development. Members noted the shortage of delivery of housing land supply within the Borough and how the proposed development would be of substantial benefit in fulfilling need.
- b) **Trees:** Members raised concerns regarding the proposed tree coverage, including the 1m shortfall alongside Ewell Bypass. The Officer noted that the proposed development would be optimized usage of the site and that the shortfall would be negligible in this case.
- c) **Air quality:** Following a question from a Member, the Officer confirmed that there had not been an Air Quality Survey completed for the site. The Officer advised that measures could be taken to impose sustainability principles into the development to limit its impact on air quality.
- d) **Height and massing:** Members raised concerns regarding the height, mass, bulk and design of the proposal, and questioned if it may be out of suiting to the existing neighbouring buildings.

- e) **Impact on neighbouring amenity:** Members raised concerns regarding the size and scale of the proposed development and its adverse impact on neighbouring amenity. The Officer noted that steps had been taken to reduce adverse neighbouring impact, including the nature of the enclosed shared amenity area to ensure that there would be no direct overlooking.
- f) **Highways:** Prior to issuing the notice of decision officers were requested to facilitate a meeting between Surrey County Council Highway Authority and the local Councillor for the site regarding ingress and egress from the application site to clarify issues raised in the Committee meeting.
- g) **Landscaping:** Officers were asked to explore the potential for enhanced screening and tree planting within the application and to incorporate the outcome in any proposed planning conditions.
- h) **Fire safety:** Officers were requested to add a planning condition requiring proposed fire safety measures to be submitted and approved in writing prior to any construction above slab level taking place.

Following consideration, the Committee resolved with 6 Members voting for, 3 Members voting against and the Chair not voting that:

The Application be **APPROVED** subject to:

Part A

**24.1** Subject to a legal agreements being completed and signed by the 22nd July 2021 to secure the following Heads of Terms:

*Affordable Housing*

- The provision of 12 affordable housing units : 7 units (4 x 3 Beds, 2 x 2 Beds and 1 x 1 Bed units (Social Rented), and 5 units comprising 5 x 1 Bed units (Shared Ownership)
- A commuted sum of £149,000 in lieu of on-site provision of an affordable unit Car Club

*Car Club*

- Details of a Car Club Scheme with the Car Club Operator to be submitted to the County Council's Highway Authority for approval and thereafter to implement such approved scheme before the Occupation of any Dwelling to the County Council's reasonable satisfaction.
- The Car Club Scheme will:
  - a) ensure the dedication retention and maintenance of the Car Club Space and that the Car Club Space shall not be used for any other purpose for a minimum of three years from the date of the sale / disposal of the last Dwelling to be sold / disposed of

- b) provide one Car Club Vehicle for use by the Car Club Scheme
- c) ensure that the Car Club Vehicle is accessible on a 24 hour basis to both residents and non-residents of the Development.
- d) provide for the Car Club Operator to market the Car Club Scheme for a period of three years from the date of implementation of the approved Car Club Scheme
- e) meet the full costs of three years membership and of eight driving hours for each flat unit
- f) appoint an accredited Car Club Operator for the Car Club Scheme
- g) provide on request information to the Council concerning the usage by residents of the Development of the Car Club Scheme.
- There shall be no occupation of the development until the Car Club Scheme has been provided, or the Car Club Contribution has been paid in full to the County Council.
- In the event that the Owner does not:
  - a) enter into an agreement with the Car Club Provider; and or
  - b) deliver the Car Club Scheme and the Car Club Space,

the Owner shall pay the Car Club Contribution on or before Occupation of the Development.
- There shall be no occupation of the development until the Car Club Scheme has been provided, or the Car Club Contribution has been paid in full to the County Council.

*Off-Site Highway works*

- Prior to the commencement of the development hereby permitted to submit for the written approval of the Highway Authority, details of push button controlled pedestrian crossing facilities on London Road. The approved crossing facilities shall be provided prior to first occupation of the development.
- Prior to the first occupation of the development hereby permitted the provision of a 3m wide footway on both the London Road and Ewell Bypass frontages of the site to be dedicated as public highway, in general accordance with drawing 346 (SP) 03.

*Bus Infrastructure*

- Prior to the commencement of the development hereby permitted to submit for the written approval of the Highway Authority, details of

improved bus stop infrastructure at both the A24 north-side bus stop and A24 south-side bus stop to include shelters and Real Time Passenger Information. The approved bus stop infrastructure shall be provided prior to first occupation of the development.

*Monitoring Fee*

- A s106 monitoring fee in respect of legal costs associated with the monitoring/implementation of the obligations in the s106 agreement in the sum of £1,500, to be paid to the Council upon commencement of the development

The Committee authorise the Head of Planning to grant planning permission subject to the conditions detailed below:

**Part B**

24.2 In the event that the section 106 Agreement referred to in Part A is not completed by 22nd July 2021, the Head of Planning be authorised to refuse the application for the following reason:

In the absence of a completed legal obligation under section 278 agreement of the Highways Act 1980 and/or section 106 of the Town and Country Planning Act 1990 (as amended), the applicant has failed to comply with Policy CS9 (Affordable Housing and meeting Housing Needs) in relation to the provision of 12 on site affordable housing units, and a commuted sum of £149,000 in lieu of the on-site provision of an affordable unit and/or necessary infrastructure/provision to make the scheme acceptable to comply with Policies DM37 (Parking Standards), CS16 (Managing transport and travel) and CS6 (Sustainability in New Developments) in relation to the provision of parking, car-club, Off-Site Highway works and improvements to the bus stop infrastructure to make the scheme acceptable on highway and pedestrian grounds.

**Condition(s):**

- (1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

**Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 (1) of the Planning and Compulsory Purchase Act 2004.**

- (2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan 346 (SP) 01

Existing Site Plan 346 (SP) 02

Proposed Site Plan 346 (SP) 03

Proposed Ground Floor Site Plan 346 (SP) 04

Proposed Ground Floor Plan 346 (GA) 00

Proposed First Floor Plan 346 (GA) 01

Proposed Second Floor Plan 346 (GA) 02

Proposed Third Floor Plan 346 (GA) 03

Proposed Fourth Floor Plan 346 (GA) 04

Proposed Fifth Floor Plan 346 (GA) 05

Proposed Roof Plan 346 (GA) 06

Proposed South East (London Road) Elevation 346 (GA) 10

Proposed South West (Ewell By-Pass) Elevation 346 (GA) 11

Proposed North West (Rear) Elevation 346 (GA) 12

Proposed North East (Side) Elevation 346 (GA) 13

Proposed NE (Side) & SW (Side) Elevations - NE Block 346 (GA) 14

Existing Streetscape Elevations 346 (GA) 20

Proposed Streetscape Elevations 346 (GA) 21

Drainage Strategy, Waterman, July 2020, revision -, document reference:  
WIE17307-100-R-1-1-3-DS

Preliminary Investigation report, Soils Ltd, July 2020, document reference:  
18316/PIR\_R26/V1

**Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans to comply with Policy CS5 of the Core Strategy (2007).**

- (3) Prior to the commencement of development, details and samples of the external materials to be used for the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

**Reason: To secure a satisfactory appearance in the interests of the visual amenities and character of the locality in accordance with Policy CS5 of the Core Strategy (2007) and Policies DM9 and DM10 of the Development Management Policies 2015.**

- (4) No development shall take place until details of the design, external appearance and decorative finish of all railings, fences, gates, walls,

bollards and any other means of enclosure have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the development first being occupied and shall thereafter be retained.

**Reason: To secure a satisfactory appearance in the interests of the visual amenities and character of the locality in accordance with Policy CS5 of the Core Strategy (2007) and Policies DM9 and DM10 of the Development Management Policies 2015.**

- (5) Prior to commencement of works section drawings through balconies, parapets, reveals, soffits, lintel and cills at a scale of 1:5 shall be submitted to the local planning authority. No works shall commence until these specifications are approved and shall carried out in accordance with the approved specifications.

**Reason: To secure a satisfactory appearance in the interests of the visual amenities and character of the locality in accordance with Policy CS5 of the Core Strategy (2007) and Policies DM9 and DM10 of the Development Management Policies 2015.**

- (6) The windows in the flank and rear elevation of Flat No G-8, 1-11 and 2-11, of the development hereby permitted, shall be glazed with obscure glass of no less than obscurity level 3 and permanently fixed shut, unless the parts of the window/s which can be opened are more than 1.7 metres above the floor of the room in which the window is installed, and shall thereafter be permanently retained as such.

**Reason: To safeguard the privacy of the occupants of adjoining properties in accordance with Policy DM10 of the Development Management Policies 2015.**

- (7) No development shall take place until details of existing and proposed finished site levels, finished floor and ridge levels of the buildings to be erected, and finished external surface levels have been submitted to and approved in writing by the local planning authority. The development shall thereafter be constructed in accordance with the approved details.

**Reason: In order to safeguard the amenities of the occupiers of neighbouring properties in accordance with Policy CS5 of the Core Strategy (2007) and Policy DM10 of the Development Management Policies 2015.**

- (8) No development, above ground floor slab level, shall commence until a scheme of hard and soft landscaping has been submitted to the Local Planning Authority for approval, which shall include details of all existing trees on the land, and details of any to be retained, together with measures for their protection, in the course of development. The scheme shall indicate the location and species of plants and trees to be planted on the site. The approved scheme shall be implemented so that planting can be carried out during the first planting season following the final

occupation of the building(s) or the completion of the development whichever is the sooner. All planted materials shall be maintained for five years and any trees of planted removed, dying, being damaged or becoming diseased within that period shall be replaced in the next planting season with others of similar size and species to those originally required to be planted unless the Local Planning Authority gives written consent to any variation.

