

DATED

17<sup>th</sup> October

2017

- (1) THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF MERTON
- (2) CIRCLE THIRTY THREE HOUSING TRUST  
LIMITED
- (3) PENELOPE JOY HEAD

AGREEMENT UNDER SECTION 106  
OF THE TOWN AND COUNTRY PLANNING ACT  
1990 (AS AMENDED)  
RELATING TO LAND SITUATE AT  
HIGH PATH ESTATE

THIS DEED OF AGREEMENT is made the 17<sup>th</sup> day of October 2017

**BETWEEN**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON** of Merton Civic Centre, London Road, Morden, Surrey, SM4 5DX ("**the Council**");
- (2) **CIRCLE THIRTY THREE HOUSING TRUST LIMITED** (Registered Society No 18652R) at Level 6, 6 More London Place, Tooley Street, London, SE1 2DA ("**the First Owner**"); and
- (3) **PENELOPE JOY HEAD** of The Old Lamp Works, 25 High Path, Merton Abbey, London SW19 2JL ("**the Second Owner**").

jointly referred to as the "**Parties**" and "**Party**" shall be construed accordingly.

**INTERPRETATION**

In this Deed the following words and expressions shall have the following meanings: -

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990
<b>"Accredited Car Club Provider"</b>	means an organisation accredited in the United Kingdom by Car Plus which provides cars for use by members of a Car Club in consideration of payment thereof
<b>"Affordable Housing"</b>	means subsidised housing available through a Registered Provider (or other social landlord as the Council shall have approved in writing) provided to households whose incomes are insufficient to enable them to afford to purchase or rent housing locally in the open market, to be provided in part as Affordable Rented Accommodation and Social Rented Accommodation

<p><b>“Affordable Housing Units”</b></p>	<p>means where Part I of Schedule 1 applies 59.7% of the Residential Units to be provided as Affordable Housing comprising of the Affordable Rented Units and the Social Rented Units together and the term “Affordable Housing Unit” shall be construed accordingly PROVIDED THAT where Part II of Schedule 1 applies the number of the Residential Units to be provided as Affordable Housing shall be determined by the Viability Assessment</p>
<p><b>“Affordable Rented Accommodation”</b></p>	<p>means the housing let by a Registered Provider that is not subject to the national rent regime, but subject to the rent (including service charges) being set at levels that are no greater than 80% of the local market rent unless otherwise agreed in writing by the Council</p>
<p><b>“Affordable Rented Units”</b></p>	<p>means where Part I of Schedule 1 applies 60% of the Affordable Housing Units being the on-site units which are only to be available for use and occupied exclusively as Affordable Rented Accommodation PROVIDED THAT where Part II of Schedule 1 applies the tenure of the Affordable Housing Units shall be determined by the Viability Assessment</p>
<p><b>“Alternative Affordable Housing Units”</b></p>	<p>means where Part II of Schedule 1 applies the number of Residential Units which the Viability Assessment demonstrates as being financially viable as Affordable Housing</p>
<p><b>“Appraisal Model”</b></p>	<p>means a template that would comply with the requirements of the RICS/UK Government in respect of a development appraisal that assesses residual profit agreed between the Owners and the Appointed Assessor</p>
<p><b>“Appointed Assessor”</b></p>	<p>means a qualified and competent expert viability consultant appointed by the Council with the prior written consent of the Owners within 21 days of receipt by the Council of the notice of intention referred to in Part II of Schedule 1</p>

<b>“Benchmark Land Value”</b>	means four million four hundred and seventy thousand pounds (£4,470,000)
<b>“Building Regulations”</b>	means the set standards for the design and construction of buildings pursuant to the Building Regulations 2010
<b>“Car Club”</b>	means a local club operated and managed by an Accredited Car Club Provider in which members can book cars owned by the Accredited Car Club Provider and parked in specifically reserved car club spaces and use them for the period of the booking and the term “Car Clubs” shall be construed accordingly
<b>“Car Plus”</b>	means the national charity (No. 1093980) promoting responsible car use and which operates an accreditation scheme for Car Clubs
<b>“CPZ”</b>	means the controlled parking zones or any controlled parking zones amending or replacing the same
<b>“Development”</b>	means the development of the pursuant to the Planning Permission
<b>“Development Plan”</b>	means the London Plan (March 2016) the London Borough of Merton Core Planning Strategy adopted July 2011 and Sites and Policies Plan adopted 2014
<b>“Developer’s Profit”</b>	means a blended return to the Owners of 20% of the Gross Development Value for Market Housing Units and 6% of the Gross Development Cost of the Affordable Housing
<b>“Disabled Persons Badge”</b>	means a disabled person's badge issued pursuant to Section 21 of the Chronically Sick and Disabled Person's Act 1970
<b>“GLA”</b>	means the Greater London Authority and shall include any statutory successor
<b>“Gross Development Cost”</b>	means all costs for the Development including the costs for

	demolition, construction, external works, assumed contingency, fees, CIL, section 106 and finance costs
<b>"Gross Development Value"</b>	means the gross development value as the aggregate value of the Market Housing Units determined by reference to sales prices for units actually sold or valuations carried out under a Viability Assessment
<b>"High Path Estate"</b>	means the area edged blue on Plan 2
<b>"HSC"</b>	means the Council's Head of Sustainable Communities for the time being or such other person as may be appointed from time to time to carry out that function
<b>"Implementation"</b>	<p>means the carrying out of a material operation as defined by Section 56(4) of the 1990 Act in relation to the Development but shall not include the following:</p> <ul style="list-style-type: none"> <li>a. site clearance;</li> <li>b. demolition work;</li> <li>c. ground investigatory site survey work;</li> <li>d. construction of boundary fencing or any other temporary means of enclosure;</li> <li>e. archaeological investigation;</li> <li>f. works of decontamination or remediation of other adverse ground conditions;</li> <li>g. diversion and laying of services;</li> <li>h. access works; and</li> <li>i. temporary display of site notices or advertisements</li> </ul>
<b>"Implementation Date"</b>	means the date on which Implementation occurs

<b>"Market Housing Unit"</b>	means any one of the Residential Housing Units that is for sale or rent on the open market other than an Affordable Housing Unit
<b>"London Housing Design Guide"</b>	means the GLA London Housing Design Guide 2010
<b>"Monitoring Fee"</b>	means the sum of ten thousand pounds (£10,000) to be used by the Council towards the costs of monitoring this Deed
<b>"New Persons"</b>	means any new tenants of the Owners and the term "New Person" shall be construed accordingly
<b>"Nominations Agreement"</b>	means a deed in a format acceptable to the Council acting reasonably to be entered into between the Council and the Registered Provider and under which the Council shall be entitled to nominate prospective tenants or occupiers for the Affordable Rented Units and Social Rented Units as and when it becomes available for occupation
<b>"Occupation"</b>	means the full and beneficial occupation of a Residential Unit (but this expression shall not include occupation for the purposes of construction or fitting out or for marketing or security purposes or management of the Development) and the terms "Occupied" "Occupy" and "Occupation Date" shall be construed accordingly
<b>"Owners"</b>	means the First Owner and the Second Owner jointly
<b>"Occupation Date"</b>	means first Occupation of the first Residential Unit
<b>"Person"</b>	means a body of persons corporate or unincorporated
<b>"Plan 1"</b>	means the plan of the Site attached at Appendix 1 to this Deed and marked as such
<b>"Plan 2"</b>	means the plan of the High Path Estate attached at Appendix 1 to this Deed and marked as such

