

DATED 21st March

2019

- (1) CHERWELL DISTRICT COUNCIL
- (2) OXFORDSHIRE COUNTY COUNCIL
- (3) HEYFORD PARK DEVELOPMENTS LIMITED
- (4) SECURE TRUST BANK PLC

DEED OF VARIATION OF PLANNING OBLIGATION

under Section 106A of the Town and Country Planning Act 1990

**relating to former RAF base at Upper Heyford
Oxfordshire**

DATE

Twenty-first day of March 2019

PARTIES

- (1) **CHERWELL DISTRICT COUNCIL** of Bodicote House, Bodicote, Banbury, Oxon OX15 4AA ("the District Council");
- (2) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford OX1 1ND ("the County Council");
- (3) **HEYFORD PARK DEVELOPMENTS LIMITED** (Co Reg No 09630640) whose registered office is at Heyford Park House, Heyford Park, Upper Heyford, Bicester, Oxfordshire, OX25 5HD ("Owner"); and
- (4) **SECURE TRUST BANK PLC** (Co Reg No 00541132) whose registered office is at One Arleston Way, Solihull B90 4LH 9 ("the Mortgagee")

INTRODUCTION

1. The District Council is the local planning authority for the purposes of the Act for the area in which the Upper Heyford Site is situated
2. The County Council is the local highway and education authority for the area in which the Upper Heyford Site is situated
3. The Owner is the freehold owner of that part of the Village Centre North Land shown hatched blue green and pink on the Plan pursuant to a transfer from (1) Dorchester Heyford Park GP Limited and Dorchester Heyford Park Nominee Limited (2) Heyford Park Estate Limited and (3) Heyford Commercial Development Limited to the Owner dated 14 December 2018 and is a Landowner for the purposes of the Principal Agreement
4. The land shown edged red on the Plan is currently unregistered highway land which is subject to a stopping up order made by the Secretary of State dated 13 November 2018 to take effect on the completion of highway works in the vicinity of the Village Centre North Land as specified in the said stopping up order and in respect of which the Owner has an interest pursuant to the ad medium filum principle

5. The Mortgagee has the benefit of a charge registered over that part of the the Village Centre North Land shown hatched blue green and pink (and other land) dated 14 December 2018
6. Clause 2 of the Supplemental Agreement supplements the Principal Agreement so as to limit the liability of owners of the 'Relevant Land' as defined therein and which includes parts of the Village Centre North Land, and also prohibits the construction of any New Build Dwellings as defined in the Principal Agreement within that 'Relevant Land'
7. This Deed varies the provisions of the Supplemental Agreement in order that the Village Centre North RMA may be implemented and the Village Centre North Dwellings may be permitted to be built on the Village Centre North Land

DEFINITIONS

8. The definitions contained in clause 1 of the Principal Agreement shall apply to this Deed in addition to the definitions set out below and the provisions as to construction contained in clause 1.2 of the Principal Agreement shall apply to this Deed:

| | |
|-----------------------|---|
| "Plan" | the plan marked 'Plan 1' attached to this Deed at Appendix 1 |
| "Principal Agreement" | the Agreement pursuant to Section 106 of the Act dated 22 December 2011 relating to the Upper Heyford Site being land at Upper Heyford made between (1) Cherwell District Council (2) Oxfordshire County Council (3) Dorchester Heyford Park GP Limited and Dorchester Heyford Park Nominee Limited (4) Upper Heyford GP Limited and Upper Heyford Nominee Limited (5) FREP 2 (Heyford Park) Limited and (6) Investec Bank plc as supplemented and varied by the Variation Agreements |