**Reason: To ensure the provision, establishment and maintenance of an appropriate landscape scheme in the interests of the visual amenities of the locality in accordance with Policy CS5 of the Core Strategy (2007) and Policies DM5 and DM9 of the Development Management Policies 2015.**

- (9) The development must be carried out in accordance with the submitted Noise Assessment Report by Sustainable Acoustics document reference Report No. 20-0065-0 R01a dated 1 July 2020. The recommended mitigation measures within the report to ensure that the building design complies with the requirements of BS 8233 : 2014 must be implemented in full and retained thereafter.

**Reason: To protect the occupants of the development hereby approved from noise disturbance in accordance with Policy DM10 of the Development Management Policies 2015.**

- (10) Prior to commencement of above ground works / the relevant part of the development hereby permitted a sample of each of the proposed brick finishes a 1m X 1m panel shall be constructed on site for inspection and approval by the local planning authority on site with bricks matching the existing building. These shall illustrate the proposed brick in colour, texture, module, bond, pointing and mortar colour proposed for the building and shall be retained on site as a model for the work on site. The work shall not be carried out otherwise than as to conform to approve samples

**Reason: To secure a satisfactory appearance in the interests of the visual amenities and character of the locality in accordance with Policy CS5 of the Core Strategy (2007) and Policies DM9 and DM10 of the Development Management Policies 2015.**

- (11) The development hereby approved shall be carried out in accordance with the protection, mitigation and enhancement measures detailed in the Ecological Appraisal, by Wychwood Environmental Ltd, dated May 2020, prior to the first occupation of the development and/or in accordance with the approved timetable detailed in the ecological assessment and plan. The approved measures shall thereafter be maintained.

**Reason: To preserve and enhance biodiversity and habitats in accordance with Policy CS3 of the Core Strategy (2007) and Policy DM4 of the Development Management Policies 2015.**

- (12) Works related to the construction of the development hereby permitted, including works of demolition or preparation prior to building operations



shall not take place other than between the hours of 08.00 to 18.00 hours Mondays to Fridays; 08.00 to 13.00 hours Saturdays; with no work on Saturday afternoons (after 13.00 hours), Sundays, Bank Holidays or Public Holidays.

**Reason: In order to safeguard the amenities of the occupiers of neighbouring properties in accordance with Policy DM10 of the Development Management Policies 2015.**

- (13) Unless otherwise agreed by the Local Planning Authority, the following must be undertaken following demolition and prior to occupation of the new development, in accordance with current best practice guidance:

A site investigation and risk assessment to determine the existence, extent and concentrations of any made ground/fill, ground gas and contaminants (including asbestos and hydrocarbons) with the potential to impact sensitive receptors on and off site. The scope and detail of these are subject to the approval in writing by the local planning authority. The results of the investigation and risk assessment shall be submitted to and approved by the Local Planning Authority. If ground/groundwater contamination, filled ground and/or ground gas is found to present unacceptable risks, a detailed scheme of risk management measures shall be designed and submitted to the Local Planning Authority for approval. The site shall be remediated in accordance with the approved measures and a verification report shall be submitted to and approved by the Local Planning Authority. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site and verification report shall incorporate the approved additional measures.

**Reason: To control significant harm from land contamination to human beings, controlled waters, buildings and or/ecosystems as required by Policy DM10 of the Development Management Policies Document (2015).**

- (14) The development hereby approved shall not be first occupied unless and until the facilities for the secure parking for a minimum of 54 bicycles within the development site have been provided in accordance with the approved plans and thereafter shall be retained and maintained to the satisfaction of the Local Planning Authority.

**Reason: In order that the development does not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policy CS16 of the Core Strategy 2007.**

- (15) The occupant of each residential unit shall be provided with a travel information pack regarding the availability of and whereabouts of local public transport / walking / cycling / car sharing clubs / car clubs, in

accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.

**Reason: In recognition of Section 9 “Promoting Sustainable Transport” in the National Planning Policy Framework 2019.**

- (16) The development hereby approved shall not be occupied unless and until each of the proposed parking spaces are provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.

**Reason: The condition above is required in order that the development should not prejudice highway safety, nor cause inconvenience to other highway users, and to accord with the National Planning Policy Framework 2018 and Policy DM 36 Sustainable Transport for New Development, of the Epsom & Ewell Borough Council Development Management Policies Document September 2015.**

- (17) No part of the development shall be first occupied unless and until the proposed vehicular access to London Road has been constructed and provided with visibility zones in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority (in general accordance with drawing SK01 Rev G) and thereafter the visibility zones shall be kept permanently clear of any obstruction over 0.6m high.

**Reason: In order that the development does not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policy CS16 of the Core Strategy 2007.**

- (18) The development hereby approved shall not be first occupied unless and until a pedestrian inter-visibility splay measuring 2m by 2m has been provided on each side of the access to London Road, the depth measured from the back of the footway and the widths outwards from the edges of the access. No obstruction to visibility between 0.6m and 2m in height above ground level shall be erected within the area of such splays.

**Reason: In order that the development does not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policy CS16 of the Core Strategy 2007.**

- (19) The development hereby approved shall not be first occupied unless and until the existing access from the site to London Road has been permanently closed and any kerbs, verge, footway, fully reinstated.

**Reason: In order that the development does not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policy CS16 of the Core Strategy 2007.**

- (20) The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.

**Reason: In order that the development does not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policy CS16 of the Core Strategy 2007.**

- (21) No development shall commence until a Construction Transport Management Plan, to include details of:
- a) parking for vehicles of site personnel, operatives and visitors
  - b) loading and unloading of plant and materials
  - c) storage of plant and materials
  - d) programme of works (including measures for traffic management)
  - e) provision of boundary hoarding behind any visibility zones
  - f) HGV deliveries and hours of operation
  - g) vehicle routing
  - h) measures to prevent the deposit of materials on the highway
  - i) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused
  - j) on-site turning for construction vehicles has been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.

**Reason: In order that the development does not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policy CS16 of the Core Strategy 2007.**

- (22) Prior to the occupation of the development a Car Park Management Plan shall be submitted for the written approval of the Local Planning Authority and then the approved Car Park Management Plan shall be implemented and for each and every subsequent occupation of the development, to the satisfaction of the Local Planning Authority.

**Reason: To ensure the efficient and functional use of the car parking area, to safeguard the amenity of future occupiers of the approved development and to ensure that the development does not prejudice highway safety nor cause inconvenience to other highway users in compliance with Policy**

**DM10, DM37 of the Development Management Policies Document 2015 and Policy CS16 of the Core Strategy 2007.**

- (23) The development shall be carried out in strict accordance with the sustainable design measures contained in the Energy and Sustainability Report prepared by Envision, dated 1 July 2020, prior to the first occupation of the building, and shall be maintained as such thereafter and no change shall take place without the prior written consent of the local planning authority.

**Reason: To ensure that measures to make the development sustainable and efficient in the use of energy, water and materials are included in the development in accordance with Policy CS6 of the Core Strategy (2007).**

- (24) The development hereby permitted shall not commence until details of the design of a surface water drainage scheme have been submitted to and approved in writing by the planning authority. The design must satisfy the SuDS Hierarchy and be compliant with the national Non-Statutory Technical Standards for SuDS, NPPF and Ministerial Statement on SuDS. The required drainage details shall include:
- a) The results of infiltration testing completed in accordance with BRE Digest: 365 and confirmation of groundwater levels.
  - b) Evidence that the proposed final solution will effectively manage the 1 in 30 & 1 in 100 (+40% allowance for climate change) storm events, during all stages of the development. Associated discharge rates and storage volumes shall be provided using a maximum discharge rate equivalent of 1l/s.
  - c) Detailed drainage design drawings and calculations to include: a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features (silt traps, inspection chambers etc.).
  - d) A plan showing exceedance flows (i.e. during rainfall greater than design events or during blockage) and how property on and off site will be protected.
  - e) Details of drainage management responsibilities and maintenance regimes for the drainage system.
  - f) Details of how the drainage system will be protected during construction and how runoff (including any pollutants) from the development site will be managed before the drainage system is operational.

**Reason: To ensure the Drainage System is constructed to the National Non-Statutory Technical Standards for SuDS, in accordance with Policy CS6 of the Epsom and Ewell Core Strategy (2007) and Policy DM19 of the Development Management Policies 2015.**

- (25) Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).

**Reason: To ensure the Drainage System is constructed to the National Non-Statutory Technical Standards for SuDS, in accordance with Policy CS6 of the Epsom and Ewell Core Strategy (2007) and Policy DM19 of the Development Management Policies 2015.**

- (26) All dwellings hereby approved shall comply with Regulation 36 (2)(b) and Part G2 of the Building Regulations - Water Efficiency.

