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PLANNING STATEMENT

OUTLINE APPLICATION FOR THE ERECTION OF A
CLASS C2 CONTINUING CARE RETIREMENT
COMMUNITY COMPRISING A 50 BED CARE HOME,
60 NO. ASSISTED LIVING UNITS, ACCESS,
INFRASTRUCTURE, LANDSCAPING AND ANCILLARY
WORKS

SITE AT ELKER LANE, BILLINGTON

April 2024

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1.0 INTRODUCTION.

1.1. Purpose of the report.

This report accompanies an outline planning application for the development of this site for a Continuing Care Retirement Community (CCRC). It is submitted to clarify to the local authority the terms of the application made in respect of applicable planning law; planning policy approach and suggest to the local authority limitations that are commonly applied to such schemes for planning purposes. Other reports have been submitted to the local authority with the application made and so there is no need in this report to restate those other matters, for which reference should be made to those other documents.

Format of the report.

This report is presented in the following format:

- Section 2 sets out what a CCRC is.
- Section 3 identifies why there is a need for the facility in Ribble Valley.
- Section 4 identifies those planning policies against which the proposals should be assessed both at national and local level.
- section 5 provides a summary of that policy approach.
- Section 6 deals with the issue of the use class definition of the proposals and the implications of this for the application of planning policy.
- section 7 sets out the sustainability benefits of the facilities to be provided in the scheme.
- Section 8 provides our concluding remarks.

Limitations.

This statement is produced as a written description and justification for the accompanying planning application only and is not intended for any other purposes. It should be read in conjunction with the plans and information supplied in the application and not read in isolation.

No part of this statement should be reproduced or used in any other document or circular without the prior approval of its authors as to the context and form in which it may occur, as the planning references used may not be appropriate for other purposes. The report is intended for the person to whom it is addressed only and no responsibility can be accepted for any third party for the use of a part or the whole of its content.

Where reference is made to other documents or publications where it is necessary, these are not provided with this report and the authors cannot be held responsible for providing such copies.

References

The following documents and information have been referred to in the preparation of this report :

- RVBC Core Strategy
- National Planning Policy Framework
- HAPPI report 2012
- Joseph Rowntree Foundation publications
- Housing Learning and Improvement Network Viewpoint 20
- all Parliamentary Group on Housing our Ageing Population Plan for Implementation
- DSIP Design Principles for Extra Care
- RTPI Good Practice Note 8 Extra care Housing
- English Villages operations policy

2.0 BACKGROUND

What is a Continuing Care Retirement Community?

The Continuing Care Retirement Community concept is quite new to the UK and is very different from conventional care with accommodation. It offers a unique combination of independence and security of lifestyle within a socially active and supportive community. The result is that older people with a range of abilities and disabilities are able to continue to live in their own space, supported by a comprehensive and flexible network of personal care services and activities.

A Community generally includes a nursing care unit that can provide end of life care close to home and more intensive episodes of care and rehabilitation for those who need it. This care may include short-term health and social care, treatment and support; specialist respite care; rehabilitation and intermediate care to enable early discharge and prevent acute hospital admission and palliative care.

Accommodation for anyone over 55 and anyone with disabilities or other health problems who need care and support. This group would otherwise face the stark choice of a traditional Care Home which may mean separation from their partners and loss of autonomy; or reliance on Social Services to provide care at their current home with care packages that cannot be as comprehensive or responsive as their changing needs require.

A purpose built community which complements the local infrastructure where residents can enjoy flexible and responsive care and support that focuses on re-ablement and rehabilitation; and will be available around the clock to enable individuals to remain in their own homes for longer — and in most cases, for life. All this is combined with the use of communal facilities and activities designed to promote individual health and wellbeing. This ensures residents retain as much independence as possible.

New and better options for couples and individuals when weighing up the pros and cons of where to live in later life. This is because the new community will have three main types of accommodation designed to suit varying levels of need:

- Care Bedrooms registered with the Care Quality Commission (CQC)
- Close Care Units, serviced by an on-site Care Agency registered with the CQC.

- Linked Assisted Living Units (both 1 and 2 bedroom) serviced by an on-site Care Agency registered with the CQC.
- Assisted Living Units (both 1 and 2 bedroom) serviced by an on site Care Agency registered with the CQC.

The main client group will comprise elderly and frail people needing care and support, some of whom will have high dependency needs including very frail elderly, terminally ill, rehabilitation, post operatives and the partially sighted; as well as those with dementia, learning difficulties or an acquired brain injury. Other residents will include adults with a disability or other health problems including neurological conditions, for example Multiple Sclerosis, Motor Neurone Disease and Parkinson's disease.

Based on experience in established operational villages, the average age of residents in Assisted Living Units is 77, though 65% are over 80. In Close Care Units the average age is 86, with 70% being over 85. In the nursing unit the resident profile ranges between 80 and 100.

How a Continuing Care Retirement Community Operates

Apart from the dedicated nursing care unit for those in need of 24 hour care, the site will provide individual units that will be provided as close care units or assisted living units. These are self-contained and linked to packages of care provision, which varies in amount depending on the needs of the occupier. They offer an amount of independent living and privacy than would be available in a more traditional care bedroom in a home. The units are purchased by the occupier. Each occupier is given a needs assessment to establish what level of care if required and from that a care plan for each individual can be formulated. A property can only be occupied or the lease assigned to a person who has been assessed as having the needs appropriate to the care services provided or their qualifying partner. A property owner can be requested to sell the property back to the site operator (within a reasonable time) if the accommodation is no longer appropriate to that person's needs, or in the event that the property is vacated for more than 6 months or otherwise ceases to be that person's main residence. Thus the units are not available to persons without care needs and are not available as 'open market' housing'. All units are controlled for sale by the community operators and cannot be sold to another party. Thus units cannot sub-let and therefore cannot be purchased as 'buy to let' and neither can they be mortgaged or owned by a company.

All residents have use of the communal facilities the site offers. All residents are contractually entitled under the terms of the lease to a comprehensive package of services including healthcare services, which they must pay for via a service charge. Depending on the accommodation occupied some of the services are included in the fees. Others are available on a menu basis.

The controls over the development operation and use.

The site will be operated by an approved Care Provider which will be registered and monitored by the Care Quality Commission, which is an independent Regulator of all Health and Social Care services in England. The Care provider will enter into a community care and management plan with individual occupiers providing their individual assessment of care needs. This enables support restrictions on occupation and a calculation of the service charges for that care provision and the charges for use of the facilities of the site. Councils can require, by way of a section 106 agreement, prior approval of the community care and management plan to ensure that the units and facilities retain their community link as well as ensuring that the development continues to provide care and support to the elderly.