| | |
|----------------------------------|--|
| “Principal Planning Permission” | planning permission reference 10/01642/OUT granted by the District Council on 22 December 2011 |
| “Site Plan” | the plan marked ‘Plan 2’ attached to this Deed at Appendix 1 |
| “Supplemental Agreement” | the Agreement pursuant to Section 106A of the Act dated 28 August 2012 made between (1) Cherwell District Council (2) Oxfordshire County Council (3) Dorchester Heyford Park GP Limited and Dorchester Heyford Park Nominee Limited (4) Upper Heyford GP Limited and Upper Heyford Nominee Limited (5) FREP 2 (Heyford Park) Limited and (6) Investec Bank plc |
| “Upper Heyford Site” | the land defined as “the Site” in the Principal Agreement |
| “Variation Agreements” | the Supplemental Agreement and further agreement relating to the Upper Heyford Site dated 27 June 2014, 30 March 2016, 12 October 2017 and 8 May 2017 |
| “Village Centre North Dwellings” | a dwelling constructed or proposed to be constructed on the Village Centre North Land pursuant to the Village Centre North RMA |
| “Village Centre North Land” | the land shown edged red on the Site Plan attached to this Deed at Appendix 1 which comprises part of the Upper Heyford Site |
| “Village Centre North RMA” | the Reserved Matters Approval in relation to the Village Centre North Land granted on 24 July 2018 with reference |

18/00513/REM for “*retail units, B1 Use, 30 residential units, involving the erection of two, three storey buildings, partial demolition and change of use of Building 100 to provide B1 Use and demolition of buildings 101 and 102, plus the formation of vehicle parking and associated landscaping works*”

9. Subject to the variations contained in this Deed the terms of the Principal Agreement and the Supplemental Agreement shall continue to have full force and effect

LEGAL BASIS

10. This Deed is made pursuant to Section 106A of the 1990 Act Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers
11. This Deed varies the covenants restrictions and requirements in respect of the Supplemental Agreement pursuant to section 106A of the 1990 Act

VARIATION OF SUPPLEMENTAL AGREEMENT

12. The parties agree that from the date of completion of this Deed the Supplemental Agreement (and thereby the Principal Agreement) shall be varied as follows:

- 12.1 The definition of “Relevant Land” shall be deleted and shall be replaced with the following definition:

“the Retained Housing Land and the CLUD Land and the Change of Use Land as shown coloured pink on the Plan attached to this Agreement but excluding any part of the Village Centre North Land as defined in a planning obligation dated [March] 2019”.

MORTGAGEE CONSENT

13. The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Village Centre North Land shall be bound by the provisions of the Principal Agreement without the limitations

imposed by the Supplemental Agreement and that the security of the mortgage over the Village Centre North Land shall take effect subject to the provisions of the Principal Agreement.

MISCELLANEOUS

14. The Owners will on completion of this Deed pay to the District Council and County Council their reasonable legal costs incurred in connection with the preparation and completion of this Deed
15. No provisions of this Deed shall be enforceable under the Contracts (Right of Third Parties) Act 1999 (other than by the parties and their successors in title and assigns and any successor to the District Council's or as applicable County Council's functions)
16. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality
17. The parties to this Deed confirm that the Village Centre North RMA is a Reserved Matters Application as defined in the Principal Agreement

WAIVER

18. No waiver (whether expressed or implied) by the District Council or County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

NO FETTER

19. Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the District Council or County Council in the exercise of their respective functions in any capacity.

JURISDICTION

20 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England in relation to any disputes between the parties arising out of or related to this Deed.