**Reason: In order to comply with Policy CS6 (Sustainability in New development) of the LDF Core Strategy (2007).**

- (27) All non-CHP space and hot water fossil fuel (or equivalent hydrocarbon based fuel) boilers installed as part of the development must achieve dry NOx emission levels equivalent to or less than 30 mg/kWh.

**Reason: To protect air quality and people's health by ensuring that the production of air pollutants, such as nitrogen dioxide and particulate matter, are kept to a minimum during the course of building works and during the lifetime of the development. To contribute towards the maintenance or to prevent further exceedances of National Air Quality Objectives.**

**Informative(s):**

- (1) The Council confirms that in assessing this planning application it has worked with the applicant in a positive and proactive way, in line with the requirements of paragraph 38 of the National Planning Policy Framework 2019.
- (2) This form of development is considered liable for the Community Infrastructure Levy (CIL). CIL is a non-negotiable charge on new developments which involve the creation of 100 square metres or more of gross internal floorspace or involve the creation of a new dwelling, even when this is below 100 square metres. The levy is a standardised, non-negotiable charge expressed as pounds per square metre, and are charged on the net additional floorspace generated by a development. You will receive more information regarding the CIL in due course.

More information and the charging schedule are available online:

<http://www.epsom-ewell.gov.uk/NR/exeres/74864EB7-F2ED-4928-AF5A-72188CBA0E14.frameless.htm?NRMODE=Published>

- (3) The permission hereby granted shall not be construed as authority to carry out any works on the highway or any works that may affect a drainage channel/culvert or water course. The applicant is advised that a permit and, potentially, a Section 278 agreement must be obtained from the Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. All works on the highway will require a permit and an application will need to be submitted to the County Council's Street Works Team up to 3 months in advance of the intended start date, depending on the scale of the works proposed and the classification of the road. Please see:

<http://www.surreycc.gov.uk/roads-and-transport/road-permits-andlicences/the-traffic-management-permit-scheme>.

The applicant is also advised that Consent may be required under Section 23 of the Land Drainage Act 1991. Please see:

[www.surreycc.gov.uk/people-and-community/emergency-planningand-community-safety/floodingadvice](http://www.surreycc.gov.uk/people-and-community/emergency-planningand-community-safety/floodingadvice).

- (4) The developer is reminded that it is an offence to allow materials to be carried from the site and deposited on or damage the highway from uncleaned wheels or badly loaded vehicles. The Highway Authority will seek, wherever possible, to recover any expenses incurred in clearing, cleaning or repairing highway surfaces and prosecutes persistent offenders. (Highways Act 1980 Sections 131, 148, 149)
- (5) The developer is advised that as part of the detailed design of the highway works required by the above condition(s), the County Highway Authority may require necessary accommodation works to street lights, road signs, road markings, highway drainage, surface covers, street trees, highway verges, highway surfaces, surface edge restraints and any other street furniture/equipment.
- (6) Section 59 of the Highways Act permits the Highway Authority to charge developers for damage caused by excessive weight and movements of vehicles to and from a site. The Highway Authority will pass on the cost of any excess repairs compared to normal maintenance costs to the applicant/organisation responsible for the damage.
- (7) It is the responsibility of the developer to ensure that the electricity supply is sufficient to meet future demands and that any power balancing technology is in place if required. Please refer to:

<http://www.beama.org.uk/resourceLibrary/beama-guide-to-electricvehicle-infrastructure.html> for guidance and further information on charging modes and connector types

- (8) The permission hereby granted shall not be construed as authority to obstruct the public highway by the erection of scaffolding, hoarding or any other device or apparatus for which a licence must be sought from the Highway Authority Local Highways Service.
- (9) Notwithstanding any permission granted under the Planning Acts, no signs, devices or other apparatus may be erected within the limits of the highway without the express approval of the Highway Authority. It is not the policy of the Highway Authority to approve the erection of signs or other devices of a non-statutory nature within the limits of the highway.

*The meeting began at 6.30 pm and ended at 8.38 pm*

COUNCILLOR CLIVE WOODBRIDGE (CHAIR)

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Ward:	College Ward
Site:	South Hatch Stables Burgh Heath Road Epsom Surrey KT17 4LX
Application for:	Proposed amendments to S106 Agreement, attached to planning permission 18/00308/FUL
Contact Officer:	Ginny Johnson

## 1 Plans and Representations

- 1.1 The Council now holds this information electronically. Please click on the following link to access the plans and representations relating to this application via the Council's website, which is provided by way of background information to the report. Please note that the link is current at the time of publication, and will not be updated.

Link: <https://eplanning.epsom-ewell.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QNHYQEGY0BY00>

## 2 Summary

- 2.1 Planning permission was granted on 22 May 2020, at South Hatch Stables, for the demolition of an existing Racecourse Training Establishment (RTE) and the erection of a new RTE, with enabling residential development, comprising 46 apartments (ref: 18/00308/FUL). A S106 Agreement formed part of the permission, dated 15 May 2020. The formal description of development is as follows:

*“Demolition of the existing Racehorse Training Establishment (RTE) and the erection of a new RTE comprising of a main yard stable complex of 40 boxes, a secondary stable block of 20 boxes, an isolation yard, a trainer and assistant trainers house, stable staff accommodation, horse walkers, muck pits, a therapy barn, trotting ring and outdoor school, a lunge ring, turnout paddocks and a machinery store and storage barn and enabling residential development comprising 46 apartments. Description amended to reflect reduction in 1 apartment (47 to 46)”*

- 2.2 By letter, dated 14 January 2021, the Applicant has made a Formal Request for agreement to vary the S106 Agreement. It sets out that in order for the Landowner and Applicant to deliver on the mutual objective of all parties, constructing and practically completing the RTE facilities in a shortened timeframe, the S106 Agreement must be varied to allow overlapping of the approved phases. The letter sets out that this would ensure the viability of the scheme.
- 2.3 Officers consider that the Applicant has provided sufficient reasoning and justification to amend the approved phasing of the scheme. Formal amendments to the S106 Agreement, by way of a Deed of Variation, would continue to secure the completion of the RTE, with the benefit of a reduced construction period.
- 2.4 Officers are of the view that the obligations sought to be varied still serve a useful purpose, and that purpose would be served equally well if the modifications were made as sought by the Applicant.

- 2.5 Therefore the proposed amendments to the S106 Agreement are favourably considered by Officers, to be captured within a Deed of Variation.

3 Site description

*The Application Site ('Site')*

- 3.1 The Application Site ('Site') comprises an existing Racehorse Training Establishment (RTE), which occupies an area of 1.92 hectares, with a substantial building group, comprising of an existing manager's house, a traditional brick built stable building, wooden stables, a storage barn, tack rooms and sundry outbuildings.
- 3.2 Key existing buildings include a U-shaped two storey stable block, concrete block and timber stables, steel sheet clad storage barns, tack rooms and other outbuildings. The main stable yard accommodation facilitates a manager's office, stable staff accommodation, a mess room and an office. Additionally, a main housing, is also located on this Site.
- 3.3 In terms of its local context, South Hatch Stables is located approximately 2km (1.3 miles) from the centre of Epsom and its railway station, off the B284 Burgh Heath Road. The Site is also accessible to the Epsom Race Course and its common, which are located approximately 0.5km south of the stables. This can be accessed directly from the southern paddock.
- 3.4 To the north of the Site is dense residential development, located on the periphery of Epsom. To the south east of the Site are several residential properties, which either front or are set back from Burgh Heath Road.
- 3.5 The existing Site access is from Burgh Heath Road.
- 3.6 The Site falls within the Green Belt.

4 Proposal

- 4.1 Planning permission was granted on 22 May 2020 at South Hatch Stables for the demolition of an existing Racecourse Training Establishment (RTE) and the erection of a new RTE, with enabling residential development, comprising 46 apartments (ref: 18/00308/FUL). A S106 Agreement formed part of the permission, dated 15 May 2020. The formal description of development is as follows:

*Demolition of the existing Racehorse Training Establishment (RTE) and the erection of a new RTE comprising of a main yard stable complex of 40 boxes, a secondary stable block of 20 boxes, an isolation yard, a trainer and assistant trainers house, stable staff accommodation, horse walkers, muck pits, a therapy barn, trotting ring and outdoor school, a lunge ring, turnout paddocks and a machinery store and storage barn and enabling residential development comprising 46 apartments. Description amended to reflect reduction in 1 apartment (47 to 46)*

4.2 Accompanying the Planning Permission is a S106 Agreement, dated 15 May 2020. This includes a Phasing Plan (ref: 1810\_80) referred to at Appendix 2. This is also captured within Condition 2 of the Planning Permission. The Phasing Plan sets out the following sequence:

- Phase 1: Earthworks and infrastructure to the whole site, excluding existing stable facilities
- Phase 2; construction of isolation yard, trainer's house, machinery store, stable block, horse walker and muck pit. Horses moved to these facilities
- Phase 3: Demolition of existing stable facilities and earthworks and infrastructure to this area (dashed lines denote buildings to be demolished)
- Phase 4: Construction of residential plots 1-22
- Phase 5; Construction of main yard and trotting ring
- Phase 6; Construction of residential plots 23-39
- Phase 7: Construction of therapy barn, storage barn, gatehouse and racing staff accommodation
- Phase 8: Construction of residential plots 40-47.