In addition, on the sale of any of the units, covenants are entered into by the purchaser to restrict the resale of the unit to the site owner, prevent sub-let or lease or vacancy, as well as ensuring that the care package provisions for care are adhered to by the occupiers.

Councils can place other controls on the development by way of conditions or planning agreement to ensure an age restriction occupancy of the units, that the care and communal facilities are provided and therefore that the site is continued and maintained in perpetuity as a continuing care retirement community Attached at [Appendix 1](#) is a draft of a Unilateral Undertaking similar in format to the original mechanism associated with the original outline planning permission approved under reference 3/2016/0927.

The Planning History of the Site

3/2016/0927 – Outline application for the development of a Class C2 Continuing Care Retirement Community – Approved 16.4.2018

3/2021/0373 – Reserved Matters application pursuant to outline approval 3/2016/0927 for the erection of a Continuing Care Retirement Community comprising a 50 bed care home; 60 self-contained assisted living units; car parking; landscaping and associated works – Approved 7.10.2021

3.0. NEED

3.1. The Need for elderly accommodation in the Ribble Valley.

The issue of the provision of continuing elderly care communities is dealt with in the Lancashire County Council (LCC) publication '*Extra Care and Specialist Housing Strategy*' (ECSHS) issued in August 2014.

There is a consensus amongst all elderly person related publications that nationally as well as locally there is an increasingly ageing demographic profile. Some documentation translates this to being somewhere in the region of some 14.8 million over the age of 65 by 2014. At this point in time there are 9.6 million people in the UK over 65. That is 15.7% of the population.

The LCC publication has been produced because of the challenging budgetary and demand needs of the services for the elderly. LCC conclude in their publication that elderly person services can no longer be afforded to be provided in the way that they have historically and believes that '*investing in extra care facilities is the right thing to do.*' (paragraph 1.1 executive summary ECSHS).

The ECSHS study identifies a need for an additional 988 units of extra care across the County against a current provision of around 350. (paragraph 1.3 executive summary ECSHS). That report goes on to identify that extra care provides a cost effective alternative to commissioning into residential care and that better outcomes can be expected both for the individual and the commissioning authorities.

In terms of the numbers of extra or continued care home provision, that report has the following to say :

'The total number of extra care units currently required in Lancashire as defined in the previous section is 2,597, rising to 3,725 by 2033 which is detailed in Section 4.10. Of these, there are currently 671 units which are called "extra care" available in Lancashire (but only around 350 that are actually supported). These are a mix of purpose built facilities (Brookside in Ormskirk, Buckshaw Village in Chorley and Greenbrook House in Rossendale) and a number of units designated as extra care within sheltered housing schemes.' (paragraph 5.1 ECSHS).

That LCC report accepts that there is overuse of residential care and recommends investment in extra care provision. Whilst that relates to its own budgetary needs, it nonetheless points to the Council Council's strategy for elderly care provisions which this scheme can be used to contribute towards.

Locally, the Strategic Market Housing Assessment identifies that there are a higher percentage of pensioner households in the Ribble Valley (25.8%) than in the North West region (24.0%) and that the proportion of single pensioner households is 14.6% of the total population of Ribble Valley. It goes on to state that the Needs Survey across the Ribble Valley parishes highlight elderly households housing need in particular for one to two bedroom sheltered accommodation or bungalows near to local services and family. It goes on to set out that Ribble Valley's Sustainable Community Strategy recognises the huge challenge posed by the increasing need to find ways of providing for the projected growth in those over 80 within the district. Further that assessment recognised that there was a perception that there was a lack of schemes available for older people if they wanted to downscale from their current home. The report recommends further consultation with older people to explore the range of choices and options is carried out.

Subsequent to this Lancashire County Council published its "Housing with Care and Support Strategy 2018-2025". One of its key objectives is that the County Council are "aiming to have at least one extra care scheme for older adults in each district and about 1000 homes by 2025". All this is driven by the need to develop new models of care in order to meet the growing demand for services and place the funding of care and support on a more financially sustainable footing given that in March 2019 LCC were supporting 3285 older adults in long term residential care and a further 1111 older adults in nursing care. This equates to admissions of older adults in 2017/18 of 729 per 100,000 population compared to 557 across shire counties and 586 throughout England. Matters are further exacerbated by the forecast changes in the age structure of the population in the period from 2017-2025 with an overall 14% increase in the number of older adults, a further 25% increase in the number of people with dementia, a 17% increase in the number of people with long term illness and a 19% increase in the number of people living alone.

On page 11 of the report it identifies an estimated 125 extra care units to be provided within Ribble Valley up to 2025 and whilst this scheme would provide 60 of the identified units, at the time of the preparation of the LCC report it is significant to note that there were no units in existence nor under development within the Ribble Valley area.

The lack of provision for elderly people's housing in the Ribble Valley area is recognised by the inclusion of specific elderly housing policies in the Development Plan. These are set out in the sections that follow.

4.0. PLANNING POLICY

Government Policy

This is to be found primarily in National Planning Policy Framework, (NPPF), issued in December 2023.

The NPPF presumes in favour of sustainable development. That forms the heart of plan-making and decision-taking (paragraph 11). Sustainable development includes three roles: economic; social and environmental. In relation to the social role for this proposal, that includes supporting strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations (paragraph 7). This is taken further at paragraph 9 suggesting that "planning policies and decisions should play an active role in guiding development towards sustainable solutions but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area".

For plan making, NPPF does not change the statutory status of the development plan as the

starting point for decision making therefore making it desirable that local authorities should have an up to date plan in place. In those circumstances, NPPF seeks to approve development proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies out of date, granting planning permission unless doing so would outweigh the benefits or specific policies in the NPPF indicate development should be restricted.

In relation to promoting healthy communities under Section 8 entitled Promoting healthy and safe communities, paragraphs 96 and 97 of NPPF suggests that planning policies and decisions should aim to achieve healthy, inclusive and safe places as well as provide social, recreational and cultural facilities and services the community needs.

In relation to planning conditions and obligations, NPPF asks local authorities to consider whether unacceptable development could be made acceptable through the use of conditions or planning obligations, such obligations only being used when it is not possible to address unacceptable impacts through a planning condition. Planning obligations need to be necessary; directly related to the development and fairly and reasonably related in scale and kind to the development. Planning conditions should only be imposed where they are necessary; relevant to planning and to the development being permitted; enforceable, precise and reasonable in all other respects.

Local Planning Policy.

This to be found in the Ribble Valley Core Strategy 2008-2028, adopted on 16 December 2014.

The RVCS sets out the strategic spatial policies that form the basis of guiding investment decisions and determining how the area will change over future years. At this moment, the RVCS is a strategy only, with detailed proposals maps in terms of specific site allocations awaiting publication and adoption. With the adoption of the RVCS, its predecessor Local Plan and its site and development boundary designations have been cancelled.