<b>“Planning Application”</b>	means a planning application validated by the Council on the 22 <sup>nd</sup> September 2016 bearing reference number 16/P3738 for the demolition of existing structures associated with the Old Lamp Works, all garages (74 in total) and substation to provide residential accommodation (134 units - Class C3) in buildings of three – nine storeys, provision of car parking (31 spaces including 5 disabled spaces), cycle parking (249 spaces), landscaping and public realm works together with associated utilities and infrastructure in respect of the Site
<b>“Planning Permission”</b>	means a planning permission resolved to be granted by the Council pursuant to the Planning Application subject to the prior completion of this Deed a draft of which is attached at Schedule 3 of this Deed
<b>“Protected Tenant”</b>	means any tenant: <ul style="list-style-type: none"> <li>(a) who has exercised the right to acquire pursuant to the Housing Act 1996 the Housing and Regeneration Act 2008 the Housing and Planning Act 2016 or any voluntary statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;</li> <li>(b) who has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; and</li> <li>(d) who has acquired an Affordable Housing Unit through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008</li> </ul>
<b>“Qualifying Persons”</b>	means an existing tenant of the First Owner and the term “Qualifying Person” shall be construed accordingly
<b>“Regeneration Permission”</b>	means any planning permission granted by the Council (or

	the Mayor of London or the Secretary of State as appropriate) for any part of the Regeneration Scheme
<b>“Regeneration Scheme”</b>	means the proposed regeneration of the High Path Estate
<b>“Residential Occupier”</b>	means New Persons and Qualifying Persons and the term excludes any business or corporate body or bodies
<b>“Residents Parking Bay”</b>	means a marked highway parking space designated by the Council by order under the Road Traffic Regulation Act 1984 the Road Traffic Regulations (Parking) Act 1986 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation) for use by residents outside of the High Path Estate or Site boundary
<b>“Residents Parking Permit”</b>	means a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing for a motor vehicle to park in a Residents Parking Bay within the relevant CPZ
<b>“Registered Provider”</b>	means  (a) the First Owner and its successors in title; or (b) another registered provider of social housing as defined in section 80 of the Housing and Regeneration Act 2008
<b>“Residential Units”</b>	means the units of residential accommodation within the Development and shall include the Affordable Housing Units and the Market Housing Units and the term “Residential Unit” shall be construed accordingly
<b>“Sale Date”</b>	means the completion date of the sale of the freehold or the grant of a lease for a period of not less than 21 years at a nominal rent of the first Residential Unit
<b>“Site”</b>	means the land and property known as land to the north and east of Marsh Court, Pincott Road, bound by High Path, Pincott Road, Nelson Grove Road and Rodney Place inclusive of garages, Marsh Court Play Area and The Old



	Lamp Works, 25 High Path, London, SW19 2JL and recorded at HM Land Registry under title numbers SY284669, TGL26495, SY191585, SY190849, SY292903, SY307463, TGL31732, TGL121964, TGL107043, SGL677154, SGL29816, SY294579, SY51187, TGL19724 and outlined red on Plan 1
<b>"Social Rented Accommodation"</b>	means housing which is available to rent from a Registered Provider at guideline target rents determined through the national rent regime
<b>"Social Rented Units"</b>	means where Part I of Schedule 1 applies 40% of the Affordable Housing Units being the on-site units which are only to be available for use and occupied exclusively as Social Rented Accommodation and PROVIDED THAT where Part II of Schedule 1 applies tenure of the Affordable Housing Units shall be determined by the Viability Assessment
<b>"Statutory Undertaker"</b>	means any legal entity authorised by statute to carry on an undertaking for the supply of television, telecommunications, electricity, gas, water and/or drainage
<b>"Travel Plan Monitoring Report"</b>	means a report prepared by the Owners to the Council on the first and third anniversary of implementation of the Travel Plan that shall demonstrate how the Travel Plan has been operated during the previous 12-month period
<b>"Viability Assessment"</b>	means an assessment of residual profit of the development that may be submitted by the Owners using the Appraisal Model to determine how much Affordable Housing the Development can be viably provided in the absence of the Regeneration Scheme. The Viability Assessment shall contain the following assumptions:  (a) The Development has a land cost input value equivalent to the Benchmark Land Value  b) The Developer receives a Developer's Profit

<b>“Working Day”</b>	means any day excluding Saturdays, Sundays and any statutory or bank holiday and the term “Working Days” shall be construed accordingly
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**WHEREAS:**

- (A)** The Council is the local planning authority for its administrative area within which the Site is situated for the purposes of the 1990 Act and for the purpose of Section 106 of the 1990 Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable.
- (B)** The First Owner is registered at the HM Land Registry with absolute title as the proprietor of the freehold interest of title numbers SY284669, TGL26495, SY191585, SY190849, SY292903, SY307463, TGL31732, SGL677154, SGL29816, SY294579, SY51187 and TGL19724 which form part of the Site.
- (C)** The Second Owner is registered at the HM Land registry with absolute title as proprietor of the freehold interest of title numbers TGL107043 and TGL121964 which forms part of the Site.
- (D)** At its meeting on 16<sup>th</sup> March 2017 the Council’s planning applications committee having had regard to the provisions of the Development Plan and all other material considerations resolved to approve the Planning Application and grant the Planning Permission subject to the prior completion of a deed of planning obligation under section 106 of the 1990 Act to secure the planning obligations now contained in this Deed.
- (E)** The Second Owner has contracted to sell the parts of Site the comprised in title numbers TGL107043 and TGL121964 to Circle Anglia Limited by a contract for sale and purchase dated 6 May 2016 ("the Sale Contract") and in the Sale Contract the Second Owner has agreed to enter into this Deed where entry into the Deed is required for the Planning Permission to be granted.
- (F)** Both the First Owner and Circle Anglia Limited are part of Circle Housing which is part of the Clarion Housing Group which has made the Planning Application

**NOW THIS DEED WITNESSETH** as follows:

- 1 THIS Deed is made pursuant to section 106 of the 1990 Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011, section 16 of the Greater London Council (General Powers) Act 1974, section 111 of the Local Government Act 1972 and any other enabling powers and the obligations contained in this Deed are planning obligations for the purposes of that section insofar as they fall within the terms of section 106 of the 1990 Act and receipt of a copy of this Deed pursuant to subsection 106(10) of the 1990 Act is hereby acknowledged by the Council.
- 2 THE Owners hereby covenants with the Council as set out in Schedule 1.
- 3 THE Council covenants with the Owners as set out in Schedule 2.
- 4 Miscellaneous agreements and declarations

The Parties agree that:

- (a) nothing contained in this Deed constitutes planning permission;
- (b) nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local authority and its rights powers duties and obligations under all public and private statutes bye-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed;
- (c) if any provision in this Deed shall be held to be void invalid illegal or unenforceable this shall not affect the operation validity legality and enforceability of any other provision of this Deed provided severance therefrom is possible;
- (d) a reference to the masculine feminine and neuter genders shall include the other genders and reference to the singular shall include the plural and vice versa;
- (e) Where in this Deed reference is made to any clause paragraph part or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph part or schedule or recital in this Deed;

- (f) the expressions "the Council" and "the Owners" shall include their respective successors in title and assignees.

5 Local land charge provisions

The Parties agree that:

- (a) This Deed is a Local Land Charge and shall be registered by the Council in the Council's Register of Local Land Charges immediately on completion thereof;
- (b) The Council will, upon written request by either the First Owner or the Second Owner if applicable effect a cancellation of any entry made in the Local Land Charges Register in regard to this Deed forthwith after the obligations of the Owners hereunder have been wholly performed or discharged.

6 Reference to statutes and statutory instruments

References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force.

7 Variations

The Parties agree that:

- (a) the covenants undertakings and restrictions contained in this Deed shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Deed by or on behalf of the relevant parties hereto or by a subsequent deed of variation;
- (b) in the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the 1990 Act in respect of the conditions in the planning permission (and for no other purpose whatsoever) references in this Deed to the Planning Application the Planning Permission and the Development shall (unless the Council requires otherwise) be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly and this Deed shall be endorsed with the following words in respect of any future section 73

application relating to the Planning Permission:

“the obligations in this Deed relate to and bind the Site in respect of which a new planning permission referenced [ ] has been granted pursuant to section 73 of the Town and Country Planning Act 1990 (as amended)”

8 English law applicable

The construction validity and performance of this Deed shall be governed by English law.

9 Effect of revocation of planning permission

In the event of the Planning Permission being revoked by the Council or any other authority having powers in relation to planning matters or otherwise withdrawn or modified by any statutory procedure without the consent of the Owners or their successors in title the obligations of the Owners under this Deed shall thereupon cease absolutely and in that event the Council will repay to the Owners such monies as have been paid to it pursuant to the obligations contained within this Deed to the extent that they remain unspent.

10 Waivers not to be of a continuing nature

No waiver (whether express or implied) by any Party to this Deed of any breach or default by any Party to this Deed in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent any Party to this Deed from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Party in question.

11 Liability of subsequent Owners and release of former Owners

The provisions hereof shall be enforceable by the Council against the Owners and all persons who shall have derived title through or under them in respect of the Site (but so that no person shall be liable to the Council for any breach of the provisions committed after such a person has parted with all of its interest in such land)  
PROVIDED THAT:

- (a) a Registered Provider as owner of only the completed Affordable Housing Units shall not be responsible for any of the covenants in this Agreement save for those specified in Part I of Schedule 1 or paragraphs 1.5 and 1.6 of Part II of Schedule 1 Part II (whichever is applicable);
- (b) a Statutory Undertaker which has an interest in the Site or part thereof for the purpose of its undertaking shall not be bound by the terms of this Deed or be liable for the breach of any covenant contained in this Deed;
- (c) freeholders leaseholders occupiers and mortgagees of completed Residential Units shall not be bound by the terms of this Deed or be liable for the breach of any covenant contained in this Deed with the exception of any restriction on Occupation of the Residential Unit concerned that applied when such Residential Unit was first Occupied; and
- (d) any mortgagee or chargee shall only be liable for any breach that itself has caused whilst mortgagee in possession and shall not be liable itself for any pre-existing breach.