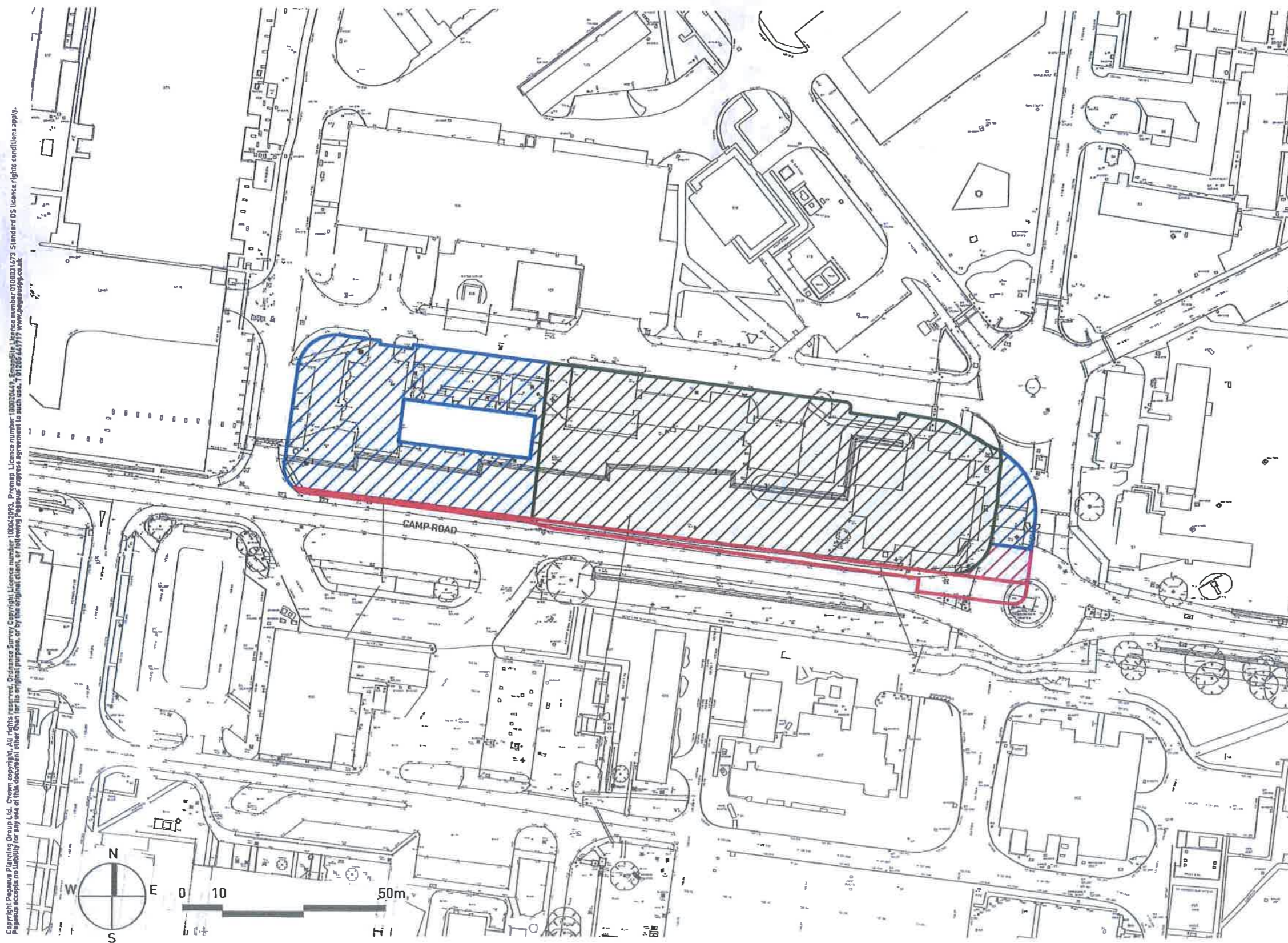
DELIVERY

21 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed in counterpart this Deed on the day and year first before written.