In relation to new housing, the strategy aims to concentrate the majority of new housing within an identified strategic site to the south of Clitheroe and the principal settlements of Longridge and Whalley. Overall, some 5,600 new dwellings are aimed to be delivered over the plan period at a completion rate of 280 dwellings per year. Additionally, new housing will be focused towards 9 Tier 1 settlements, of which Billington is defined as one. These are stated to be the most sustainable of the 32 defined settlements. Table 4.12 of the RVCS sets out that for Billington, there are 76 new dwellings required over the plan period.

In relation to elderly person provision, the RVCS recognises at Key Statement 3 H3 : Affordable Housing, that *“Providing housing for older people is a priority for the Council within the Housing Strategy.”* That policy therefore seeks to require 15% of those 5,600 units for the elderly. That equates to some 840 elderly person dwellings over the plan period. Half of those are required to be affordable, some 420 affordable elderly person dwellings, with half as open market dwellings, again some 420 market elderly person dwellings. (assuming that requirement is made because all the new housing sites are on 10 or 5 or more unit sites).

There is no separate policy in the RVCS's that relates to the provision of community facilities, such as C2 uses, other than their inclusion within policy EC2 which aims to prevent proposals that have an adverse impact on existing community facilities.

The RVCS is supported by a Strategic Market Housing Assessment, which sets out that in relation to older people, Ribble Valley has a higher proportion of pensioner households (25.8%) than the North West average (24.0%) and that there will be 8,700 additional persons in the over 65 age group over the period to 2029. It identifies that the majority of pensioner households (77.1%) live in owner occupied accommodation. This high level of home

ownership in elderly households is suggested to imply that there are a large number of older people with equity in their own homes who may not have disposable income to meet housing repair costs.

5.0. PLANNING POLICY SUMMARY

Both Government and local planning policies are aimed at delivering a wide choice of quality homes including a mixture of housing based on *current and future demographic trends* (NPPF). At the local planning level, the need for suitable housing for the elderly is recognised in the RVCS and provision is made for elderly housing in the housing requirement of the plan. Unlike some local authorities, there is no specific policy in the development plan for continuing care, or extra care, communities. It is clear that the development strategy of the RVCS identifies Billington as a sustainable location, as the RVCS identifies it as a Tier 1 settlement where new development can be directed. Whilst this site is not identified as within the 'settlement boundary' of the draft DPD, it is also put that this site can be considered as being within, or at the least on the edge of, the Billington settlement. This is supported given the relevant planning history of the site.

With a continuing care or extra care scheme, the application of local planning policy has in other locations become dependent upon the use class such schemes are considered to fall into. That is because if, as many claim, the use class is Class C2 then the proposals are not considered against housing policies of development plans. Because of the implications of this for the application of planning policy, we consider this below.

6.0. THE USE CLASS DEFINITION.

Class C2 or C3?

The Use Class distinction to be made with a CCRC between class C3, dwellings and C2, residential institutions, is dependent upon the nature of care that is provided within the scheme. That is because class C3(b) refers to single households receiving care and class C2 refers to residential accommodation. Therefore, it is clear that a residential care home with communal facilities is class C2 whereas sheltered housing, which is self-contained accommodation with a warden with no care provided, is class C3(a). The definition of care remains unchanged and is given as:

'Personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or past or present mental disorder.'

In a CCRC scheme, the residential units are not for sale on the open market in the normal sense that implies. That is because they are restricted by way of a section 106 agreement, or planning condition, to a minimum age occupancy and to any occupant having to meet a minimum level of need or care and therefore any occupant must pay for a minimum package of care provided by the site operator. Any intended occupier is assessed initially for care needs which is regularly reviewed and the care packages adjusted accordingly. Because of this additional costs to occupancy, the units are not occupied other than by those in genuine need of care. Because of the old age restriction, a degree of future inevitable decline can be built into the care packages. This personal care for all of the residents is a distinguishing feature of a class C2 use. This is backed up by the requirement for all residents to have an absolute package of care. This is more than would be provided in a sheltered housing scheme where domiciliary care can be received but is not a condition of occupation. It is the explicit requirement to be in receipt of care as a condition of occupation that makes such uses a class C2 use.

The document reproduced at appendix 1 shows how that care provision can be controlled by planning conditions and agreement. Reproduced at Appendix 2 is an opinion of Counsel made

in 2008 and included in the Joseph Rowntree Foundation Guide to Planning. That concludes, that such uses fall within class C2 as residential institutions. Further, at [Appendix 3](#), is reproduced an appeal case example in 2014 where it is also concluded that continuing care, or extra care, retirement communities fall within the class C2.

In view of the above and subject to the imposition of appropriate conditions and a section 106 agreement to ensure the degree of care to be provided in the units is controlled by the imposition on any occupiers of a care package, the proposals are a class C2 use.

7.0. SUSTAINABILITY.

NPPF sets out that there are three dimensions to sustainable development. These are: economic, social and environmental. With regard to the economic role, there is employment by way of the initial construction and continuing employment for the running of the site. For the site operation, the numbers of staff required are likely to be as follows:

Village manager	1
Care home manager	1
Trained nurses	8
Carers	24
Domiciliary and domestic care	12
chef and cooking	5
waitress	6
laundry	2
housekeeping	4
receptionist	1
Bus driver	1
Treatment rooms/Activities organiser	2
Gardner	1
TOTAL	68

There are also likely to be other support and extra services paid for by residents that will generate employment to local services.

The facilities and care services offered by the development will be available to the local community for use, especially those in need of care, and so the proposals meet the performance of a social role in meeting the needs of the local community.

In terms of an environmental role, the scheme provides the opportunity to minimise the need to travel by car as the facilities are on site for the residents; there is a communal bus service provided by the operator for residents and staff and it is recognised that such uses have low levels of car ownership so that significant numbers of additional car journeys are not generated. Thus the proposals are sustainable development.

8.0. CONCLUDING REMARKS

- 8.1.** It is acknowledged that there is an increasing elderly population in Ribble Valley and that this is only likely to increase with a high percentage of those elderly person households in single occupancy. The RVCS attempts to deal with that ageing population by the inclusion within its affordable housing strategy of a percentage of elderly person units. The percentage of elderly people in the 85+ age range will also increase by 2030 and therefore the numbers of those within that age range requiring care due to long term medical needs will also increase. There is no provision in the RVCS for C2 or residential institutional uses. Neither is there any other facility in the area that provides the range and level of care within a single facility such as will be provided with these proposals. There is therefore a shortfall of elderly care provision within Ribble Valley and therefore there is a need for this type of facility.

