
Dated: 15th May 2020

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

Agreement

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

Contents

Clause		Page
1	DEFINITIONS AND INTERPRETATION	1
2	EFFECT OF THIS AGREEMENT	5
3	COMMENCEMENT DATE.....	6
4	OBLIGATIONS OF THE PARTIES	6
5	FURTHER SECTION 73 CONSENT.....	6
6	TERMINATION OF THIS AGREEMENT	6
7	NOTICES.....	7
8	COSTS OF THIS AGREEMENT	7
9	DETERMINATION OF DISPUTES.....	7
10	INTEREST	8
11	JURISDICTION.....	9
12	EXECUTION	9
Schedules		
1	OWNER'S OBLIGATIONS	10
2	BOROUGH COUNCIL'S OBLIGATIONS.....	14
Appendices		
1	PLAN	16
2	PHASING PLAN	17
3	DRAWING 1810_34: TRAINER'S AND ASSISTANT TRAINER'S HOUSE	18

THIS AGREEMENT is made on

15th May 2020

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

"Affordable Housing"	shall have the same meaning as given in the National Planning Policy Framework adopted February 2019 or any successor policy document
"Affordable Housing Commuted Sum"	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 part 7 and/or part 8 of Schedule 1 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)
"Application"	an application for full planning permission for the carrying out of the Development carrying the reference 18/00308/FUL
"Commencement Date"	the date specified in clause 3.1 and the term Commence and other derivations shall be construed in accordance with that provision
"Community Minibus"	the minibus to be provided and operated pursuant to the Community Minibus Scheme
"Community Minibus Scheme"	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
"Development"	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
"Dwelling"	each and every unit of residential accommodation provided as part of the Residential Development pursuant to the Planning Permission
"Index Linked"	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
"Interest"	means 4% above the base rate of the Bank of England from time to time
"Occupy"	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 Occupation and Occupied shall be construed accordingly
"Phase"	any phase of the Development as identified on the Phasing Plan
"Phasing Plan"	the plan attached to this Agreement at Appendix 2 with drawing number 1810_80 or such other plan as agreed in writing by the Council from time to time
"Plan"	the plan attached to this Agreement at Appendix 1 with drawing number 1810-10 Rev H
"Planning Permission"	the planning permission that may be granted for the Development in pursuance of the Application
"Practical Completion"	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
"Reptile Management Plan"	Translocation 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

"Reptile Survey"	the reptile survey by The Ecology Partnership dated May 2019 and submitted by the Owner as part of the Application
"the Residential Development"	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
"RTE"	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
"Section 73 Consent"	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
"Site"	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
"Specialist"	has the meaning given to it in clause 9.2
"Stable Staff Accommodation"	the property shown on the Phasing Plan and labelled "Stable Staff Accommodation"
"Trainer's and Assistant Trainer's House"	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 Appendix 3
"Travel Pack"	<p>a residents' travel pack issued to each Dwelling on its first Occupation which shall include as a minimum:</p> <p>(i) information on employment, education, retail and leisure land uses that are within 2km walking distance and 5 km cycling distance of the Site;</p> <p>(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;</p> <p>(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</p> <p>(iv) provision of a website address to gain up-to-date bus and rail timetable information</p>
"Viability Assessment"	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
"Viability Review"	a review of the viability of the Development which shall take place in accordance with the provisions of Part 7 of Schedule 1

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:.....

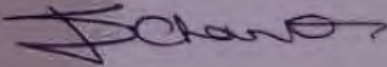
.....

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:

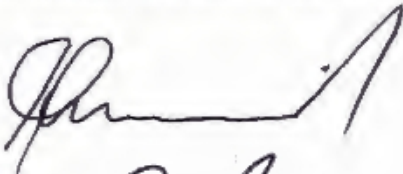
Mayor

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**

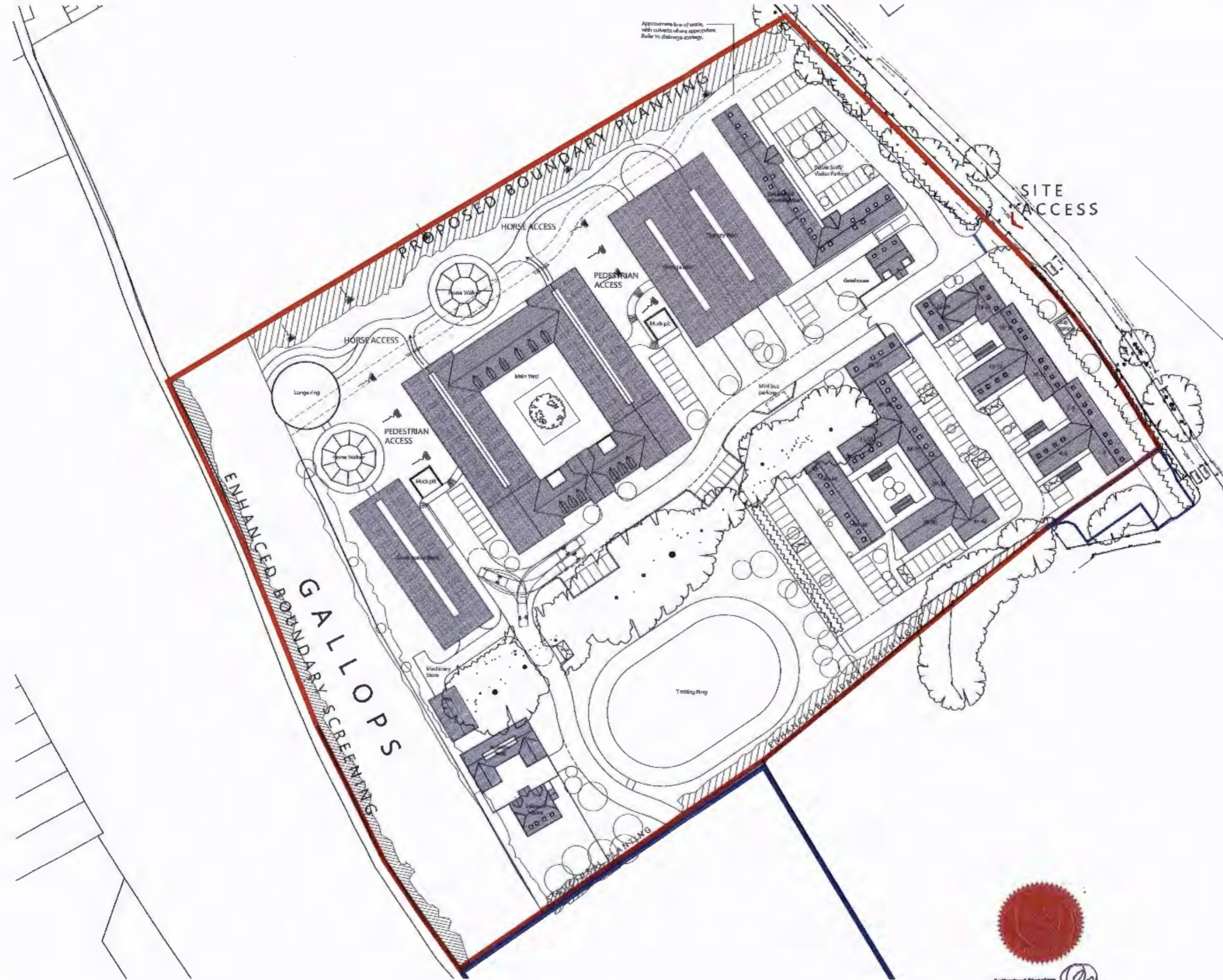
Witness address: **195, HIGH STREET**

CRADLEY HEATH, B64-5HU

APPENDIX 1

PLAN

Approximate line of walls, with columns where appropriate. Refer to drainage strategy.



PLANNING ISSUE
The client has requested that the proposed development be designed to meet the requirements of the relevant planning authorities. It is the responsibility of the client to ensure that the proposed development complies with all applicable planning regulations and conditions. The client is advised that the proposed development may be subject to planning conditions and restrictions. The client is advised to consult the relevant planning authorities for further information.

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

APPENDIX 2

PHASING PLAN



Authorised Signatory *[Signature]*
 Chief Legal Officer

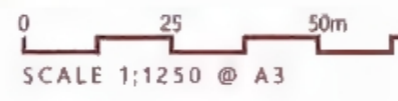
Phasing Plan Keys

- Phase 1: Earthworks and infrastructure to the whole site, excluding existing stable facilities.
- Phase 2: Construction of Isolation 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 one. Existing three-storey buildings to be demolished.
- Phase 4: Construction of residential plots 1-22.
- Phase 5: Construction of Main Yard and Training Ring.
- Phase 6: Construction of residential plots 23-38.
- Phase 7: Construction of Therapy Barn, Storage Barn, Garages and Hoag 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	REV
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 *[Signature]*
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

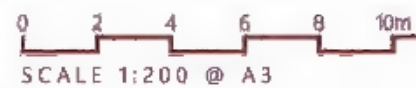


Isolation Yard - Courtyard Elevation
SCALE 1:200 @ A3

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 the original drawings. 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
Lytle Associates Architects is a trading name of Gery Lytle Associates Ltd

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



LytleAssociates
ARCHITECTS

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

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