4.3 This Formal Request seeks to make amendments to "Schedule 1 Part 3 – Residential Development" of the S106 Agreement. The amendments sought to the wording of the phasing mechanism are detailed below. (New words in bold, omissions ~~aaa~~):

To construct the Development in accordance with the following:

1.1. not to commence construction of the Dwellings comprising Phase 4 unless the small stable block in Phase 2 has been practically completed in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority ~~and until the works comprising Phases 1, 2 and 3 having been Practically Completed;~~

1.2. to construct and practically complete the small stable block in Phase 2 prior to the ~~the works comprising Phases 1, 2 and 3 prior to the commencement of construction of any part of the dwellings comprising Phase 4;~~

1.3. ~~not to commence construction~~ no part of the Dwellings comprising Phase 6 4 shall be first occupied unless and until the works comprising Phases 1, 2 and 3 5 having been Practically Completed in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority

1.4. to construct and practically complete the works comprising Phases 1, 2, 3 and 5 3 prior to the first occupation of any part ~~commencement of construction~~ of the Dwellings comprising Phase 6 4;

1.5. not to commence construction work in respect of Phase 6 ~~of the Dwellings comprising Phase 8~~ unless the works comprising Phases 1, 2, and 3, 5 ~~and 7~~ having been practically completed in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority ~~and;~~

- 1.6. to construct and practically complete the works comprising Phases 1, 2 and 3, 5 and 7 prior to the commencement of construction work in respect of Phase 6; of the Dwellings comprising Phase 8.
- 1.7 not to commence any construction work in respect of Phase 6 unless and until the main yard in Phase 5 has reached first floor level in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority;
- 1.8 to construct and reach first floor level of the main yard in Phase 5 prior to the commencement of construction work in respect of Phase 6;
- 1.9 no part of the Dwellings comprising Phase 6 shall be first occupied unless and until the works comprising Phases 1, 2, 3, and 5 having been practically completed; and
- 1.10 to construct and practically complete the works comprising Phases 1, 2, 3 and 5 prior to the first occupation of any part of the Dwellings comprising Phase 6.
- 1.11 not to commence any construction work in respect of Phase 8 unless the works comprising Phases 1, 2, 3 and 5 having been practically completed;
- 1.12 to construct and practically complete the works comprising Phases 1, 2, 3 and 5 prior to the commencement of construction work in respect of Phase 8;
- 1.13 not to commence any construction work in respect of Phase 8 unless and until the stable staff accommodation in Phase 7 have reached first floor level in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority;
- 1.14 to construct and reach first floor level of the stable staff accommodation in Phase 7 prior to the commencement of any construction work in respect of Phase 8;
- 1.15 no part of the Dwellings comprising Phase 8 shall be first occupied unless and until the works comprising Phases 1, 2, 3, 5 and 7 having been practically completed in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority; and
- 1.16 to construct and practically complete the works comprising Phases 1, 2, 3, 5 and 7 prior to the first occupation of any part of the Dwellings comprising Phase 8.
- 4.4 For the avoidance of doubt, the S106 Agreement defines the words “practical completion”. This means “completion in relation to any part of the Development or an individual Dwelling in all material respects and the issue of a certificate of practical completion by the Owner’s architect or engineer as the case may be and the expression “Practically Completed” shall be construed accordingly.
- 4.5 The proposed wording of “practical completion” as part of the amendments sought are therefore in conformity with the S106 Agreement.

5 Comments from third parties

5.1 Consultation or notification is not statutorily required for an application to amend an approved S106 Agreement. However, in the public interest, the Formal Request was advertised by means of letters of notification to 101 neighbouring properties. To date, 37 letters of objection have been received, including from College Ward Residents Association, summarised below:

- The proposed amendments prioritises residential development, over the RTE provision element. The development was permitted as the racing industry was a prime beneficiary to Epsom and the Planning Permission included scheduling to ensure that was delivered
- Words “practically complete” is vague, no certainty of RTE delivery
- Inappropriate Green Belt development
- Noise and disturbance as a result of construction, including transport and ecology/biodiversity impacts
- Affordable housing element (stable staff accommodation) pushed back
- Issue whether the development would be left incomplete.

6 Consultations

6.1 None required

7 Relevant planning history

Application number	Decision date	Application detail	Decision
18/00308/FUL	22.05.2020	Demolition of the existing Racehorse Training Establishment (RTE) and the erection of a new RTE comprising of a main yard stable complex of 40 boxes, a secondary stable block of 20 boxes, an isolation yard, a trainer and assistant trainers house, stable staff accommodation, horse walkers, muck pits, a therapy barn, trotting ring and outdoor school, a lunge ring, turnout paddocks and a machinery store and storage barn and enabling residential development comprising 46 apartments. [Description amended to reflect reduction in 1 apartment (47 to 46)]	GRANTED
20/01571/S106A		Proposed amendments to S106 Agreement, attached to planning permission 18/00308/FUL	Withdrawn 25.01.2021

8 Planning Policy

National Policy Planning Framework (NPPF) 2019

Chapter 2 Para 8 Achieving sustainable development

Chapter 5 Para 62, 64, 67 Delivering a sufficient supply of homes

Chapter 13: Para 143-146 Protecting Green Belt Land

Core Strategy 2007

Policy CS2 Green Belt

Policy CS3 Biodiversity

Policy CS5 Built Environment

Policy CS16 Highways

Development Management Policies Document 2015

Policy DM3 Replacement and extensions of Buildings in the Green Belt

Policy DM21 Meeting Local Housing Needs

Policy DM 26 Equestrian-Related Development in the Green Belt

9 Planning considerations

Green Belt

- 9.1 Paragraphs 143 to 147 of the NPPF set out the Government's policies relating to development proposals in the Green Belt. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
- 9.2 Paragraph 144 of the NPPF advises that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Very Special Circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
- 9.3 Policy CS2 of Core Strategy protects the Green Belt, so that it shall serve its key functions, its existing general extent be maintained and within its boundaries, strict control continue to be exercised over inappropriate development as defined by Government policy.
- 9.4 The supporting text to Policy CS2 recognises the Green Belt designation and its significance in the Borough. Paragraph 3.3.3 notes the long association Epsom has had with the horse racing industry and that the Green Belt is home to the nationally important Epsom racecourse, as well as to facilities for the local racehorse training industry.
- 9.5 Policy DM26 of the Development Management Policies Document refers specifically to equestrian related development in the Green Belt. It says that where such development constitutes inappropriate development applicants will be expected to demonstrate very special circumstances which clearly outweigh the harm to the Green Belt.
- 9.6 A letter accompanies this Formal Request, dated 14.01.2021. It sets out the Applicant seeks to amend the S106 Agreement. The amendments (provided below) would ensure the viability of the project and allow the Landowner and Applicant the ability to deliver on the mutual objective of all parties, by constructing and practically completing the RTE facilities in a shortened timeframe.
- 9.7 The letter sets out that the proposed amendments would still enforce the Phasing Plan, but allow for overlapping of various phases, to ensure a shortened overall construction period. Certain critical milestones have been identified for the RTE phases, prior to commencement of construction of the residential development, but allowing the residential development to commence prior to the practical completion of the whole of the associated RTE phase.
- 9.8 The letter sets out that the residential units cannot be occupied prior to the whole of the associated RTE phase reaching practical completion. A main building in each RTE phase was identified that needs to achieve a certain milestone of construction prior to the associated residential phase commencing. These buildings are:
- The small stable block in Phase 2;
  - The main yard in Phase 5; and
  - The stable staff accommodation in Phase 7.

9.9 The letter summarises the proposed amendments, as follows:

- The small stable block in Phase 2 needs to be practically completed (which will allow Jim Boyle Racing to temporary relocate to this stable block) prior to any construction commencing on Phase 4 (the first 24 residential units)
- All of Phase 2 needs to be practically completed prior to occupation of any units consisting Phase 4
- The Main Yard in Phase 5 needs to reach first floor level prior to works commencing on Phase 6 (the second 18 residential units)
- All of Phase 4 need to be practically completed prior to occupation of any units consisting Phase 6
- The Stable Staff Accommodation needs to reach first floor level prior to works commencing on Phase 8 (the last 4 residential units); and
- All of Phase 7 need to be practically completed prior to occupation of any units consisting Phase 8.

*Officer Assessment*

9.10 The request is made under S106A of the *Town and Country Planning Act 1990* – “Modification and discharge of planning obligations: The section states at sub-section 6:

*6) Where an application has been made the authority may determine—*

*(a) that the planning obligation shall continue to have effect without modification;*

*(b) if the obligation no longer serves a useful purpose, that it shall be discharged; or*

*(c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.*

9.11 In this case, paragraph 106A(6)(c) applies. The Council must consider whether:

- i. the obligation sought to be varied continues to serve a useful purpose;  
and
- ii. it would serve that purpose equally well if the modification sought was made.