- 8.2.** Billington is identified in RVCS as a Tier 1 settlement in policy DS 1 and is therefore viewed in the development plan as a sustainable location and policy DMG2 requires new development to consolidate and be closely related to the main built up areas of tier 1 settlements. This site is so related, being located as it is adjacent to the existing built area and therefore the development of the site as proposed is in keeping with the strategic locational considerations of the RVCS.

- 8.3.** The CCRC or extra housing site as proposed can be controlled by planning conditions and agreement to ensure that it relates to elderly person care provision. Such conditions and agreement ensure that the site does not become available for general open market housing and so for planning purposes, the development of such sites does not conflict with development plan housing policies. Further, because such sites are self-contained for services and facilities, they provide a sustainable solution to the elderly housing need provision. They do not generate large volumes of traffic because of the nature of the elderly residents. This site, being identified in the RVCS as a sustainable location and the proposed use having sustainable credentials, its approval would not conflict with development plan policy for the location of new development, housing policies or sustainability principles.

APPENDIX 1

DATED

16th April

2014

PLANNING AGREEMENT

made between

THE TRUSTEES OF GALLAGHER GROUP DB SSAS

and

GALLAGHER PROPERTIES LIMITED

and

MAIDSTONE BOROUGH COUNCIL

pursuant to

SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990

in respect of

**Land at Ledian Farm, Upper Street,
Leeds, Maidstone, ME17 1RZ**

dgb Solicitors LLP
The Captain's House
Central Avenue
Pembroke
Chatham Maritime
Kent
ME4 4UF
Ref: 3/97290/8

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THIS AGREEMENT BY DEED is made on 16th April 2014

BETWEEN

- (1) **PATRICK GALLAGHER, MARY BRIGID GALLAGHER** both of Hermitage Farm, Hermitage Lane, Maidstone, Kent ME16 9NT and **ROWANMOOR TRUSTEES LIMITED** (Company Registration Number 01846413) whose registered office is at Rowanmoor House, 46-50 Castle Street, Salisbury SP1 3TS as Trustees of the Gallagher Group DB SSAS ('the First Owner') and
- (2) **GALLAGHER PROPERTIES LIMITED** (Company Registration Number 02082870) whose registered office is at 171-173 Grays Inn Road London WC1X 8UE ('the Second Owner')
- (3) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House King Street Maidstone Kent ME15 6JQ ('the Council')

in pursuance of Section 106 of the 1990 Act (as hereinafter defined) and Section 111 of Local Government Act 1972

AND WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

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

"the 1990 Act" means the Town and Country Planning Act 1990 as amended

"Care Home" means the care home within the Village Centre Building

"Care Plan" means a personalised care plan in a form acceptable to the Care Quality Commission and which:

- (i) is subject to review according to medical need but otherwise re-assessed for suitability for the person in question at intervals of not more than six months

- (ii) is assessed and determined by the Domiciliary Care Agency as appropriate for the person in question.
- (iii) provides for a minimum of 1.5 hours of Personal Care per Qualifying Person per week

"Care Unit" means, a Close Care Unit or an Assisted Living Unit , but not, for a avoidance of doubt, a bedroom within the Care Home

"Communal Facilities" means the meeting rooms and the wellness centre in the Village Centre Building

"Communal Facilities Conditions" means such reasonable conditions imposed in relation to the use of the Communal Facilities as are considered appropriate to ensure that the Communal Facilities are available on a membership basis to persons who satisfy the Communal Facilities Criteria.

"Communal Facilities Criteria" means:

Either

- (i) a person normally resident within the village of parish of Leeds in Maidstone, Kent and:
 - 1. aged over 65; or
 - 2. aged under 65 and registered for Disability Living Allowance or in receipt of a General Practitioner certificate stating a disability; or
 - 3. aged under 65 and registered with the Council as visually impaired or
- (ii) an Employee and the immediate family of an Employee or contracted and living with him or her or
- (iii) a member of the general public

"Commencement of the Development" means the implementation of the Planning Permission by the carrying out on the Land of a material operation as defined by Section 56(4) of the 1990 Act in connection with the Development save that for the purposes of this Deed none of the following operations shall constitute a material operation:

archaeological or site inspections
site or soil surveys

decontamination works
demolition or site clearance
the laying of services
the erection of a site compound
the erection of temporary fences or hoardings
the display of advertisements including the erection of advertisement hoardings
and
interim landscaping works

and "**Commence**" shall be construed accordingly

"Development" means the development of the Land permitted by the Planning Permission

"Disability Living Allowance" means the disability living allowance attendance allowance or personal independence payment (or successor and replacement allowances of the same type) payable by central government through the benefits system

"Domiciliary Care Agency" means a domiciliary care agency registered with the Care Quality Commission with responsibility for providing domiciliary care to Qualifying Persons.

"Employee" means a person employed by the owner or operator of the Development to work at the Development.

"First Occupation" means the first occupation of a Care Unit (as specified), but does not include occupation by the Owners for the purposes of construction fitting out decoration marketing or display and **"First Occupy"** shall be construed accordingly

"Healthcare Contribution" means the sum of £49,320 payable by the Owner to the Council pursuant to Clause 5

"Index" means the All-in Tender Price Index (as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors)

"Index Linked" means that the sum payable shall be increased in the same proportion as the percentage increase in the Index between the quarterly Index figure immediately preceding the date of this Deed and the quarterly Index figure for the quarter immediately preceding the date of actual payment

"Land" means the land at Ledian Farm, Upper Street, Leeds, Maidstone, Kent ME17 1RZ which is shown for purposes of identification only edged red on Plan 1 being (as edged red but uncoloured on the Plan) the whole of the property owned by the First Owner registered at the Land Registry with Title Absolute under Title number K924761 and (as edged red and coloured green on the Plan) part of the property owned by the Second Owner registered at the Land Registry with Title Absolute under Title number K925191

"Local Area" means the area within the parish of Leeds in Maidstone, Kent at the date of this Deed

"Local Connection" means, in relation to an individual, someone who:

- (a) has his current only or principal home or place or work in the Local Area;
- (b) is or has previously been employed in the Local Area for an aggregate period of not less than 3 years provided that such period is either continuing at, or ended not more than 2 months before, the date of taking up occupation of the relevant part of the Development; or
- (c) previously lived and/or worked in the Local Area for an aggregate period of not less than 5 years; or
- (d) has established links in the Local Area by reason of birth and/or has immediate family who has its current only or principal home and/or place of work in the Local Area.