## 12 Contracts (Rights of Third Parties) Act 1999

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed is to have the benefit of or is capable of enforcing any term in this Deed and no party is to have any rights to enforce this Deed other than those falling within the definitions of the Council and the Owners.

## 13 Release

This Deed shall be deemed to have been revoked and be of no effect (without any further act or deed on the part of either the Council or the Owners) if Implementation has not taken place within three (3) years of the date of the Planning Permission or the Planning Permission having been granted shall be varied or revoked other than at the request of the Owners or the Planning Permission having been granted is quashed following a successful legal challenge and in any such case any sums paid by the Owners under this Deed shall be repaid to the Owners by the Council forthwith together with interest at the base rate of Barclays Bank plc from the date such sums were received by the Council until the date of repayment.

14 VAT clauses

- (a) All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof;
- (b) If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly subject to the provision of a valid VAT invoice.

15 Community Infrastructure Levy Regulations 2010

The terms of this Deed comply in all respects with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 in that the obligations contained herein are necessary to make the Development acceptable in planning terms, directly relate to the Development and fairly and reasonably related in scale and kind to the Development.

16 Dispute Resolution

The Parties agree that:

- (a) in the event of any dispute arising in respect of any matter contained in this Deed save as to matters regarding its legal construction then unless the relevant part of the Deed indicates to the contrary the same shall be referred to an expert being an independent person to be agreed upon between the Parties hereto or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors and such expert shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the Parties hereto and whose costs shall be in his award;
- (b) that the expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) days from the date of his

appointment to act;

- (c) that the expert shall be required to give notice to each of the said Parties inviting each of them to submit to him within ten (10) working days written submissions and supporting material and shall afford to each of the said Parties an opportunity to make counter submissions within a further five (5) working days in respect of any such submission and material and his decision shall be given in writing within twenty eight (28) days of this appointment with reasons and in the absence of manifest error shall be binding on the said Parties;
- (d) the costs of any reference of any dispute shall be paid jointly by the Owners and the Council unless otherwise determined in the independent person's award.

17 Reasonableness

Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the Council under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.

18 Service

Any notice under this Deed shall be in writing and shall be sufficiently served if personally delivered or sent by recorded delivery service addressed in the case of the Council unless otherwise stated herein to the HSC at the address given herein and in the case of the First Owner or the Second Owner at the addresses given herein.

19 Condition Precedent

- 19.1 The Owners obligations in respect of Part VI of Schedule 1 of this Deed shall not apply to a Residential Occupier of a Residential Unit with an allocated on site parking space.
- 19.2 The Owners obligations in paragraph 1 of Schedule 1 shall not apply if the events in Part II of Schedule 1 occur.
- 19.3 The Owners obligations in paragraph 1.1 Part II of Schedule 1 shall not apply if the event in paragraph 1, Part I of Schedule 1 occurs.



## SCHEDULE 1

### COVENANTS BY THE OWNERS

#### Part I – Affordable Housing

- 1 The Owners covenants with the Council:
  - 1.1 Subject to paragraph 1.4 of this Schedule 1 not to cause or permit the Affordable Housing Units to be used or Occupied for any purpose other than Affordable Housing in accordance with the following:
    - 1.1.1 in relation to first lets of Affordable Housing Units to Qualifying Persons only save that if the number of Qualifying Persons accepting tenancies is lower than the number of Affordable Housing Units the Owners shall be free to let the relevant unit to a New Person; and
    - 1.1.2 in relation to subsequent lets of Affordable Housing Units to New Persons only.
  - 1.2 To apply for and obtain such Building Regulations and other approvals as may be necessary in respect of the erection of the Affordable Housing Units.
  - 1.3 To ensure that the Affordable Housing Units shall be built so as to meet the London Housing Design Guide.
  - 1.4 Not to use the Affordable Housing Units for any purpose other than for Affordable Housing save that the obligations in this Part I of Schedule 1 shall not be binding upon or enforceable against:
    - 1.4.1 a tenant or leaseholder who becomes a Protected Tenant nor any chargee or mortgagee of such Protected Tenant nor any administrator, administrative receiver, fixed charge receiver including any receiver appointed under the Law of Property Act 1925 nor any other person appointed under any security documentation by such mortgagee or chargee and in each case, to anyone who is a successor in title or who derives title from them or any of them; or
    - 1.4.3 a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person

appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver")) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- (a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of one or more Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation concerning the whole or any part of the Affordable Housing Units but no other land or interests including all accrued principal monies, interest and costs and expenses; and
- (b) if such disposal has not completed within the three (3) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Agreement which provisions shall determine absolutely in respect of those Affordable Housing Units

- 1.6 To permit any duly authorised officer of the Council upon reasonable written notice being given to enter any part of the Site for the purpose of inspection and ensuring compliance with the provisions relating to Affordable Housing contained in this Deed.

## **Part II - Affordable Housing Viability**

1 The Owners covenant:

- 1.1 If by Occupation of the first Residential Unit to be Occupied the Owners have notified the Council in writing that they have resolved not to proceed with the Regeneration Scheme they shall serve a notice ("Notice of Intention") on the HSC that they intend to complete the Viability Assessment and produce the Viability Assessment to the Council within fourteen (14) days of the first Residential Unit being Occupied and shall thereafter not Occupy or permit the Occupation of more than thirty (30) Residential

Units until the Viability Assessment has been fully assessed and approved by the Council pursuant to paragraph 1.4, Part II of Schedule 1 of this Deed.

1.2 To pay:

1.2.1 for the Viability Assessment provided pursuant to paragraph 1.1, Part II of the Schedule above; and

1.2.2 (within fourteen (14) days of receipt of an invoice by the Council) for all reasonable and proper costs incurred to the Council in connection with its instructing the Appointed Assessor to verify the Viability Assessment the outcome of such verification ("the Review Report") to be provided by the Council to the Owners within fourteen (14) days (or such other time as agreed between the Parties) of receipt of the Viability Assessment by the Council.

1.3 Where the Owners in their absolute discretion consider it necessary to submit further written submissions ("the Further Submissions") addressing any comments or conclusions of the Review Report they shall be permitted to provide the Further Submissions to the Council within fourteen (14) days (or such other time as agreed between the parties) of receipt of the Review Report.

1.4 If based on the outcome of the Viability Assessment the Review Report and the Further Submissions the Council is satisfied that the Owner is in a position to provide onsite Affordable Housing provision whilst generating (at a minimum) the Developer's Profit the Parties (both acting reasonably) shall agree the quantum, mix and tenure of the Alternative Affordable Housing Units which shall accord with the Development Plan.

1.5 To enter into a Nominations Agreement with the Council in respect of the Alternative Affordable Housing Units.

1.6 To ensure that the Alternative Affordable Housing Units are bound by the same obligations and terms relating to the Affordable Housing Units as set out in Part I Schedule 1 of this Deed save that paragraph 1.1 of Part I shall not apply and the Alternative Affordable Housing Units shall only be Occupied in accordance with the Nominations Agreement agreed pursuant to paragraph 1.5 of this Part II Schedule 1.

- 1.7 For the avoidance of doubt, any dispute between the Parties as to the Viability Assessment shall be resolved in accordance with the provisions of Clause 16 (a)-(d) of this Deed.

### **Part III Notifications**

- 1 The Owners covenant to provide:
- 1.1 Seven (7) days prior written notice of the Implementation Date and a further written notice of the actual Implementation Date within seven days of the occurrence of the same.
- 1.2 Written notification within seven (7) days of applying to the Council for new addresses for a Residential Unit.
- 1.3 Written notification within seven (7) days of the Council allocating address numbers for a Residential Unit.
- 1.4 Seven (7) days prior written notice of the Occupation Date or the Sale Date (whichever is sooner).

### **Part IV - Costs and contributions**

- 1 The First Owner covenants to pay:
- 1.1 The reasonable and proper legal costs of the Council in the preparation and completion of this Deed in the sum of £2500 (two thousand five hundred pounds) on the date hereof
- 1.2 The reasonable and proper legal costs of the Second Owner in the approval, amendment and completion of this Deed in the sum of £1000 (one thousand pounds) plus VAT on the date hereof
- 1.3 The Monitoring Fee to the Council on the Implementation Date

### **Part V – Travel plans**

- 1 The Owners covenant that:
- 1.1 On a date no later than first anniversary of the Occupation Date it shall prepare and submit to the Council a draft travel plan (“the Travel Plan”) and shall implement the Travel Plan following written approval of the same from the Council.