APPENDIX 1

Plans



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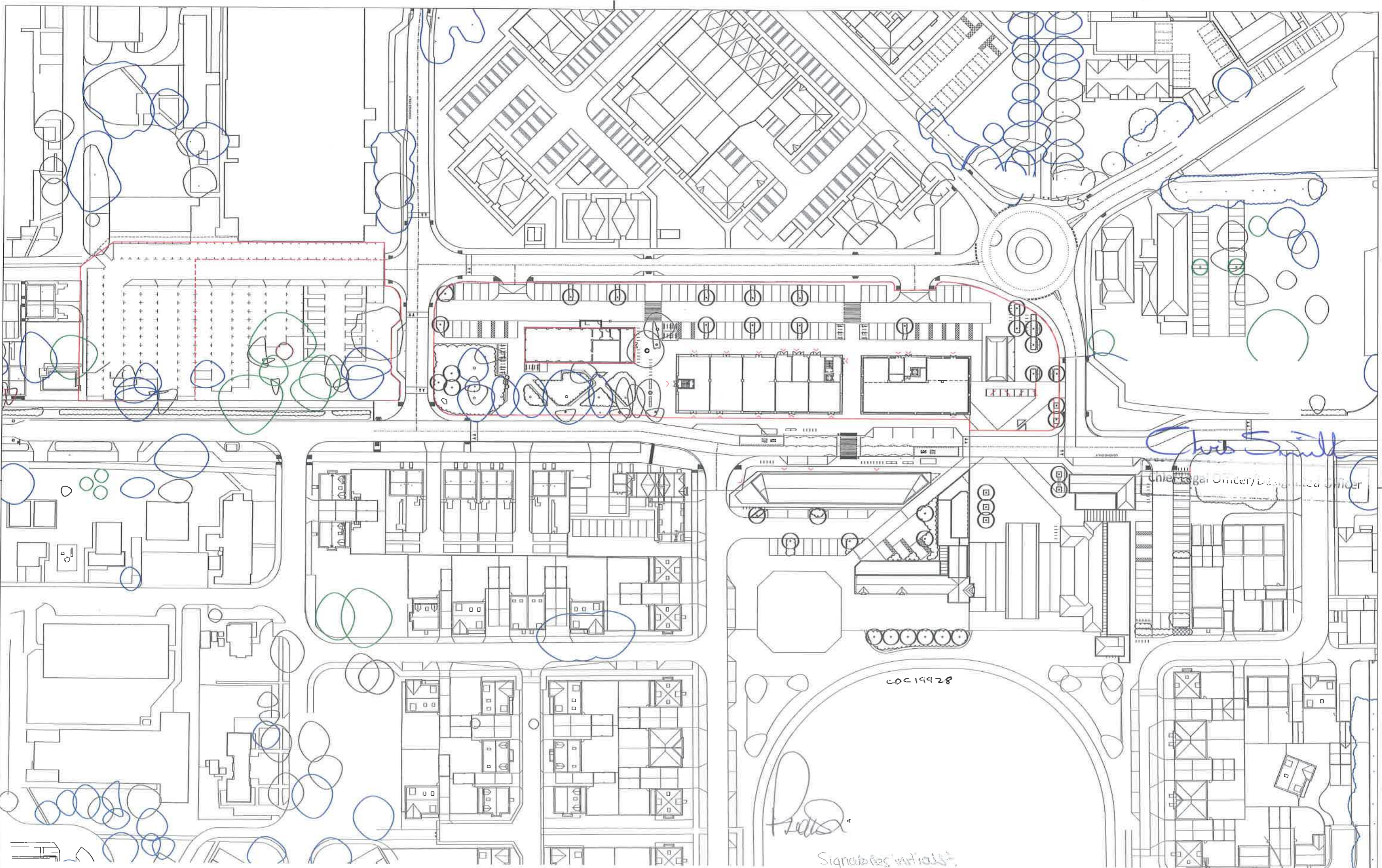
Handwritten signature

Signatories' initials:

Handwritten initials: CS, SW, H

Chris Smith
 Chief Legal Officer

HEYFORD PARK - COMPOSITE VILLAGE CENTRE NORTH TRANSFER PLAN



Heyford Park Village Centre - Northern Plot General Arrangement Plan
 Eden Development Consultants - 16/03/2018 - EDC05-GA-100 - Rev J
 Drwn by: RDG - Scale 1:250

Chris Smith
 Chief Legal Officer / Designated Officer
 LDC 19928
 Signage for vehicles
 RDG
 MS

EDC14928

THE COMMON SEAL of)
CHERWELL DISTRICT COUNCIL)
was affixed in the presence of:-)


Authorised Signatory:



THE COMMON SEAL of)
OXFORDSHIRE COUNTY COUNCIL)
was affixed in the presence of:-)



Authorised Signatory:




15/13/18

EXECUTED (but not delivered until
the date inserted herein) **AS A DEED**
by **HEYFORD PARK DEVELOPMENTS LIMITED**

acting by a Director

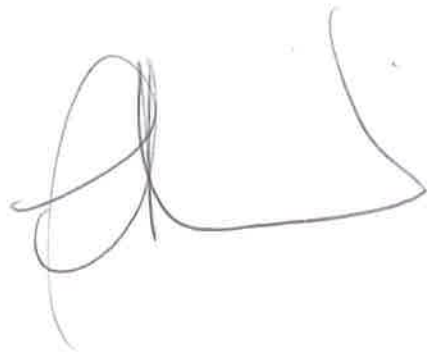
in the presence of:

Witness signature:


WITNESS SIGNATURE

Witness name: CAVIN ANGELL

Witness address: 10 BILLING STREET,
LONDON
SW10 9UK



**Executed and Delivered as a Deed by
SECURE TRUST BANK PLC**
Acting by two duly appointed Attorneys under a
Power of Attorney dated 30th January 2019


.....
Attorney


.....
Attorney