"Maidstone Area" means the administrative area of the Council at the date of this Deed

"Maidstone Connection" means, in relation to an individual, someone who:

- (a) has his current only or principal home or place or work in the Maidstone Area;
- (b) is or has previously been employed in the Maidstone Area for an aggregate period of not less than 3 years provided that such period is either continuing at or ended not more than 2 months before the date of taking up occupation of the relevant part of the Development; or
- (c) previously lived and/or worked in the Maidstone Area for an aggregate period of not less than 5 years; or
- (d) has established links in the Maidstone Area by reason of birth and/or has immediate family who has its current only or principal home and/or place of work in the Maidstone Area

"Marketing Scheme" means a scheme to market the Care Units for sale in a way which gives priority to persons with a Maidstone Connection and further priority to persons with a Local Connection to be agreed between the Owner and the Council in accordance with the provisions of clause 6

"Monitoring Committee" means a committee comprising 6 persons being

- (i) two persons nominated by the Owner the developer or the proposed operator of the Development
- (ii) two persons who are a Members of the Council and
- (iii) two persons who are an officers of the Council

"Owners" means the First Owner and the Second Owner

"Personal Care" means

- assistance with bodily functions such as feeding bathing and toileting
- care which falls just short of assistance with bodily functions but still involving physical and intimate touching including activities such as helping a person get out of a bath and helping them to get dressed
- non-physical care such as advice encouragement and supervision and
- emotional and psychological support including the promotion of social functioning behaviour management and assistance with cognitive functions'

"Plan" means the plan of the Land annexed hereto

"Planning Application" means the application dated 12 November 2012 and validated on 23 November 2012 registered by the Council under the Council's reference number MA/12/2046

"Planning Challenge" means an application for judicial review challenging the grant of the Planning Permission lodged within six weeks of the date of the grant of the Planning Permission

"Planning Obligations" means the obligations contained in Clauses 4 to 10 (inclusive)

"Planning Permission" means the written planning permission for the Development pursuant to the Planning Application which on 12 December 2013 the Council resolved give its Head of Planning and Development delegated powers to grant subject to the completion of this Deed

"Qualifying Person" means a person who (a) is the subject of a Care Plan, (b) has contracted via the obligations in the regulations and service charges applicable to the completion of the Development to receive Personal Care for a minimum of 1.5 hours per week and (c) (i) is aged 65 years or more; (ii) under 65 years and registered for Disability Living Allowance or (iii) in receipt of a General Practitioner's certificate stating a disability or is registered with the Council as visually impaired

"Standard Operating Conditions" means the relevant standard operating conditions set out in the Schedule as may be varied from time to time by the operator

"Village Centre Building" means the village centre building to be permitted to be developed by the Planning Permission comprising the Care Home, Close Care Units, Linked Assisted Living Units, a wellness centre, shop, restaurant, café bar, library, craft room, laundry, kitchen and administration areas

Application Boundary -
Land in applicants control but
not part of Planning Application



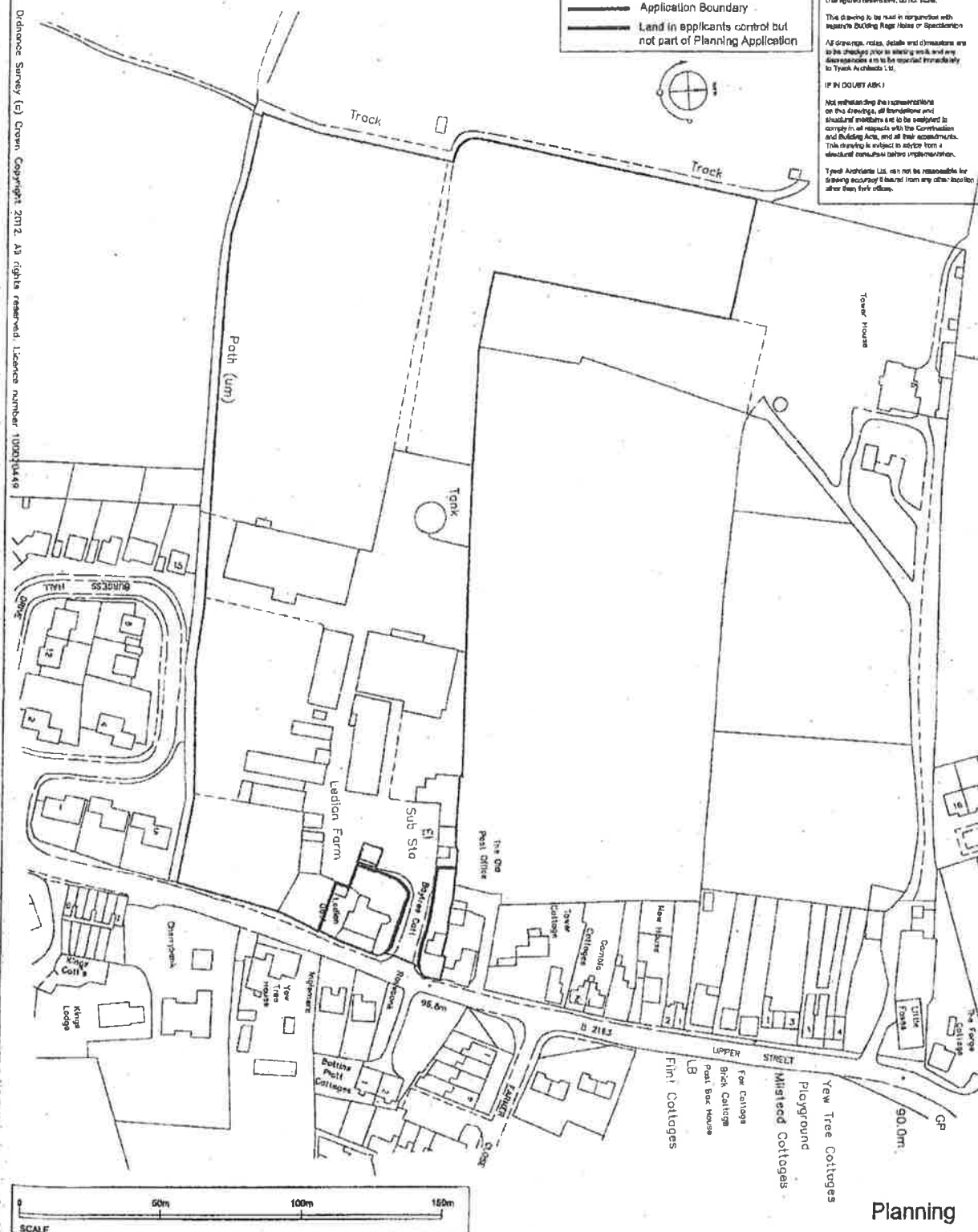
Use figured dimensions, do not scale.

As drawings, notes, details and dimensions are in the checks prior to starting work, and any discrepancies are to be reported immediately to Tyack Architects Ltd.