- 1.2 The Travel Plan shall accord with the terms of the current Travel Plan Development Control Guidance issued by Transport for London which shall include as a minimum:
- (a) effective measures for the ongoing monitoring of the Travel Plan;
  - (b) effective means to delivering the Travel Plan objectives; and
  - (c) effective mechanisms to achieve the objectives of the Travel Plan by present and future occupiers of the Development.
- 1.3 The Monitoring Survey shall be undertaken on of the first and third anniversaries of the Travel Plan being approved in accordance with paragraph 1.1 Part V of Schedule 1.
- 1.4 It will submit a Travel Plan Monitoring Report to the Council as soon as practicable after the Monitoring Surveys have been carried out in accordance with paragraph 1.2 Part V of Schedule 1.
- 1.5 In the event that the Travel Plan Monitoring Report shows that the Travel Plan has failed to meet the objectives / targets in any respect, then the Owners shall within three (3) months indicate to the Council the remedial measures that it will take in order to secure that the Travel Plan objectives / targets are met and the Owners shall thereafter carry out the new measures so as to ensure that the Travel Plan objectives / targets are met.
- 1.6 To produce the Travel Plan Monitoring Report required that shall be:
- (a) based upon the travel survey to and from the Site ("Monitoring Survey") conducted by the Owners;
  - (b) comply with Transport for London's format or such other format as the Council may reasonably specify; and
  - (c) submitted and approved by the Council within three (3) months of the first and third anniversaries of the Travel Plan.
- 1.7 In the event that the Owners fail to carry out any Monitoring Survey then the Owners shall pay to the Council its reasonable and proper costs incurred by the Council for

carrying out such a survey up to a maximum amount of £5,000 (five thousand pounds) per survey.

## **Part VI – Car Club**

1 The Owners covenant:

1.1 Subject to Clause 19 of this Deed prior to the Occupation Date to submit to the Council details of the name of and correspondence with Accredited Car Club Providers indicating the intention of the Owner to establish that Residential Occupiers of each Residential Unit (other than those that have on-plot parking) shall have membership of a Car Club (one membership per relevant Residential Unit) including a proposed establishment date for approval and not to Occupy the Development unless and until the Accredited Car Club Provider for the Development has been approved by the Council (such approval not to be unreasonably withheld or delayed) and if approval has not been given within twenty (20) Working Days the Owners may refer the matter for dispute resolution in accordance with clause 16 of this Deed.

1.2 Within one (1) month of the Occupation of any part of any Residential Unit on the Development to procure at its own expense that the first Residential Occupiers of Residential Units that do not have on-plot parking have membership of the approved Car Club for three (3) years from first Occupation and to provide a copy of the final signed and dated contract with the Accredited Car Club Provider to the Council.

1.3 In the event that the Accredited Car Club Provider is no longer able to provide the Car Club for the Development the Owners shall notify the Council in writing and shall then use reasonable endeavours to secure another Accredited Car Club Provider for the Development in accordance with the provisions of this Deed.

## **Part VII – Car Parking Permits**

1 The Owners covenant that:

1.1 The Residential Units shall not be used and/or Occupied by any New Person who has at the date they use and/or Occupy a Residential Unit a Residents Parking Permit for any CPZ existing at the date of this Deed or a contract to park a motor vehicle in any car park owned controlled or licensed by the Council at the date of this Deed unless such New Person is or becomes entitled to be a holder of a Disabled Persons Badge PROVIDED THAT the New Person has first notified the Council in writing of such entitlement and has provided proof thereof if required to do so by the Council and for

the avoidance of doubt any New Person whilst residing using and/or Occupying the Residential Unit shall not purchase or procure the purchase of a Residents Parking Permit for a Residents Parking Bay that exists at the date of this Deed.

- 1.2 The Owners shall procure that the restrictions set out in paragraph 1.1 Part VII of Schedule 1 are included in any lease option licence or other disposal of any Residential Unit to any New Person.

## SCHEDULE 2

### COVENANTS BY THE COUNCIL

- 1 Upon being satisfied that the Owners have complied with any obligation in this Deed the HSC shall if requested to do so by the Owners provide written notification thereof to the Owners.



**SCHEDULE 3**

**DRAFT PLANNING PERMISSION**

# LONDON BOROUGH OF MERTON



Samruti Patel  
Savills  
33 Margaret Street  
London  
W1G 0JD

Planning Department  
London Borough Of Merton,  
Civic Centre,  
London Road,  
Morden  
Surrey  
SM4 5DX

TOWN & COUNTRY PLANNING ACT 1990

## Planning Permission Decision Notice 16/P3738

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The London Borough of Merton, as Local Planning Authority, hereby **GRANTS Planning Permission** for the works specified in the First Schedule below subject to the conditions specified in the Second Schedule below.

### First Schedule - Particulars of application

Application Number: 16/P3738

Location: Land to the north and east of Marsh Court  
Pincott Road  
bound by High Path  
Pincott Road  
Nelson Grove Road and Rodney Place inclusive of garages  
Marsh Court Play Area and The Old Lamp Works  
25 High Path  
London  
SW19 2JL.

Proposal: DEMOLITION OF EXISTING STRUCTURES ASSOCIATED WITH THE OLD LAMP WORKS, ALL GARAGES (74 IN TOTAL) AND MARSH COURT PLAY AREA TO PROVIDE RESIDENTIAL ACCOMMODATION (134 UNITS - CLASS C3) IN BUILDINGS OF THREE - NINE STOREYS, PROVISION OF CAR PARKING (31 SPACES INCLUDING 5 DISABLED SPACES), CYCLE PARKING (249 SPACES), LANDSCAPING AND PUBLIC REALM WORKS TOGETHER WITH ASSOCIATED UTILITIES AND INFRASTRUCTURE.

Approved Plans: See Conditions 2 and 3

### Second Schedule - Conditions

- 1 The development to which this permission relates shall be commenced not later than the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 (as amended) of the Town & Country Planning Act 1990.

**2** The development hereby permitted shall be carried out in accordance with the following approved plans: [ 2000; 2001; 2010; 2011; 2012; 2013; 2014; 2015; 2016; 2017; 2018; 2019; 2020; 2021; 2022; 2023; 2024; 2050; 2100; 2101; 2102; 2103; 2104; 2105; 2106; 2107; 2108; 2109; 2120; 2121; 2122; 2123; 2124; 2125; 2126; 2130; 2131; 2200; 2201; 2202; 2203; 2204; 2205; 2206; 2207; 2220; 2221; 2222; 2225; 2230; 2231; 2232; 2300; 2301; 2302; 2303; 2310; 2311; 2312; 2313; 2314; 2315; 2316; 2320; 2321; 2330; 2331; 2332; 2340; 2341; 2342; 2350; 2351; 2352; 2353; 2610; 2611; 2612; 2613; 2614; 2615; 2616; 2617; 2001 - Indicative Landscape Plan - General Arrangement; 2002- Indicative Landscape Plan (Colour)] Condition 2 contd

Reason: For the avoidance of doubt and in the interests of proper planning

**3** Approved plan Condition 2 contd....

Design and access Statement (incorporating Landscaping Strategy); Biodiversity survey report September 2016; Ellis + Moore Clarification of Bio Retention Suds and Permeable Paving (2017 01 18); Sharps Redmore, Planning Noise Assessment Report dated September 2016.

Reason: For the avoidance of doubt and in the interests of proper planning

**4** No development above ground shall take place until detailed drawings, samples and a schedule of all materials to be used on all external faces (including roof) of Blocks A, B and D of the development hereby permitted, including window frames and doors (notwithstanding any materials specified in the application form and/or the approved drawings), have been submitted to the Local Planning Authority for approval. No works which are the subject of this condition shall be carried out until the details are approved, and the development shall be carried out in full accordance with the approved details.

Reason: To ensure a satisfactory appearance of the development and to comply with the following Development Plan policies for Merton: policy 7.6 of the London Plan 2015, policy CS14 of Merton's Core Planning Strategy 2011 and policies DM D2 and D3 of Merton's Sites and Policies Plan 2014.

**5** Condition 5 Part One

No development above ground shall take place until drawings to a scale of not less than 1:20 and samples and/or manufacturer's specifications of the design and construction details listed below have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out solely in accordance with the approved details.

- i) metal, glass and wood work including private amenity spaces, balustrades to balconies showing glass to flats;
- ii) all external window and door systems (including technical details, elevations, plans and cross sections showing cills and reveal depths);
- iii) copings and soffits and junctions of external materials;

**6** Condition 5 Part Two

- iv) rain water goods(including locations, fixings, material and colour)

Reason: To ensure a satisfactory appearance of the development and to comply with the following Development Plan policies for Merton: policy 7.6 of the London Plan 2015, policy CS14 of Merton's Core Planning Strategy 2011 and policies DM D2 and D3 of Merton's Sites and Policies Plan 2014.