9.12 These questions are matters for the discretion of the local planning authority, acting reasonably.



- 9.13 On 17 September 2019, Planning Committee considered application ref: 18/00308/FUL and supported the Officer's recommendation to grant Planning Permission, subject to the referral of the application to the Secretary of State (the proposal was a departure from the Development Plan). The Minutes of the Committee meeting set out that:

*Members were presented with an update report, which they considered. They agreed to accept the recommended changes to the conditions and also to the draft heads of terms to the proposed Section 106 Agreement, which added the following additional requirements:*

- A mechanism to review the viability of the development if Phase 4 of the residential scheme has not reached slab level within two years of consent being granted*
- A "claw back" clause to ensure that the Council is paid the equivalent value of the cost of the affordable housing provision, due at the time planning was granted on the residential scheme (i.e. 40% Affordable Housing), if the applicant/owner sold the stables in part or as a whole, within a 15 year period from completion of the enabling residential development.*

*The officer presentation also included an amendment to withdraw permitted development rights. The Members accepted the officer's recommendation to approve the application based on the very special circumstances test having been met as set out in the report.*

- 9.14 The Secretary of State confirmed in writing on 18 March 2020 that this application should be considered and determined by the Local Planning Authority. As such, Planning Permission was granted, with an accompanying S106 Agreement.
- 9.15 The Applicant's letter, dated 14 January 2021, formally requesting the modifications sets out that in order for the Landowner and Applicant to deliver on the mutual objective of all parties, constructing and practically completing the RTE facilities in a shortened timeframe, the agreed phasing of the scheme needs amending. The letter sets out that this would ensure the viability of the scheme.
- 9.16 Concerns have been raised by nearby residents regarding this Formal Request. There is concern that should this Formal Request be allowed, the altered phasing of the approved scheme would bring forward the delivery of the housing, ahead of the RTE.
- 9.17 In considering this Formal Request, Officers recognise that the phasing obligation is currently structured so that the RTE would be practically completed ahead of the residential development. This was considered to necessary and proportionate in planning terms, so to ensure the delivery of this significant facility. It is considered that this obligation still serves a useful purpose.
- 9.18 The proposed amended phasing would enforce the agreed phasing plan, but allow for overlapping of various phases, which the Applicant explains would shorten the overall construction period. Officers do consider that a shortened construction period, allowing development to be brought forward at a quicker pace, is reasonable.

- 9.19 The revised phasing plan would still ensure that the residential units couldn't be occupied before the whole of the associated RTE phase reached practical completion. Therefore, the useful purpose of the phasing obligation would continue to be served equally as well if the amended phasing is substituted, and the RTE facility would still be delivered prior to occupation of the residential units.
- 9.20 Officers consider that the Applicant has provided sufficient reasoning and justification to amend the approved phasing of the scheme and set out the implications of doing so. Formal amendments to the S106 Agreement, by way of a Deed of Variation, would continue to secure the completion of the RTE, with the benefit of a reduced construction period.
- 9.21 The amendments sought to the approved phasing plan are not considered to materially change the mechanism of securing the delivery of the RTE and is therefore in accordance with the objectives of National and Local Planning Policy.

## 10 Conclusion

- 10.1 The purpose of the phasing obligation is to secure the delivery of the RTE prior to occupation of the residential units, and this purpose continues to be useful in planning terms.
- 10.2 Officers consider that the amended phasing would enable a quicker construction period, allowing development to be brought forward at a quicker pace, but still ensuring practical completion of the RTE phase, before the residential units could be occupied.
- 10.3 Therefore, the planning purpose of the obligation would continue to be served equally well by the proposed modifications, and would continue to be compliant with all relevant planning policy.
- 10.4 The proposed amendments to the S106 Agreement are favourably considered by Officers, to be captured within a Deed of Variation.

## 11 Recommendation

- 11.1 Amendments to the S106 Agreement, dated 15 May 2020, attached to Planning Permission 19/00308/FUL, be made as set out in this report

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**Dated:** 15<sup>th</sup> May 2020

- (1) EPSOM & EWELL BOROUGH COUNCIL
- (2) SURREY COUNTY COUNCIL
- (3) SOUTH HATCH SURREY LIMITED
- (4) ORTUS SECURED FINANCE I LIMITED

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**Agreement**

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under section 106 Town and Country Planning Act 1990 relating to land known as South Hatch Stables, Burgh Heath Road, Epsom, Surrey KT17 4LX

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15<sup>th</sup> May 2020

**THIS AGREEMENT** is made on

**BETWEEN**

- (1) **EPSOM & EWELL BOROUGH COUNCIL** of Town Hall, The Parade, Epsom, Surrey KT18 5BY ("**the Borough Council**");
- (2) **SURREY COUNTY COUNCIL** of Penrhyn Road, Kingston upon Thames, KT1 2DW ("**the County Council**");
- (3) **SOUTH HATCH SURREY LIMITED** (registered number 09053483) whose registered office is at Unit 14 First Quarter, Blenheim Road, Epsom, Surrey KT19 9QN ("**the Owner**"); and
- (4) **ORTUS SECURED FINANCE I LIMITED** (registered number 08380992) whose registered office is at 8 Wimpole Street, London W1G 9SP ("**the Mortgagee**").

**BACKGROUND**

- (A) For the purposes of the 1990 Act, the Borough Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement.
- (B) The County Council is the local highway and public transport authority and is also a local planning authority for the area in which the Site is location and is entitled to enforce those obligations in the Agreement given to the County Council
- (C) The Owner is the freehold owner of the Site registered with title absolute at the Land Registry under title numbers SY687962 and SY687964 subject to a mortgage in favour of the Mortgagee but otherwise free from encumbrances that would prevent the Owner entering into this Agreement.
- (D) The Mortgagee is the registered proprietor of the charge contained in a debenture dated 8 November 2019 referred to in entry numbers 6 and 4 of the charges registers of Title numbers SY687962 and SY687964 respectively and has agreed to enter into this Agreement to give its consent to the terms of this Agreement.
- (E) Pursuant to the Application the Owner has applied to the Borough Council for full planning permission for the Development.
- (F) On 17 September 2019 the Borough Council's Planning Committee resolved to grant the Planning Permission subject (inter alia) to the completion of this Agreement.
- (G) The Borough Council supports the Development and accepts that as at the date of this Agreement the Development is unable to provide either on-site Affordable Housing or a policy compliant commuted sum towards the provision of Affordable Housing elsewhere in the Borough Council's administrative area.
- (H) The parties have agreed to enter into this Agreement to secure the obligations herein and with the intention that the obligations contained in this Agreement may be enforced by the Borough Council and the County Council against the Owner and its successors in title as set out herein.

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words and expressions have the following meanings:

"1990 Act"

the Town and Country Planning Act 1990

<b>"Affordable Housing"</b>	shall have the same meaning as given in the National Planning Policy Framework adopted February 2019 or any successor policy document
<b>"Affordable Housing Commuted Sum"</b>	an Index Linked financial contribution towards the provision of off-site Affordable Housing in the Borough of Epsom & Ewell which may be payable by the Owner pursuant to the provisions of <b>part 7 and/or part 8 of Schedule 1</b> and which shall be calculated in accordance with the Borough Council's local plan policy CS9 up to a maximum of £2,286,504 (two million two hundred and eighty six thousand five hundred and four pounds)
<b>"Application"</b>	an application for full planning permission for the carrying out of the Development carrying the reference 18/00308/FUL
<b>"Commencement Date"</b>	the date specified in <b>clause 3.1</b> and the term <b>Commence</b> and other derivations shall be construed in accordance with that provision
<b>"Community Minibus"</b>	the minibus to be provided and operated pursuant to the Community Minibus Scheme
<b>"Community Minibus Scheme"</b>	a scheme detailing the provision and operation of a minibus service for occupiers of the Development running between the Site and Epsom railway station at Station Road Epsom Surrey KT19 8EW which shall include as a minimum details of how information on the Community Minibus is to be disseminated to users of the Site, details of the hours of operation and the fee to be charged per trip and shall provide for six (6) services in each direction between the hours of both (a) 06:30 and 09:30 and (b) 16:30 and 19:30 on weekdays (other than bank holidays) and six (6) services in each direction regularly spaced during Saturdays which scheme (including for the avoidance of doubt the number of services) may be revised from time to time with the written agreement of both the Borough Council and County Council PROVIDED THAT agreement by the Borough Council and County Council (either to the initial scheme or to revision thereof) shall not be unreasonably withheld and in the event that the Owner can properly demonstrate (to the satisfaction of the Borough Council and County Council acting reasonably) that the provision of the scheme will exceed the cost attributed to the scheme in the Viability Assessment it shall be presumed to be unreasonable to withhold consent
<b>"Development"</b>	the demolition of the existing racehorse training establishment and:  (1) the erection of a new RTE comprising of a main yard stable complex of 40 boxes, a secondary stable block of 20 boxes, an isolation yard, a trainer and assistant trainers' house, stable staff accommodation, horse walkers, muck pits, a therapy barn, trotting ring and outdoor school, a lunge ring, turnout paddocks and a machinery store and storage barn; and