(IF IN DOUBT ASK)

Notwithstanding the representations on this drawing, all foundations and structural members are to be designed to comply in all respects with the Commission and Building Acts, and all their amendments. This drawing is subject to advice from a structural consultant before implementation.

Type: Architects Ltd. can not be responsible for
 drawing accuracy if issued from any other place
 other than their offices.



Planning

Tyack
ARCHITECTS

date Sept '12

drawn db

checked

Site Location Plan

Proposed Care Village, Ledian Farm, Leeds Kent

1:1250@A3

nummer 2222.010

Copyright © 2011 Trade Architects Ltd

I. k. Toman

checked *AGB*

Mr Gallagher

✓ Anurup Singh
✗ Rohan Kumar / Trustee / tel

"Village Facilities" means that part of the Development intended to be made available for use by the public as well as the occupants of the Development, namely the reception area, the shop, the restaurant and café bar, the meeting rooms, and the Woodland and Amenity Area, but not the Communal Facilities

"Village Transport Conditions" means such reasonable conditions imposed in relation to the use of the Village Transport Service as are considered appropriate to ensure that the Village Transport is available to residents of the Development and those meeting the Village Transport Criteria recognizing that priority will always be given to residents of the Development.

"Village Transport Criteria" means someone who either

- (i) holds the appropriate communal membership entitling him to use the Communal Facilities or
 - (ii) has personal mobility difficulties and has his current only or principal home in the Local Area
- and

can be reasonably and safely transported by the Village Transport Service

"Village Transport Service" means a twice weekly return transport service from the Development to shops and facilities in Maidstone on Mondays to Saturdays and a twice weekly return trip to supermarkets in or around the Maidstone Area for the benefit of residents of the Development and other persons who satisfy the Village Transport Conditions.

"Woodland and Amenity Area" means that part of the Development designated for use as a woodland and amenity area.

1.2 The expressions the "Council" and the "Owners" (or either of them) shall include their respective successors in title and assigns save where specifically provided to the contrary by this Deed

1.3 Words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons

1.4 This Deed is a planning obligation for the purposes of Section 106 of the 1990 Act

1.5 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute

1.6 References in this Deed to any Clause Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause Sub-Clause or Schedule to this Deed so numbered

1.7 The Clause paragraph and Schedule headings do not form part of this Deed and shall not be taken into account in its construction or interpretation

2. RECITALS

2.1 The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated and the body by which the provisions of this Deed are intended to be enforceable

2.2 The Council is a Local Planning Authority within the meaning of the 1990 Act and is a principal council within the meaning of section 270(1) of the Local Government Act 1972 and is responsible for the enforcement of the obligations contained in Clauses 4-10 of this Deed

2.3 At the time the Planning Application was made that part of the property registered at the Land Registry with Title number K924761 was owned by Patrick Gallagher, Mary Brigid Gallagher and JB Trustees Limited as Trustees of the Gallagher Plant Limited SSAS but it is now owned by the First Owner

2.4 The Owners own the freehold interest in the Land

2.5 The Council consider that it is expedient in the interests of proper planning that the Owners should be required to enter into this Deed

2.6 The Owners have agreed to enter into this Deed:

2.6.1 pursuant to the provisions of Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972

2.6.2 upon the terms and conditions hereinafter appearing and

2.6.3 with the further intent that the same shall be a Local Land Charge and registered as such upon its completion

3. ENFORCEABILITY

3.1 The Owners enter into the obligations set out in this Deed for themselves and their successors in title for the benefit of the Council to the intent that the obligations in this Deed shall be enforceable not only against the Owners but also against the successors in title of the Owners (or either of them) and any person claiming through or under the Owners an interest or estate in the Land or any part thereof **PROVIDED THAT**

3.1.1 The Owners any successors in title of the Owners (or either of them) and any person deriving title under it shall not be liable for any breach of this Deed occurring after it shall have parted with its interest in the Land or the part of the Land to which the breach relates and

3.1.2 The obligations contained in this Deed shall not be binding upon the individual owner(s) lessee(s) or occupier(s) of any of the Care Units or any mortgagee or chargee of such owner lessee or occupier or any person deriving title from them

4. HEALTHCARE CONTRIBUTION

4.1 The Owners covenant not to First Occupy any of the Care Units or any part of the Care Home until the Primary Healthcare Contribution has been paid to the Council

4.2 The Council covenants with the Owners to

4.2.1 use its reasonable endeavours to ensure that NHS Property Services Limited (NPS) or its successors in title spend the Healthcare Contribution only on the provision improvement and enhancement of the doctors' surgery situated at The Orchard Surgery Horseshoes Lane Langley Maidstone Kent

4.2.2 on its receipt from NPS to return to the Owners (even if the Owners are not the owners of the Land at the time of such repayment) any unexpended part of the Healthcare Contribution as at the date of the tenth anniversary of payment to the Council by the Owners

5. QUALIFYING PERSONS and DOMICILIARY CARE AGENCY

5.1 The Owners covenant not to allow any person to occupy any of the Care Units or the Care Home unless they are a Qualifying Person or a spouse (including a surviving spouse) or a dependent of the Qualifying Person or, during the period of three (3) years commencing on the First Occupation of the first Care Unit to be occupied, one of a maximum of four (4) Employees

5.2 The Owners covenant not to First Occupy any of the Care Units or any part of the Care Home until a Domiciliary Care Agency is in operation at the Development

6. MARKETING

6.1 The Owners covenant with the Council that the Owners shall not market the Care Units other than by the Marketing Scheme set out in clause 6.2

6.2 It is agreed between the Owners and the Council that the Marketing Scheme shall provide, among other things, that:

(a) the Care Units shall first be made available for purchase to persons with a Local Connection and the Owners shall not agree a sale with or accept a deposit from anyone who is not a person with a Local Connection for a period of 2 months from commencement of marketing (which shall be when the sale specification and prices are first available to prospective purchasers)

- (b) in the event that any Care Unit has been marketed at market value for a period of 2 months and no person or persons with a Local Connection have been reserved to purchase that Care Unit, then the Owners shall be entitled to market that Care Unit to persons with a Maidstone Connection
- (c) the Owners shall not agree a sale of a Care Unit with or accept a deposit from anyone who is not a person with a Maidstone Connection for a period of 2 months from commencement of marketing to persons with a Maidstone Connection
- (d) in the event that any Care Unit has been marketed at market value for the period of 2 months referred to in clause 6.2 (c) and no person or persons with a Maidstone Connection have been reserved to purchase that Care Unit, then the Owner shall be entitled to market all unsold Care Units generally on the open market free from any restrictions
- (e) if more than one similar offer is received for the same Care Unit, then the Owners shall give priority to a person with a Maidstone Connection and a person with a Local Connection shall be given priority over a person with only a Maidstone Connection

7. ACCESS TO VILLAGE FACILITIES

The Owners covenant with the Council to use reasonable endeavours to make the Village Facilities available for use (in common with residents of the Development) to the general public, subject to Standard Operating Conditions and giving priority to residents of the Development

8. ACCESS TO COMMUNAL FACILITIES

The Owners covenant with the Council to use reasonable endeavours to make the Communal Facilities available for use (in common with residents of the Development) to persons who do not reside at the Development but who meet the Communal Facilities Criteria, subject to Standard Operating Conditions.