7 Prior to the commencement of landscaping works full details of a landscaping and planting scheme shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved before the commencement of the use or the occupation of any building hereby approved, unless otherwise agreed in writing by the Local Planning Authority. The details shall address the recommendations in paragraph 10.1 of the approved Biodiversity Survey Report (September 2016) and include on a plan, full details of the size, species, spacing, quantities and location of proposed plants, together with any hard surfacing, lighting, means of enclosure, and indications of all existing trees, hedges and any other features to be retained, and measures for their protection during the course of development.

Reason: To enhance the appearance of the development in the interest of the amenities of the area, to ensure the provision sustainable drainage surfaces and to comply with the following Dev

8 No development shall take place until details of the surfacing of all those parts of the site not covered by buildings or soft landscaping, including any parking, service areas or roads, footpaths, hard and soft have been submitted in writing for approval by the Local Planning Authority. No works that are the subject of this condition shall be carried out until the details are approved, and the development shall not be occupied / the use of the development hereby approved shall not commence until the details have been approved and works to which this condition relates have been carried out in accordance with the approved details.

Reason: To ensure a satisfactory standard of development in accordance with the following Development Plan policies for Merton: policies 7.5 and 7.6 of the London Plan 2015, policy CS14 of Merton's Core Planning Strategy 2011 and policies DM D1 and D2 of Merton's Sites and Policies Plan 2014.

9 No development shall commence until full details associated with the on-site carriageway and footway arrangements, including full construction details, materials, lighting and drainage arrangements, have been submitted to and approved in writing by the Local Planning Authority. The approved details should be fully implemented in accordance with the approved plans prior to first occupation of the development.

Reason. To ensure the safe operation of the carriageway and footway within the development and to comply with policy CS.20 of the Merton LDF Core Planning Strategy (2011).

10 Prior to first occupation of the development hereby approved the applicant shall have entered into and completed an agreement under the provisions of the Highways Act with the Local Highways Authority regarding associated footway and highway works. Such works as may be included within the agreement shall be completed before occupation of the development, unless otherwise agreed in writing.

Reason. To ensure the safe and efficient operation of the public highway in accordance with policies CS 20 of the Core Strategy 2011 and DM T2 of the Adopted Merton Sites and Policies Plan 2014.

11 No demolition or construction work or ancillary activities such as deliveries shall take place before 8am or after 6pm Mondays - Fridays inclusive, before 8am or after 1pm on Saturdays or at any time on Sundays or Bank Holidays.

Reason: To safeguard the amenities of the area and the occupiers of neighbouring properties and ensure compliance with the following Development Plan policies for Merton: policy 7.15 of the London Plan 2015 and policy DM EP2 of Merton's Sites and Polices Plan 2014.

12 No development shall commence until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and thereafter retained for use at all times.

Reason: To ensure satisfactory facilities for cycle parking are provided and to comply with the following Development Plan policies for Merton: policy 6.13 of the London Plan 2015, policy CS18 of Merton's Core Planning Strategy 2011 and policy DM T1 of Merton's Sites and Policies Plan 2014.

- 13 Prior to the occupation of the development hereby permitted, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall follow the current 'Travel Plan Development Control Guidance' issued by TfL and shall include:
- (i) Targets for sustainable travel arrangements;
  - (ii) Effective measures for the on-going monitoring of the Plan;
  - (iii) A commitment to delivering the Plan objectives for a period of at least 5 years from the first occupation of the development;
  - (iv) Effective mechanisms to achieve the objectives of the Plan by both present and future occupiers of the development.

The development shall be implemented only on accordance with the approved Travel Plan.

Reason: To promote sustainable travel measures and comply with the following Development Plan policies for Merton: policy 6.3 of the London Plan 2015, policies CS18, CS19 and CS20 of Merton's Core Planning Strategy 2011 and policy DM T2 of Merton's Sites and Policies Plan 2014.

- 14 Development shall not commence until a Parking Management Strategy has been submitted in writing for approval to the Local Planning Authority. No works that is subject of this condition shall be carried out until this strategy has been approved, and the development shall not be occupied until this strategy has been approved and the measures as approved have been implemented. Those measures shall be maintained for the duration of the use unless the prior written approval of the Local Planning Authority is obtained to any variation.

Reason: To ensure the provision of a satisfactory level of parking and comply with the following Development Plan policies for Merton: policy 6.13 of the London Plan 2015, policy CS20 of Merton's Core Planning Strategy 2011 and policy DM T3 of Merton's Sites and Policies Plan 2014.

- 15 Unless otherwise agreed in writing with the Local Planning Authority, subject to completion of the approved energy strategy (i.e. standalone CHP or connection to masterplan heat network) evidence must be submitted to the Local Planning Authority confirming that the development has achieved not less than a 35% improvement on Part L regulations 2013 for CO2 performance.

Reason: To ensure that the development achieves a high standard of sustainability and makes efficient use of resources and to comply with the following Development Plan policies for Merton: Policy 5.2 of the London Plan 2015 and Policy CS15 of Merton's Core Planning Strategy 2011.

- 16 Unless agreed in writing by the Local Planning Authority internal water usage rates shall not be more than 105 litres per person per day.

To ensure that the development achieves a high standard of sustainability and makes efficient use of resources and to comply with the following Development Plan policies for Merton: Policy 5.2 of the London Plan 2015 and Policy CS15 of Merton's Core Planning Strategy 2011.

- 17 No development shall take place until a scheme for the storage of refuse and recycling has been submitted in writing for approval to the Local Planning Authority. No works which are the subject of this condition shall be carried out until the scheme has been approved, and the development shall not be occupied until the scheme has been approved and has been carried out in full. Those facilities and measures shall thereafter be retained for use at all times from the date of first occupation.

Reason: To ensure the provision of satisfactory facilities for the storage of refuse and recycling material and to comply with the following Development Plan policies for Merton: policy 5.17 of the London Plan 2015, policy CS17 of Merton's Core Planning Strategy 2011 and policy DM D2 of Merton's Sites and Policies Plan 2014.

- 18** Prior to installation details of external lighting are to be submitted, which clearly demonstrates how the lighting features to be installed meets the principles that are set out in paragraph 5.8 of the submitted Design and Access Statement dated September 2016.

Reason To protect and enhance biodiversity in accordance with policies 7.19 of the London Plan 2015 and CS 13 of the Merton Core Strategy 2011.

- 19** Piling or any other foundation design using penetrative methods shall not be permitted other than with the express consent of the Local Planning Authority, in liaison with the relevant utility providers, which may be given where it has been demonstrated that there is no resultant unacceptable risk to below ground utility infrastructure. The development shall be carried out in accordance with the approved details.

Reason: The proposed works will be in close proximity to underground sewerage utility infrastructure. Piling has the potential to impact on local underground sewerage utility infrastructure.

Reason: To ensure that the piling design is protective of below ground utility infrastructure assets and controlled waters.

- 20** No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

Reason: The proposed works will be in close proximity to underground sewerage utility infrastructure. Piling has the potential to impact on local underground sewerage utility infrastructure.

- 21** No drainage systems for the infiltration of surface water drainage into the ground are permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to Controlled Waters. The development shall be carried out in accordance with the approval details.

Reason - In order to protect controlled waters and the health of future occupiers of the site and adjoining areas in accordance with the following Development Plan policies for Merton: policy 5.21 of the London Plan 2015 and policy DM EP4 of Merton's Sites and Policies Plan 2014.

**22 Condition 22 Part One**

No development approved by this permission shall be commenced until a detailed scheme for the provision of surface and foul water drainage has been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority and in consultation with Thames Water. The drainage scheme will dispose of surface water by means of a sustainable drainage system (SuDS) in accordance with drainage hierarchy contained within the London Plan Policy (5.12, 5.13 and SPG) and the advice contained within the National SuDS Standards. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) Provide information about the design storm period and intensity and the method employed to attenuate flows to sewer at a discharge rate of no more than 10l/s. Appropriate measures must be taken to prevent pollution of the receiving groundwater and/or surface waters;

### 23 Condition 22 Part Two

- ii) Include a timetable for its implementation;
- iii) Provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption and any other arrangements to secure the operation of the scheme throughout its lifetime;

Reason: To reduce the risk of surface and foul water flooding to the proposed development and future users, and ensure surface water and foul flood risk does not increase offsite in accordance with Merton's policies CS16, DMF2 and the London Plan policy 5.13.