	(2) enabling residential development comprising 46 apartments
<b>"Dwelling"</b>	each and every unit of residential accommodation provided as part of the Residential Development pursuant to the Planning Permission
<b>"Index Linked"</b>	means increased in accordance with the following formula:  Amount payable = the payment specified in this Agreement x (A/B) where:  A= the figure for the BCIS that applied immediately preceding the date the payment is due.  B= the figure for the BCIS that applied when the index was last published prior to 17 September 2019 being the date on which the Application was considered by the Borough Council's Planning Committee
<b>"Interest"</b>	means 4% above the base rate of the Bank of England from time to time
<b>"Occupy"</b>	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation in relation to security operations and <b>Occupation</b> and <b>Occupied</b> shall be construed accordingly
<b>"Phase"</b>	any phase of the Development as identified on the Phasing Plan
<b>"Phasing Plan"</b>	the plan attached to this Agreement at <b>Appendix 2</b> with drawing number 1810_80 or such other plan as agreed in writing by the Council from time to time
<b>"Plan"</b>	the plan attached to this Agreement at <b>Appendix 1</b> with drawing number 1810-10 Rev H
<b>"Planning Permission"</b>	the planning permission that may be granted for the Development in pursuance of the Application
<b>"Practical Completion"</b>	means completion in relation to any part of the Development or an individual Dwelling in all material respects and the issue of a certificate of practical completion by the Owner's architect or engineer as the case may be and the expression " <b>Practically Completed</b> " shall be construed accordingly
<b>"Reptile Management Plan"</b>	<b>Translocation</b> a plan or strategy for the translocation of reptiles on the Site which specifies:  (i) the methods by which the recommendations of the Reptile Survey are to be implemented; and  (ii) proposals for the long-term monitoring and management of reptiles on the Site

<b>"Reptile Survey"</b>	the reptile survey by The Ecology Partnership dated May 2019 and submitted by the Owner as part of the Application
<b>"the Residential Development"</b>	that part of the Development comprising the erection of 46 apartments on the Site and which shall comprise Phases 4, 6 and 8 on the Phasing Plan
<b>"RTE"</b>	a racehorse training establishment at the Site which following implementation of the Planning Permission shall comprise the land shown as Phases 1, 2, 3, 5 and 7 on the Phasing Plan
<b>"Section 73 Consent"</b>	a planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any condition to which the Planning Permission and/or to which such planning permission granted pursuant to Section 73 of the 1990 Act was granted subject to
<b>"Site"</b>	the land at South Hatch Stables, Burgh Heath Road, Epsom, Surrey KT17 4LX as shown for the purposes of identification only edged red on the Plan
<b>"Specialist"</b>	has the meaning given to it in <b>clause 9.2</b>
<b>"Stable Staff Accommodation"</b>	the property shown on the Phasing Plan and labelled "Stable Staff Accommodation"
<b>"Trainer's and Assistant Trainer's House"</b>	the 4 bedroom property shown on the Phasing Plan and labelled "Trainer's House" and as shown on drawing number 1810_34 attached hereto at <b>Appendix 3</b>
<b>"Travel Pack"</b>	a residents' travel pack issued to each Dwelling on its first Occupation which shall include as a minimum:  (i) information on employment, education, retail and leisure land uses that are within 2km walking distance and 5 km cycling distance of the Site;  (ii) information on other locations with more choice in those land uses that are on bus routes from the Site and on the train routes from Epsom;  (iii) up to date timetable information for rail and bus services serving the Site and Epsom more generally including the details for the Community Minibus; and  (iv) provision of a website address to gain up-to-date bus and rail timetable information
<b>"Viability Assessment"</b>	the assessment of the viability of the Development submitted to the Borough Council in support of the Application prepared by Andy Leahy and Gavin Bird of BPG Limited and dated 9 June 2017
<b>"Viability Review"</b>	a review of the viability of the Development which shall take place in accordance with the provisions of <b>Part 7 of Schedule 1</b>

1.2 In this Agreement:

1.2.1 Agreement:



- 1.2.2 the clause headings do not affect its interpretation;
- 1.2.3 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.4 references to any statute or statutory provision include references to:
  - 1.2.5 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
  - 1.2.6 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
  - 1.2.7 references to the Site include any part thereof;
  - 1.2.8 references to any party in this Agreement include the successors in title of that party and references to the Borough Council include any successor local planning authority exercising planning powers under the 1990 Act and any reference to the County Council shall include a successor local highway or public transport authority;
  - 1.2.9 "including" means "including, without limitation";
  - 1.2.10 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
  - 1.2.11 where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
  - 1.2.12 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## 2. **EFFECT OF THIS AGREEMENT**

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act and to the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Borough Council and County Council as set out herein.
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Borough Council or the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 This Agreement will be registered as a local land charge by the Borough Council.
- 2.5 The obligations in this Agreement will not be enforceable against:
  - 2.5.1 the buyers of an individual Dwelling erected on the Site pursuant to the Planning Permission and forming part of the Residential Development; or

2.5.2 a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by Owner to that statutory undertaker.

2.6 Nothing in this Agreement prohibits or limits the right to develop any part of the in accordance with a planning permission, other than one relating to the Development as specified in the Application, granted after the date of this Agreement, whether or not pursuant to an appeal.

### 3. COMMENCEMENT DATE

3.1 The obligations contained in **clause 4.1** and the **Schedules** referred to therein do not come into effect until:

3.1.1 the Planning Permission is granted; and

3.1.2 the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act.

### 4. OBLIGATIONS OF THE PARTIES

4.1 The Owner covenants with the Borough Council to comply with the obligations set out in **Schedule 1** and with the County Council to comply with the obligations in **Parts 5 and 6** of **Schedule 1**.

4.2 The Borough Council covenants with the Owner to comply with the obligations set out in **Schedule 2**.

4.3 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this **clause 4.3**.

### 5. FURTHER SECTION 73 CONSENT

5.1 If any Section 73 Consent is granted after the date of this deed:

5.1.1 the obligations in this deed shall relate to and bind such Section 73 Consent; and

5.1.2 the definitions of Application, Development and Planning Permission (other than for the purpose of **clause 1**) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself

PROVIDED THAT in the event of a different section 106 obligation agreed by the Council being binding on any Section 73 Consent, this obligation shall not apply to that permission if that separate section 106 obligation expressly states that it is in substitution for the obligations in this obligation.

### 6. TERMINATION OF THIS AGREEMENT

6.1 This Agreement will come to an end if:

6.1.1 subject to **clause 6.2**, the Planning Permission is quashed, revoked or otherwise withdrawn before the Commencement Date so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

- 6.1.2 the Planning Permission expires before the Commencement Date without having been implemented.
- 6.2 **Clause 6.1.1** will not apply in respect of any minor modifications to the Planning Permission or the Development agreed from time to time between the Council and the Owner prior to the Commencement Date.
- 6.3 Where the Agreement comes to an end under **clause 6.1** the Council is, on the written request of the Owner, to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.
- 6.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site 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.
7. **NOTICES**
- 7.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 7.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.
- 7.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 7.3.1 if delivered by hand, at the time of delivery;
- 7.3.2 if sent by post, on the second working day after posting; or
- 7.3.3 if sent by recorded delivery, at the time delivery was signed for.
- 7.4 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.
8. **COSTS OF THIS AGREEMENT**
- 8.1 Upon completion of this Agreement the Owner shall pay to the Borough Council its reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement.
- 8.2 Upon completion of this Agreement the Owner shall pay to the County Council its reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement.
9. **DETERMINATION OF DISPUTES**
- 9.1 Subject to **clause 9.7**, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this **clause 9**. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 9.2 For the purposes of this **clause 9** a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

- 9.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under **clause 9.4**.
- 9.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 9.5 The Specialist is to act as an independent expert and:
- 9.5.1 each party may make written representations within ten working days of his appointment and will copy the written representations to the other party;
  - 9.5.2 each party is to have a further ten working days to make written comments on the other's representations and will copy the written comments to the other party;
  - 9.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
  - 9.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
  - 9.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
  - 9.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.
- 9.6 Responsibility for the costs of referring a dispute to a Specialist under this **clause 9**, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 9.7 This **clause 9** does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.
10. **MORTGAGEE'S CONSENT**
- 10.1 The Mortgagee consents to the completion of this Agreement and declares that its interest in the Site shall be bound by the terms of this Agreement as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Site.
- 10.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Agreement unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Site.
11. **INTEREST**
- If any sum due pursuant to this Agreement is not paid on its due date it will carry Interest from the date it was due until the date of its actual payment.

12. **COUNTERPARTS**

- 12.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 12.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF format) shall take effect as delivery of an executed counterpart of this Agreement. If this method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 12.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

13. **JURISDICTION**

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

14. **EXECUTION**

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

## **SCHEDULE 1**

### **OWNER'S OBLIGATIONS**

The Owner covenants with the Borough Council, and in respect of **Parts 5 and 6** below with both the Borough Council and the County Council, so as to bind the Site as follows:

#### Part 1 - Notices

1. To provide written notification to the Council of:
  - 1.1 the intended Commencement Date no later than 7 days in advance;
  - 1.2 the actual Commencement Date no later than 7 days after its occurrence;
  - 1.3 the achievement of slab level completion for each of the RTE and each Phase of the Residential Development within 7 days after its occurrence;
  - 1.4 the date of anticipated disposal of the first Dwelling to an individual purchaser no later than 7 days in advance;
  - 1.5 the date of actual disposal of the first Dwelling to an individual purchaser no later than 7 days after its occurrence;
  - 1.6 the date of disposal of the final Dwelling to an individual purchaser no later than 7 days after its occurrence;
  - 1.7 the date of an anticipated disposal of any part of the land on which the RTE is to be constructed (comprising Phases 1, 2, 3, 5 and 7 as shown on the Phasing Plan) no later than 28 days in advance during the period up to 15 years from and including the disposal of the final Dwelling; and
  - 1.8 the date of actual disposal of any part of the land on which the RTE is to be constructed (comprising Phases 1, 2, 3, 5 and 7 as shown on the Phasing Plan) no later than 7 days after its occurrence during the period up to 15 years from and including the disposal of the final Dwelling.