9. ACCESS TO VILLAGE TRANSPORT SERVICE

- 9.1 The Owners covenant with the Council to use reasonable endeavours to make the Village Transport Service available for use (in common with residents of the Development) to persons who do not reside at the Development but who meet the Village Transport Criteria, subject to Standard Operating Conditions,

10. MONITORING COMMITTEE

- 10.1 The Owners covenant with the Council:

10.1.1 to form, or procure the forming of, the Monitoring Committee prior to the Commencement of Development and not to Commence Development until the Monitoring Committee has been formed.

10.1.2 to convene a meeting of the Monitoring Committee at least once in every period of 6 months following Commencement of the Development and to report to the Council with evidence as necessary (such as minutes) to show the Owners' compliance with the covenants in clauses 5, 6, 7, 8 and 9 of this Deed;

10.1.3 to cease construction and marketing of the Development after any period of 6 months has expired without a meeting of the Monitoring Committee having been held;

10.1.4 notwithstanding the provisions of Clause 10.1.2 from the date of First Occupation until the first anniversary of that date, to convene, or procure the convening of, a meeting of the Monitoring Committee at least once in every period of 4 months and take minutes of such meetings and take into account representations made at those meetings by the Monitoring Committee

- 10.2 If the members of the Monitoring Committee fail to attend any meeting of the Monitoring Committee, convened, or procured by the Owners, the meeting shall be deemed to have taken place if within 14 days after the date on which the

meeting was due to be held, the Owners send to the other members of the Monitoring Committee the report and/or documents it was going to table at the meeting

11. COSTS

The Owners covenant to pay to the Council on completion of this Deed its reasonable and properly incurred legal and administrative costs

12. AGREEMENTS AND DECLARATIONS

12.1 It is agreed and declared by and between the parties as follows:

12.1.1 Nothing contained or implied in this Deed shall prejudice or otherwise affect the rights powers duties and obligations of the Council in their exercise of their functions either as Local Planning Authority or in any other capacity and that all rights powers duties and obligations under any public and private statutes byelaws and regulations may be as fully and effectually exercised

12.1.2 Any notice or written communication to be served by one party upon any other pursuant to the terms of this Deed shall be deemed to have been validly served if transmitted by facsimile delivered by hand or sent by registered post or recorded delivery post to the other party at its address herein specified or such other address as from time to time be notified for the purpose by notice in writing and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an Officer or duly authorised signatory thereof

12.2 The covenants of the Owners herein are given by the First Owner and the Second Owner jointly and severally

- 12.3 The covenants as contained herein take effect as provided by this Deed but for the avoidance of doubt (save for Clause 11) they shall not be of any effect until Commencement of Development
- 12.4 This Deed shall be registered in the Register of Local Land Charges
- 12.5 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the Commencement of Development or is modified (other than by agreement with or at the request of the Owners) this Deed shall forthwith determine and cease to have effect and the Owners and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 12.6 The Council will upon the written request of the Owners at any time after the planning obligations set out within this Deed have been fully discharged or performed issue with written confirmation and effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 12.7 This Deed shall cease to have any effect if Planning Permission for the Development has not been implemented before the expiration of the period specified (or deemed to be specified) in such Planning Permission for the Commencement of the Development pursuant to Sections 91 or 92 of the 1990 Act (or such later date as may be agreed in writing by the Council)
- 12.8 Nothing in this Deed shall be construed as affecting prohibiting or limiting any rights to develop any part of the Land in accordance with any other planning permission granted whether before or after the date of this Deed by the Council or the First Secretary of State or any other competent authority
- 12.9 If there is any conflict between the terms of this Deed and any conditions attached to the Planning Permission the latter shall take precedence
- 12.10 Nothing in this Deed shall require the performance by the Owners of any obligations whatsoever in or upon over or under land outside the Land if that land is outside the ownership or control of the Owners

- 12.11 No person other than a contracting party may enforce any provision of this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999
- 12.12 All sums payable by the Owners pursuant to this Deed (save for those payable pursuant to Clause 11) shall be Index Linked
- 12.13 In the event of a Planning Challenge by any person other than the signatories to this Deed the provisions of this Deed (save for Clause 11) shall be suspended only on the cessation of Development until such time as the final determination of the Planning Challenge and shall (in circumstances where the Planning Permission is quashed on such final determination) have no further force and effect
- 12.14 The Owners shall give written notice to the Council not later than 14 days after the occurrence of any restrictive event defined within this Deed has been reached in order to assist the Council with the monitoring and delivery of all of the planning obligations set out herein
- 12.15 The liability of Rowanmoor Trustees Limited (company registration number 01846413) hereunder shall not be personal and shall be limited in any event to the extent of the assets of the Gallagher Group DB SSAS ("the Fund") in its possession. All such liability shall cease when Rowanmoor Trustees Limited ceases to be a trustee of the Fund.

13. DISPUTE RESOLUTION

- 13.1 Without prejudice to the rights of any party to this Deed to take alternative action save for matters of construction (which shall be matters for the Courts) any dispute or disagreement arising under this Deed including questions of value or any question of reasonableness may be referred at the instance of any party for determination by a single expert whose decision shall be final and binding on the parties.
- 13.2 The following provisions and terms of appointment shall apply to such disputes or disagreements and questions:

- 13.2.1 The expert shall have at least ten years post qualification experience in the subject matter of the dispute
- 13.2.2 The expert shall be agreed between the parties or appointed by the President of the Royal Institute of Chartered Surveyors at the request of any party to the dispute
- 13.2.3 The persons calling for the determination shall make written submissions to the expert and the other parties within ten working days of his appointment
- 13.2.4 The other parties shall have 21 working days from the receipt of such written submission or such extended period as the expert shall allow for a response
- 13.2.5 The expert shall disregard any representations made out of time and shall make his decision within 21 working days of receipt of the representations under Sub-Clause 13.2.4 or if none the expiry of the period referred to in Sub-Clause 13.2.3
- 13.2.6 The expert's decision shall be in writing and give reasons for his decision
- 13.2.7 The expert's fees shall be met by the person calling for the determination unless the other party is found to have acted unreasonably in which case the other party shall meet such costs and reimburse any expert's fees already paid by the other party