### 24 Condition 24 Part One

No development, other than demolition and site clearance, approved by this permission shall be commenced until a detailed scheme for the provision of surface and foul water drainage has been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority (including Ellis + Moore Clarification of Bio Retention Suds and Permeable Paving (2017 01 18) and in consultation with Thames Water. The drainage scheme will dispose of surface water by means of a sustainable drainage system (SuDS) in accordance with drainage hierarchy contained within the London Plan Policy (5.12, 5.13 and SPG) and the advice contained within the National SuDS Standards. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- j) Provide information about the design storm period and intensity and the method employed to attenuate flows to sewer at a discharge rate of no more than 10l/s. Appropriate measures must be taken to prev

### 25 Condition 24 Part Two

- ii) Include a timetable for its implementation;
- iii) Provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption and any other arrangements to secure the operation of the scheme throughout its lifetime

Reason: To reduce the risk of surface and foul water flooding to the proposed development and future users, and ensure surface water and foul flood risk does not increase offsite in accordance with Merton's policies CS16, DMF2 and the London Plan policy 5.13.

### 26 The development hereby permitted by this planning permission shall ensure that finished floor levels for all residential units shall be set no lower than +250mm above the external ground level.

Reason: To reduce the risk of flooding to the proposed development and future users in accordance with Merton's policies CS16, DM F1 and the London Plan policy 5.12.

27 The development hereby permitted shall not be occupied until such time as a Flood Warning and Evacuation plan and procedure is implemented and agreed in writing to the satisfaction of the Local Planning Authority. The Flood Warning and Evacuation Plan shall be implemented in accordance with the submitted Flood Risk Assessment document included and the procedures contained within the plan shall be reviewed annually for the lifetime of the development. Consultation of the plan shall take place with the Local Planning Authority and Emergency Services.

Reason: To reduce the risk of flooding to the proposed development and future users in accordance with Merton's CS16 and policy DM F1 and the London Plan policy 5.12.

28 Noise levels, (expressed as the equivalent continuous sound level) LAeq (10 minutes), from any new plant/machinery – including CHP plant - from the residential use shall not exceed LA90-10dB at the boundary with the closest residential property.

Reason: To safeguard the amenities of the area and the occupiers of neighbouring properties and ensure compliance with the following Development Plan policies for Merton: policy 7.15 of the London Plan 2015 and policies DM D2, DM D3, DM EP2 and DM EP4 of Merton's Sites and Policies Plan 2014.

29 Due to the potential impact of the surrounding locality on the development the recommendations to protect noise intrusion into the dwellings as specified in the Sharps Redmore, Planning Noise Assessment Report dated September 2016 shall be implemented as a minimum standard of mitigation from external noise before occupation of any dwelling.

To protect the amenities of occupiers of neighbouring properties and to accord with Sites and Policies policy DM D2.

30 An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason: In order to protect controlled waters and the health of future occupiers of the site and adjoining areas in accordance with the following Development Plan policies for Merton: policy 5.21 of the London Plan 2015 and policy DM EP4 of Merton's Sites and Policies Plan 2014.



- 31 Subject to the site investigation for contaminated land, if necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: In order to protect controlled waters and the health of future occupiers of the site and adjoining areas in accordance with the following Development Plan policies for Merton: policy 5.21 of the London Plan 2015 and policy DM EP4 of Merton's Sites and Policies Plan 2014.

- 32 Any approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development, unless otherwise agreed in writing by the Local Planning Authority. Following the completion of any measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason for condition: In order to protect controlled waters and the health of future occupiers of the site and adjoining areas in accordance with the following Development Plan policies for Merton: policy 5.21 of the London Plan 2015 and policy DM EP4 of Merton's Sites and Policies Plan 2014.

- 33 In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason for condition: In order to protect controlled waters and the health of future occupiers of the site and adjoining areas in accordance with the following Development Plan policies for Merton: policy 5.21 of the London Plan 2015 and policy DM EP4 of Merton's Sites and Policies Plan 2014.

**34 Condition 34 Part One**

No development shall take place until a Demolition and Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the demolition and construction period.

The Statement shall provide for:

- hours of operation
- the parking of vehicles of site operatives and visitors
- loading and unloading of plant and materials
- storage of plant and materials used in constructing the development
- the erection and maintenance of security hoarding including decorative - displays and facilities for public viewing, where appropriate
- wheel washing facilities -measures to control the emission of noise and vibration during construction.
- measures to control the emission of dust and dirt during construction/demolition
- a scheme for recycling/disposing of waste resulting from demolition and construction.

Reason for condition: To safeguard the amenities of the area and the occupiers of neighbour

**35 Condition 34 Part Two**

- wheel washing facilities -measures to control the emission of noise and vibration during construction.
- measures to control the emission of dust and dirt during construction/demolition
- a scheme for recycling/disposing of waste resulting from demolition and construction.

Reason for condition: To safeguard the amenities of the area and the occupiers of neighbouring properties and ensure compliance with the following Development Plan policies for Merton: policy 7.15 of the London Plan 2015 and policies DM D2, DM D3, DM EP2 and DM EP4 of Merton's Sites and Policies Plan 2014.

- 36 All Non-Road Mobile Machinery (NRMM) of net power of 37kW and up to and including 560kW used during the course of the demolition, site preparation and construction phases shall comply with the emission standards set out in chapter 7 of the GLA's supplementary planning guidance "Control of Dust and Emissions During Construction and Demolition" dated July 2014 (SPG), or subsequent guidance. Unless it complies with the standards set out in the SPG, no NRMM shall be on site, at any time, whether in use or not, without the prior written consent of the local planning authority.**

Reason for condition: To safeguard the amenities of the area and the occupiers of neighbouring properties and ensure compliance with the following Development Plan policies for Merton: policy 7.15 of the London Plan 2015 and policies DM D2, DM D3, DM EP2 and DM EP4 of Merton's Sites and Policies Plan 2014.

**37** No development other than demolition to existing ground level shall take place until the applicant (or their heirs and successors in title) has secured the implementation of a programme of archaeological observation and recording in respect of any anticipated geotechnical site investigation, in accordance with a Written Scheme of Investigation which has been submitted by the applicant and approved by the local planning authority in writing and a report on that evaluation has been submitted to and approved by the local planning authority in writing. The applicant (or their heirs and successors in title) shall implement a programme of archaeological observation and recording in accordance with a Written Scheme of Investigation.

Reason for condition: In order to provide the opportunity to record the history of the site and to comply with the following Development Plan policies for Merton: policy 7.8 of the London Plan 2015, policy CS14 of Merton's Core Planning Strategy 2011 and policy DM D4 of Merton's Sites

**38** The development shall not be occupied until the site investigation and post-investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation, and the provision for analysis, publication and dissemination of the results and archive deposition has been secured.

– Reason for condition: In order to provide the opportunity to record the history of the site and to comply with the following Development Plan policies for Merton: policy 7.8 of the London Plan 2015, policy CS14 of Merton's Core Planning Strategy 2011 and policy DM D4 of Merton's Sites and Policies Plan 2015.

**39** Prior to occupation of the development hereby permitted, the applicant shall provide suitable plans to demonstrate 20% provision for charging electric vehicles in line with London Plan (March 2016) requirements, and hereafter shall be kept free from obstruction and shall be retained for parking purposes for users of the development and for no other purpose.

Reason: To ensure the provision of an appropriate level of car parking and comply with policy CS20 of the Merton Core Planning Strategy 2011, the Mayor of London's Electric Vehicle Delivery Plan and policy 6.13 of the London Plan.

**40** Prior to first occupation of any part of the development details of the positioning and operational management of any on site security system shall be submitted to and approved in writing by the Local Planning Authority and be installed and operational and shall thereafter be retained and maintained.

Reason; To ensure a safe and secure layout in accordance with policy DM D2 of the Merton Adopted Sites and Policies Plan 2015

**41** Prior to the commencement of the development hereby permitted, a Construction Logistics Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented prior to the first occupation of the development hereby permitted and shall be so maintained for the duration of the use, unless the prior written approval of the Local Planning Authority is first obtained to any variation.

Reason: To ensure the safety of pedestrians and vehicles and the amenities of the surrounding area and to comply with the following Development Plan policies for Merton: policies 6.3 and 6.14 of the London Plan 2015, policy CS20 of Merton's Core Planning Strategy 2011 and policy DM T2 of Merton's Sites and Policies Plan 2014.