#### Part 2 - Reptile Translocation and Management Plan

1. To submit the Reptile Translocation and Management Plan to the Council for approval in writing prior to the Commencement Date.
2. Not to Commence or cause or permit Commencement unless and until the Reptile Translocation and Management Plan has been approved in writing by the Council.
3. To implement the approved Reptile Translocation and Management Plan prior to Occupation of any Dwellings and during the construction phase of the Development and until its Practical Completion.
4. Not to Occupy or cause or permit Occupation of any part of the Development unless and until the approved Reptile Translocation and Management Plan has been implemented in full.

#### Part 3 - Residential Development

1. To construct the Development in accordance with the following:
  - 1.1 not to commence construction of the Dwellings comprising Phase 4 unless the works comprising Phases 1, 2 and 3 having been Practically Completed;

- 1.2 to construct and Practically Complete the works comprising Phases 1, 2 and 3 prior to the commencement of construction of the Dwellings comprising Phase 4;
- 1.3 not to commence construction of the Dwellings comprising Phase 6 unless the works comprising Phases 1, 2, 3 and 5 having been Practically Completed;
- 1.4 to construct and Practically Complete the works comprising Phases 1, 2, 3 and 5 prior to the commencement of construction of the Dwellings comprising Phase 6;
- 1.5 not to commence construction of the Dwellings comprising Phase 8 unless the works comprising Phases 1, 2, 3, 5 and 7 having been Practically Completed; and
- 1.6 to construct and Practically Complete the works comprising Phases 1, 2, 3, 5 and 7 prior to the commencement of construction of the Dwellings comprising Phase 8.

Part 4 – Trainer’s and Assistant Trainer’s House and Stable Staff Accommodation

1. To construct, Practically Complete and make available for its intended use:
  - 1.1 the Trainer’s and Assistant Trainer’s House as part of Phase 2; and
  - 1.2 the Stable Staff Accommodation in Phase 7.
2. Not to use or Occupy or cause or permit the use or Occupation of the Trainer’s and Assistant Trainer’s House for any purpose other than as accommodation for a persons employed by the Owner (or any tenant operating the RTE) for the purposes of the training, keeping and/or breeding of horses as part of the RTE operating at the Site PROVIDED THAT the Trainer’s and Assistant Trainer’s House may be occupied by such persons together with their spouses (to include civil partners) and/or dependants.
3. Not to use Occupy or cause or permit the use or Occupation of the Stable Staff Accommodation for any use other than as accommodation by persons employed by the Owner (or any tenant operating the RTE) for the purposes of the training, keeping and/or breeding of horses or purposes ancillary thereto as part of the RTE operating at the Site or by persons employed for these purposes at similar establishments involved in the horse racing industry in the Council’s administrative area.

Part 5 - Community Minibus

1. To submit a Community Minibus Scheme to both the Borough Council and the County Council for approval in writing prior to Commencement of the Residential Development or any part thereof.
2. Not to Commence or cause or permit Commencement of the Residential Development unless and until the Community Minibus Scheme has been approved in writing by the Borough Council and the County Council.
3. Upon first Occupation of a Dwelling, to implement the Community Minibus Scheme as approved.
4. To operate the Community Minibus in accordance with the Community Minibus Scheme approved pursuant to **paragraph 1** of this **Part 5** of **Schedule 1** for a minimum of 5 years commencing on the first Occupation of the first Dwelling.

Part 6 - Travel Pack

1. The Owner shall no later than the first Occupation of the first Dwelling submit and secure the written approval of the Borough Council and the County Council for the Travel Pack.
2. The Owner shall not Occupy or permit or allow the Occupation of any Dwelling unless and until the Borough Council and the County Council has approved in writing the Travel Pack.

3. On the first Occupation of each Dwelling the Owner shall issue a Travel Pack in the form approved by the County Council pursuant to **paragraph 2** of this **Part 6** for the occupants of that Dwelling.

**Part 7 - Viability Review**

1. In the event that the Dwellings to be constructed in Phase 4 have not reached completion of all ground preparation works and ground floor slab level by the date which is two years from (but not including) the date of the Planning Permission (save that for the purposes of this paragraph only the relevant date shall be the date of the grant of permission pursuant to the Application and not include any subsequent variation) the Owner shall submit to the Council a Viability Review in accordance with **paragraph 2** of this **Part 7**.
2. The Viability Review to be submitted pursuant to **paragraph 1** of this **Part 7** shall comprise a review of the Viability Assessment and shall:
  - 2.1 be carried out by a person approved by the Council in advance (acting reasonably);
  - 2.2 use the same form and methodology as the Viability Assessment;
  - 2.3 use the same land value as the Viability Assessment;
  - 2.4 include reference to actual costs and fees incurred where appropriate (supported by documentary evidence); and
  - 2.5 identify any abnormal costs identified since the Viability Assessment was submitted, and any changes from the data included in the Viability Assessment shall be fully explained and supported by evidence.
3. The Owner shall reimburse the Council its reasonable costs incurred in carrying out its review of the Viability Review within 28 days of a written request for the same.
4. Where it is agreed that the Viability Review demonstrates that the Development can support the payment of an Affordable Housing Commuted Sum and remain viable (in accordance with the 20% developer profit level agreed in the Viability Assessment):
  - 4.1 the Owner shall submit and secure the written approval of the Council for the quantum of the Affordable Housing Contribution;
  - 4.2 the outcome of the Viability Review shall be agreed and any Affordable Housing Contribution paid prior to the Occupation of any Dwellings comprising the Development; and
  - 4.3 the Owner shall not Occupy or permit the Occupation of any Dwellings until the outcome of the Viability Review is agreed and any Affordable Housing Contribution due is paid to the Council.
5. In the event that there is a dispute as to:
  - 5.1 the outcome of the Viability Review; and/or
  - 5.2 the amount of any Increased Affordable Housing Contribution payable,the matter shall be referred to dispute resolution in accordance with **clause 9**.

**Part 8 - Affordable Housing Clawback**

1. In the event that there is a material change of use of the RTE from the training and stabling of racehorses and ancillary accommodation for workers in the horseracing industry within 15 years from and including the Practical Completion of the Residential Development the Owner of the RTE at that time shall on such change of use (but for the avoidance of doubt shall not be obliged to make such payment more than once) make payment to the



Council of the Affordable Housing Commuted Sum which shall comprise the full policy compliant contribution less any Affordable Housing Commuted Sum which has previously been paid pursuant to **Part 7** of this **Schedule 1**.

2. **Paragraph 1** of this **Part 8** shall not apply where the Council's Head of Planning expressly provides in writing that the Owner is released from the obligation specified in **paragraph 1** of this **Part 8**.

## **SCHEDULE 2**

### **BOROUGH COUNCIL'S OBLIGATIONS**

1. The Borough Council covenants with the Owner to apply the Affordable Housing Commuted Sum if paid to it pursuant to **Part 8** of **Schedule 1** towards the provision of Affordable Housing in the Borough of Epsom & Ewell and for no other purpose whatsoever.

Executed as a deed by affixing the  
common seal of **EPSOM & EWELL  
BOROUGH COUNCIL**  
in the presence of:



Authorised Signatory

Chief Legal Officer

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

Signed as a deed by  
**SOUTH HATCH SURREY LIMITED**  
acting by two directors or a director and its  
secretary

Director

Director/Secretary

Signed as a deed by  
**ORTUS SECURED FINANCE I LIMITED**  
acting by \_\_\_\_\_, a director,  
in the presence of:

.....  
Director

Witness signature:.....

Witness name:.....

Witness address:.....

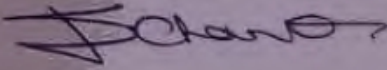
.....

Executed as a deed by affixing the  
common seal of **EPSON & EWELL  
BOROUGH COUNCIL**  
in the presence of:

Mayor

Authorised Officer

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



Signed as a deed by  
**SOUTH HATCH SURREY LIMITED**  
acting by two directors or a director and its  
secretary

Director

Director/Secretary

Signed as a deed by  
**ORTUS SECURED FINANCE I LIMITED**  
acting by \_\_\_\_\_, a director,  
in the presence of:

.....  
Director

Witness signature: .....

Witness name: .....

Witness address: .....

.....

Executed as a deed by affixing the  
common seal of **EPSOM & EWELL  
BOROUGH COUNCIL**  
in the presence of:

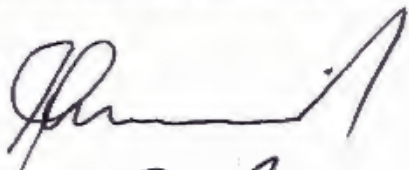
Mayor

**Authorised Officer**

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

Signed as a deed by  
**SOUTH HATCH SURREY LIMITED**  
acting by two directors or a director and its  
secretary

Director



Director/Secretary



Signed as a deed by  
**ORTUS SECURED FINANCE I LIMITED**  
acting by \_\_\_\_\_, a director,  
in the presence of:

.....  
Director

Witness signature:.....

Witness name:.....

Witness address:.....

.....