#### **42 Condition 44 Part One**

a) Prior to the occupation of the development, details of the design of the playspace in the proposed courtyard and new play facility to the south of the site (as described in the approved Design and Access Statement September 2016 and identified on the approved Drawing No. 2002 Indicative Landscape Plan (Colour)), its delivery, maintenance and retention shall be submitted to and approved by the Local Planning Authority. Such details as may be approved shall be implemented before occupation, unless otherwise agreed in writing by the local planning authority, and the play space shall thereafter be retained and maintained in accordance with those details.

#### **43 Condition 44 Part Two**

b) Prior to the commencement of the development, details of improvements to the existing play space at the southern end of Dowman Close (identified as Site E in paragraph 5.13 of the approved Design & Access Statement September 2016), shall be submitted to and approved by the Local Planning Authority. Such details as may be approved shall be implemented before any existing play space area (forming part of the High Path Estate) is rendered unusable by reason of demolition or other such works as may make use of the play area unsafe, and the play space shall thereafter be retained and maintained in accordance with those details.

Reason; To ensure the provision and retention of suitable children's play space in accordance with the requirements of Merton's Core Planning Strategy policy CS 13 and The London Plan 2015 policy 3.6.

**44** No development, other than any demolition works, shall be carried out until details of the proposed green/brown roofs (including: species, planting density, substrate, a section drawing at scale 1:20 demonstrating the adequate depth availability for a viable green/brown roof; and a maintenance plan), as confirmed in paragraphs 3.4 and 10.1 of the submitted Biodiversity Survey Report dated September 2016, are submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in accordance with the approved details and be permanently retained as such.

Reason: In order to conserve and enhance biodiversity and wildlife habitats in accordance with the provision of policy CS.13 of Merton's Core Planning Strategy 2011.

**45** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and reenacting that Order with or without modification), no extension, enlargement or other alteration of the dwellinghouses hereby approved (identified as E Blocks in the submitted Design and Access Statement dated September 2016) shall be carried out without planning permission first being obtained from the Local Planning Authority.

Reason: The Local Planning Authority considers that further development could cause detriment to the amenities of the occupiers of nearby properties or to the character of the area and for this reason would wish to control any future Development Plan policies for Merton: policy 7.6 of the London Plan 2015, policy CS14 of Merton's Core Planning Strategy 2011 and policies DM D2 and D3 of Merton's Sites and Policies Plan 2014.

- 46 No cables, wires, aerials, microwave antenna, pipe work (except any rainwater down pipes as may be shown on the approved drawings) meter boxes or flues shall be fixed to any elevation facing a highway.

Reason: To safeguard the appearance of the development and the visual amenities of the area and to comply with the following Development Plan policies for Merton: policy 7.6 of the London Plan 2015, policy CS14 of Merton's Core Planning Strategy 2011 and policies DM D2 and D3 of Merton's Sites and Policies Plan 2014.

- 47 The applicant is advised that in accordance with paragraphs 186 and 187 of the National Planning Policy Framework, The London Borough of Merton takes a positive and proactive approach to development proposals focused on solutions. The London Borough of Merton works with applicants or agents in a positive and proactive manner by suggesting solutions to secure a successful outcome; and updating applicants or agents of any issues that may arise in the processing of their application. In this instance the Planning Committee considered the application where the applicant or agent had the opportunity to speak to the committee and promote the application.

48 INFORMATIVE

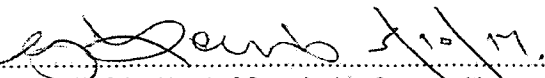
You are advised to contact the Council's Highways team on 020 8545 3700 before undertaking any works within the Public Highway to obtain the necessary approvals and/or licences. Please be advised that there is a further charge for this work. If your application falls within a Controlled Parking Zone this has further costs involved and can delay the application by 6 to 12 months.

- 49 Thames Water would recommend that petrol / oil interceptors be fitted in all car parking/washing/repair facilities. Failure to enforce the effective use of petrol / oil interceptors could result in oil-polluted discharges entering local watercourses.

- 50 A Groundwater Risk Management Permit from Thames Water will be required for discharging groundwater into a public sewer. Any discharge made without a permit is deemed illegal and may result in prosecution under the provisions of the Water Industry Act 1991. We would expect the developer to demonstrate what measures he will undertake to minimise groundwater discharges into the public sewer. Permit enquiries should be directed to Thames Water's Risk Management Team by telephoning 02035779483 or by emailing [wwqriskmanagement@thameswater.co.uk](mailto:wwqriskmanagement@thameswater.co.uk). Application forms should be completed on line via [www.thameswater.co.uk/wastewaterquality](http://www.thameswater.co.uk/wastewaterquality)

- 51 With regard to surface water drainage it is the responsibility of a developer to make proper provision for drainage to ground, water courses or a suitable sewer. In respect of surface water it is recommended that the applicant should ensure that storm flows are attenuated or regulated into the receiving public network through on or off site storage. When it is proposed to connect to a combined public sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Connections are not permitted for the removal of groundwater. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required. The contact number is 0800 009 3921.

- 52** There are public sewers crossing or close to your development. In order to protect public sewers and to ensure that Thames Water can gain access to those sewers for future repair and maintenance, approval should be sought from Thames Water where the erection of a building or an extension to a building or underpinning work would be over the line of, or would come within 3 metres of, a public sewer. Thames Water will usually refuse such approval in respect of the construction of new buildings, but approval may be granted for extensions to existing buildings. The applicant is advised to visit [thameswater.co.uk/buildover](http://thameswater.co.uk/buildover).
- 53** There are large water mains adjacent to the proposed development. Thames Water will not allow any building within 5 metres of them and will require 24 hours access for maintenance purposes. Please contact Thames Water Developer Services, Contact Centre on Telephone No: 0800 009 3921 for further information.
- 54** Thames Water recommend the following informative be attached to this planning permission. Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.
- 55** No surface water runoff should discharge onto the public highway including the public footway or highway. When it is proposed to connect to a public sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required (contact no. 0845 850 2777).
- 56** The applicant is advised to contact Thames Water Developer Services on 0800 009 3921 to discuss the details of the piling method statement.
- 57** Written schemes of investigation will need to be prepared and implemented by a suitably qualified archaeological practice in accordance with Historic England Greater London Archaeology guidelines. They must be approved by the planning authority before any on-site development related activity occurs.
- 58** Demolition of buildings and vegetation clearance should avoid the bird nesting and bat roosting season. This avoids disturbing birds and bats during a critical period and will assist in preventing possible contravention of the Wildlife and Countryside Act 1981, which seeks to protect nesting birds/bats and their nests/roosts. Buildings should also be inspected for bird nests and bat roosts prior to demolition. All species of bat in Britain and their roosts are afforded special protection under the Wildlife and Countryside act 1981. If bats are found, Natural England should be contacted for advice (tel: 020 7831 6922).

Signed  5/10/17.  
For and on behalf of the Head of Sustainable Communities.

Note: This approval confers permission under the Town and Country Planning Acts only. It does not confer consent or approval under any other statutory enactment; including the Building Regulations. Failure to obtain all necessary consents may result in enforcement action. It is emphasised that no variation from the deposited plans or particulars will be permitted unless previously authorised in writing by the London Borough of Merton  
Please read attached notes.

## NOTES REGARDING RIGHTS OF APPEAL

1. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or approval for the proposed development, or to grant permission of approval subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78 of the Town and Country Planning Act 1990 within six months from the date of this notice; **unless the application is for householder development, in which case the time limit is 12 weeks.** Appeals must be made on a form which is obtainable from The Planning Inspectorate, Room 3/24 HawkWing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. A copy of the appeals forms should also be forwarded simultaneously to the Chief Executive's Department, London Borough of Merton, 8th Floor, Civic Centre, London Road, Morden, Surrey SM4 5DX.
2. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Local Planning Authority, or imposed by them, having regard to the statutory requirement (see note below), to the provisions of the development order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given to him.
3. If permission to develop land is refused or granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State for the Environment, and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Local Planning Authority in which the land is situated a purchase notice requiring the authority to purchase his interest in the land in accordance with the provisions of part VI of the Town and Country Planning Act 1990.
4. In certain circumstances a claim may be made against the Local Planning Authority for compensation where permission is refused or granted, subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

### NOTE:

The statutory requirements are those set out in Section 79(6) of the Town and Country Planning Act 1990, namely Sections 700(l) & 72(l) of the Act.

DECconaa



## Community Infrastructure Levy (CIL) Information for Applicants

The Community Infrastructure Levy is a charge introduced by the Government to pay for the infrastructure needed to support new development. It applies to most types of developments where a new dwelling or 100sqm of new build floorspace is proposed, and is charged per square metre of floorspace.

Developments would be liable for a CIL payment once planning permission is granted or on commencement if planning permission is not required.

The liability will be calculated according to the additional GIA produced by the development. If liable, you will be asked to complete and send to us the following forms, which can be downloaded from: [www.planningportal.gov.uk/cil](http://www.planningportal.gov.uk/cil).

- o CIL Form 1 "Assumption of Liability" (if planning permission was granted)
- o CIL Form 5 "Notice of Chargeable Development" (if planning permission was not required)
- o CIL Form 6 "Commencement Notice"

As a collecting authority, Merton Council has a duty to ensure that Liability Notices (which tell you how much the charge is) are issued as soon as is reasonably practicable. To do this, we will need the above forms so that we know who to send the notice to. Any liability notice will provide details of the charge and any apportionment between liable parties. This will be recorded to the register of Local Land Charges as a legal charge upon your property and will become payable upon commencement of development. Information on the payment process (including penalties) will be provided with the liability notice or upon request.

Please note that if an Assumption of Liability is not received then a land charge could be added to the property at a later date, with no right to appeal or request a review.

It is strongly recommended that the relevant forms are submitted before development commences, to avoid being penalized. Please contact us if you are unsure what to do or whether your development will be liable.

### Current CIL Charges

Mayoral CIL - On 1st April 2012 the Mayor of London introduced a CIL charge to raise funds towards the delivery of Crossrail, setting a rate of £35 per square metre on all chargeable development, other than for health and education uses, in Merton.

Merton CIL - Since 1st April 2014 the London Borough of Merton's CIL charge has also been effect. The rates vary from £100-£220 per square metre, depending on the location and type of development. For more information on this please visit <http://www.merton.gov.uk/cil>.

For further information please visit [www.planningportal.gov.uk/cil](http://www.planningportal.gov.uk/cil) or email [CILevy@merton.gov.uk](mailto:CILevy@merton.gov.uk).

### Notes

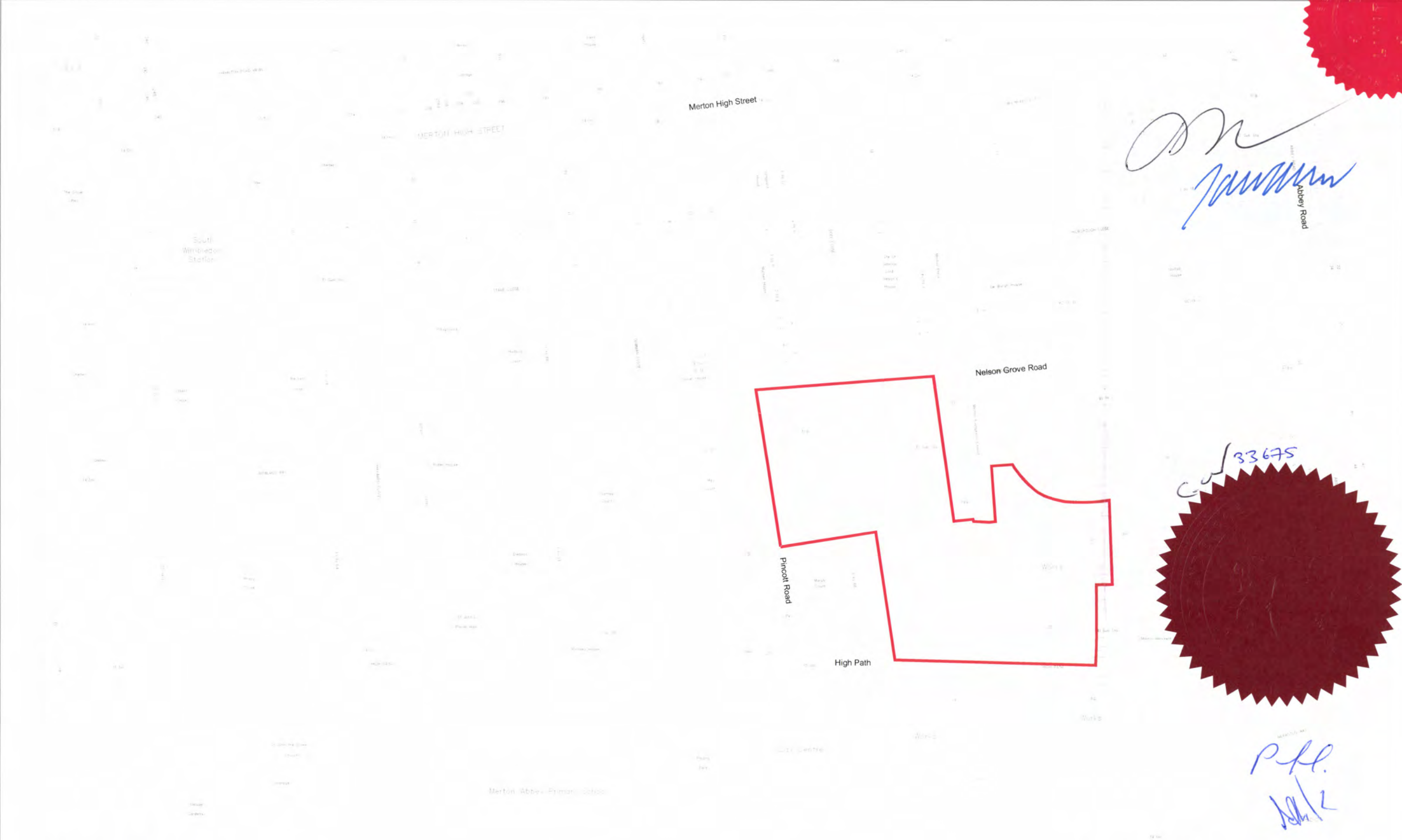
1. Any permission granted, other than with respect to certain minor material amendments granted under s.73 of the Act will relate to the entire development, regardless of any references to amendments or previous permissions granted and as such the CIL liability will be calculated on the entire proposed development.
2. If any relief or exemption applies to this proposal and you are granted this prior to commencement of development, this may reduce the final amount you are required to pay. Information is available at [www.planningportal.gov.uk/cil](http://www.planningportal.gov.uk/cil).

**APPENDIX**

**Plan 1 - Site Plan**



*Handwritten signature in blue ink.*  
Abbey Road



*Handwritten signature in blue ink.*  
P.H.  
12/2

Site Location Plan  
1 : 1250

Phase 1 Site Boundary



CDM REGULATIONS 2015. All current drawings and specifications for the project must be read in conjunction with the Designer's Hazard and Environment Assessment Record. All intellectual property rights reserved.

Designed with reference to the surveys, information and reports listed:  
Ordinum Survey Map, Topographical Survey 14804-S1A, Utilities Radar Scan PAS128 25451, Tree Survey 54154-02

Rev	Date	Description
1	28/06/20	Revised issue
	17	

Dwn	Ckd	Drawn	AA
AA	SC	Checked	MB
		Date	28/06/2017
		Scale @ A3	As indicated

High Path Phase 1  
Site Location Plan

AA4586(PH1)-2000  
REV 1  
For Planning



**Plan 2 – High Path Estate Plan**



The contractor is responsible for checking dimensions, tolerances and references. Any discrepancy to be verified with the Architect before proceeding with the works. Where an item is covered by drawings to different scales the larger scale drawing is to be worked to.

CDM REGULATIONS 2015. All current drawings and specifications for the project must be read in conjunction with the Designer's Hazard and Environment Assessment Record

Rev Date Description

Dwn Ckd Drawn GW  
 Checked SK  
 Date JUN 2017  
 Scale @ A3 1:1250

**HIGH PATH MASTERPLAN**  
**SITE LOCATION PLAN**

**AA4586\_2001**  
**REV - 1**  
**PLANNING**

**PRP**

prp-co.uk  
 London  
 020 7653 1200

Do not scale drawing. Figured dimensions to be worked to in all cases.

All intellectual property rights reserved.

IN WITNESS whereof with the intent that these presents should be executed as a Deed the Parties hereto have duly executed the same the day and year first before written

A1396/06

Executed as a Deed by affixing )  
the COMMON SEAL of )  
CIRCLE THIRTY THREE HOUSING )  
TRUST LIMITED )  
in the presence of:- )

*[Handwritten signatures in black and blue ink]*



Authorised Signatory

Authorised Signatory

Executed as a Deed by affixing )  
the COMMON SEAL of )  
THE MAYOR AND BURGESSES OF )  
THE LONDON BOROUGH OF MERTON )  
in the presence of:- )

33675



*[Handwritten signature]*

Authorised Signatory

Authorised Signatory

Executed as a deed by )  
**PENELOPE JOY HEAD** P. Head. )  
 )  
 )

in the presence of:

witness signature: 

name: ALEX MCINIGHT

address: 7 MAYFIELD ROAD  
DUMBLDON  
G67 3NF

occupation: INVESTMENT MANAGER