Executed as a deed by affixing the  
common seal of **EPSOM & EWELL  
BOROUGH COUNCIL**  
in the presence of:

Mayor

Authorised Officer

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

Signed as a deed by  
**SOUTH HATCH SURREY LIMITED**  
acting by two directors or a director and its  
secretary

Director

Director/Secretary

Signed as a deed by  
**ORTUS SECURED FINANCE I LIMITED**  
acting by **ALEX-JAYNE LOWE**, a director,  
in the presence of: **Attorney**

  
.....  
Director Duly Authorised Attorney

Witness signature:  .....

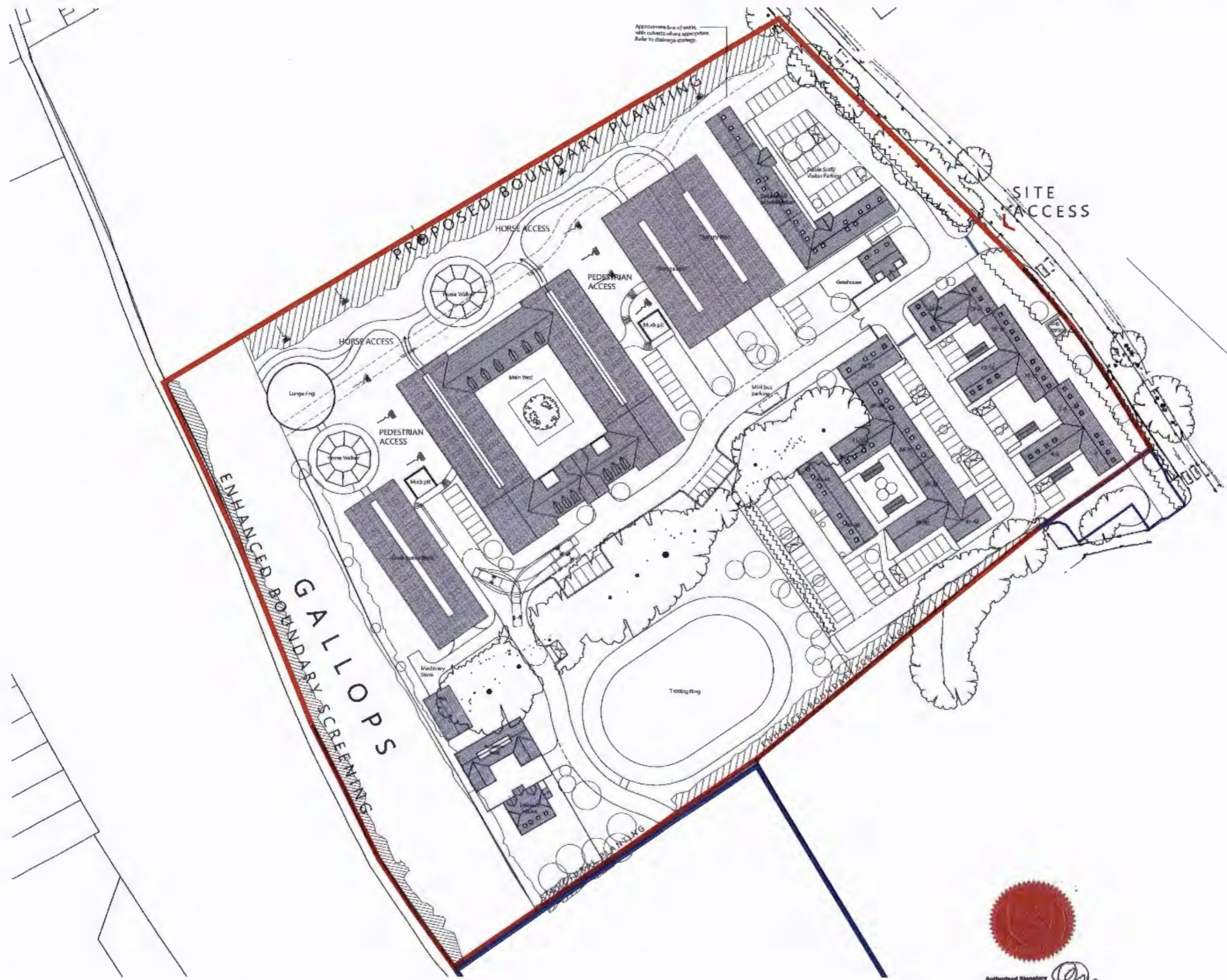
Witness name: **KENNETH COTTER** .....

Witness address: **195, HIGH STREET** .....

**CRADLEY HEATH, B64-5HW** .....

**APPENDIX 1**

**PLAN**



**PLANNING ISSUE**  
 The drawings are prepared for the purpose of illustrating the proposed development and are not to be used for any other purpose without the written consent of Lytle Associates Architects. The drawings are the property of Lytle Associates Architects and shall remain their property. No part of these drawings may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Lytle Associates Architects.

BY	CHECK	DATE
AS	AS	10/20/10

11 - When released drawing issue

Authorized Signatory  
 Chief Legal Officer

**LytleAssociates ARCHITECTS**  
 THE FOUNTAIN HEAD QUARRY STREET GUILDFORD  
 SURREY GU1 3UY 01483 301661  
 LYTLE-ASSOCIATES.COM

SCALE 1:500 @ A1

CLIENT	PROJECT	TITLE	DRAWING NUMBER	REV
South Hatch Stables	South Hatch Stables	Site Layout	1810_10	H

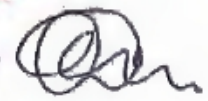
Agenda Item 3  
 Appendix 1











**APPENDIX 2**

**PHASING PLAN**



Authorised Signatory   
 Chief Legal Officer

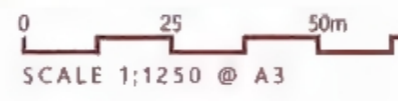
**Phasing Plan Keys**

-  Phase 1: Earthworks and infrastructure to the whole site, excluding existing stable facilities.
-  Phase 2: Construction of stable yard, Tailor's House, Machinery Room, Stable Block, Horse Water and Must Fill, Horses moved to these facilities.
-  Phase 3: Demolition of existing stable facilities and partitions and replacement by this area. Existing three-storey buildings to be demolished.
-  Phase 4: Construction of residential plots 1-23.
-  Phase 5: Construction of Main Yard and Training Ring.
-  Phase 6: Construction of residential plots 24-38.
-  Phase 7: Construction of Therapy Barn, Storage Barn, Garages and Riding Staff Accommodation.
-  Phase 8: Construction of residential plots 39-52.

**PLANNING ISSUE**

This drawing and design is for use solely in connection with the project described. The drawing and design is the property of Lytle Associates Architects and must not be removed, loaned or copied without written consent. All dimensions and setting out to be checked onsite before construction. Do not scale from the drawing. The drawing is to be read in conjunction with all other information relevant to the project. Any apparent discrepancy is to be brought to the attention of Lytle Associates Architects.

REV	AMENDMENT	BY	CHECK	DATE
--	Planning Issue	LB	DP	03.05.18



**LytleAssociates**  
ARCHITECTS

THE FOUNTAIN HEAD QUARRY STREET GUILDFORD  
 SURREY GU1 3UY 01483 301661  
 LYTLE-ASSOCIATES.COM

CLIENT	PROJECT	TITLE	DRAWING NUMBER
South Hatch Stables	South Hatch Stables	Proposed Phasing Plan	1810_80

**1810\_80**

**APPENDIX 3**

**DRAWING 1810\_34: TRAINER'S AND ASSISTANT TRAINER'S HOUSE**



Trainer's House - Front Elevation  
SCALE 1:200 @ A3



Trainer's House - Rear Elevation  
SCALE 1:200 @ A3



Authorised Signatory  
Chief Legal Officer



Isolation Yard and Trainer's House - Side Elevation  
SCALE 1:200 @ A3



Isolation Yard - Rear Elevation  
SCALE 1:200 @ A3



Isolation Yard - Courtyard Elevation  
SCALE 1:200 @ A3



Isolation Yard and Trainer's House - Side Elevation  
SCALE 1:200 @ A3



Isolation Yard - Front Elevation  
SCALE 1:200 @ A3



Isolation Yard - Courtyard Elevation  
SCALE 1:200 @ A3

### PLANNING ISSUE

This drawing and design is for use only in connection with the project described. The drawing and design is the property of Lytle Associates Architects and must not be altered, loaned or copied without written consent. All dimensions and settings are to be checked against before construction. Do not scale from this drawing. The drawing is to be used in conjunction with all other information relevant to the project. Any apparent discrepancy is to be brought to the attention of Lytle Associates Architects.

Lytle Associates Architects is a trading name of Gery Lytle Associates Ltd

REV	AMENDMENT	BY	CHECK	DATE
--	Planning Issue	LB	DP	11.05.18



0 2 4 6 8 10m  
SCALE 1:200 @ A3

**LytleAssociates**  
ARCHITECTS

THE FOUNTAIN HEAD QUARRY STREET GUILDFORD  
SURREY GU1 3UY 01483 301661  
LYTLE-ASSOCIATES.COM

CLIENT	PROJECT	TITLE	DRAWING NUMBER
South Hatch Stables	South Hatch Stables	Isolation Stables and Trainer's House Proposed Elevations	1810_34