IN WITNESS whereof the Owners have executed this document as a Deed upon the date hereof

THE SCHEDULE

Standard Operating Conditions

1. Village Transport Service

- 1.1 The operator will deliver the Village Transport Service in accordance with a published timetable.
- 1.2 Anyone meeting the Village Transport Criteria may request a reservation to use the Village Transport Service on a first come, first served basis. The operator may determine how far in advance bookings may be made.
- 1.3 The operator will decide if an individual meets the Village Transport Criteria at its sole discretion.
- 1.4 The operator may decline to transport anyone wishing to travel to or from anywhere outside Leeds Village.
- 1.5 The operator may accept reservations from anyone living in the Development before accepting reservations from those living outside the Development.
- 1.6 The operator may refuse to transport anyone whose needs cannot be adequately met during the journey or who presents a health and safety risk to the driver or other passengers as determined by risk assessment by the operator.
- 1.7 The operator may refuse to transport anyone who presents anti-social behavior or for any other reason at its sole discretion.
- 1.8 The operator may cancel or postpone any service scheduled to operate on any day in the event of an appropriate vehicle or driver being unavailable for any reason; or if prevented by snow or other extreme weather.

- 1.9 The operator may limit the number of reservations made by an individual if their use unreasonably prevents others who meet the Village Transport Criteria from using the service.
- 1.10 The operator will not wait for anyone who is not at the pick up point at the designated time.
- 1.11 The number of wheelchair users that can be accommodated within the Village Transport Service may be restricted by the availability of vehicles and other operating considerations.

2. Wellness Centre

- 2.1 The operator will provide a Wellness Centre.
- 2.2 The operator will determine the opening hours of each of the facilities within the wellness centre at its sole discretion.
- 2.3 The operator will provide an external membership for anyone resident in the Local Area and the Maidstone Area over the age of 65 and anyone under the age of 65 at the discretion of the operator subject to the wellness centre conditions.
- 2.4 Membership of the wellness centre will be subject to payment of a subscription determined by the operator.
- 2.5 The operator will determine the number of members having regard to the size of the facilities and usage.
- 2.6 The operator will make the facilities available for use by healthcare professionals and practitioners at its sole discretion subject to availability and payment of a service fee.
- 2.7 The operator may accept reservations from anyone living in the Development before accepting reservations from those living outside the Development.

- 2.8 The operator may refuse to accommodate anyone whose needs cannot be adequately met or who presents a health and safety risk to residents, users or staff.
- 2.9 The operator may admission to anyone who presents anti-social behavior or for any other reason at its sole discretion.
- 2.10 The operator may close any facility or service scheduled to operate on any day in the day in the event of equipment failure, technical difficulties or staff being unavailable for any reason.

3. Communal Facilities

- 3.1 The operator will determine the opening hours of each of the facilities within the Development at its sole discretion.
- 3.2 The operator will provide an external membership for anyone resident in the Maidstone Area over the age of 65, and anyone under the age of 65 at the discretion of the operator, subject to the wellness centre conditions.
- 3.4 Membership of the Communal Facilities will be subject to payment of a subscription determined by the operator.
- 3.5 The operator will determine the number of members having regard to the size of the facilities and usage.
- 3.6 The operator will make the facilities available for use by healthcare professionals and practitioners at its sole discretion subject to availability and payment of a service fee.
- 3.7 The operator may accept reservations from anyone living in the Development before accepting reservations from those living outside the Development.
- 3.8 The operator may refuse to accommodate anyone whose needs cannot be adequately met or who presents a health and safety risk to residents, users or staff.

- 3.9 The operator may admission to anyone who presents anti-social behavior or for any other reason at its sole discretion.
- 3.10 The operator may close any facility or service scheduled to operate on any day in the day in the event of equipment failure, technical difficulties or staff being unavailable for any reason.
- 3.11 The operator may limit the number of reservations made by an individual if their use unreasonably prevents others who meet the Communal Facilities Criteria from using the facilities or service.

4. Village Facilities

- 4.1 The operator shall permit anyone resident in the Local Area and the Maidstone Area over the age of 65 or anyone under the age of 65 at the discretion of the operator to use the Village Facilities
- 4.2 The hours of operation of each individual facility shall be at the sole discretion of the operator.
- 4.3 The prices and charges shall be at the sole discretion of the operator.
- 4.4 The operator may accept reservations from anyone living in the Development before accepting reservations from those living outside the Development.
- 4.5 The operator may refuse to accommodate anyone whose needs cannot be adequately met or who presents a health and safety risk to other residents, users or staff.
- 4.6 The operator may refuse admission to anyone who presents anti-social behavior or for any other reason at its sole discretion.
- 4.7 The operator may close any service scheduled to operate on any day in the event of equipment failure, technical difficulties or staff being unavailable for any reason.

- 4.8 The operator may limit the number of reservations made by an individual if their use unreasonably prevents others from using the facilities or service.

The Common Seal of **MAIDSTONE**)
BOROUGH COUNCIL was affixed hereto in)
the presence of:)

I. K. Turner

Solicitor - Authorised Signatory



190897/1

Signed as a Deed on behalf of)
GALLAGHER PROPERTIES LIMITED by)

Director

Director/Secretary

[Signature]

The Common Seal of **ROWANMOOR**)
TRUSTEES LIMITED was affixed hereto in)
the presence of:)

Authorised Signatory

Authorised Signatory

Andrew

[Signature]



Signed as a Deed by the said **PATRICK**)
GALLAGHER in the presence of :

Signature X 

Name N. G. A. YANDIE

Address 7 CONWAY ROAD

MAIDSTONE

MEIL DND

Occupation Co. Director

X 

Signed as a Deed by the said **MARY**)
BRIGID GALLAGHER in the presence of :

Signature X 

Name N. G. A. YANDIE

Address 7 CONWAY ROAD

MAIDSTONE

MEIL DND

Occupation Co. Director

X  Mr. Gallagher

APPENDIX 2

Appendix T3

Counsel's opinion for Crowell Homes Ltd on the C2 or C3 Use Class issue

Accompanies the report

Continuing care retirement communities

A guide to planning

Robin Tetlow



**JOSEPH ROWNTREE
FOUNDATION**



**Planning
Officers
Society**

CROWELL HOMES LIMITED

re

Redevelopment of Ashwicke Hall, Marshfield, Gloucs

O P I N I O N

1. I am asked to advise Crowell Homes in connection with a dispute that has arisen between the company and South Gloucestershire Council about whether the proposed use of Ashwicke Hall can properly be regarded as falling within classes C2 or C3 of the Use Classes Order. The clients contend that class C2 is the appropriate class; the Council, class C3. The present use is within Use Class C2. Ashwicke Hall is a Grade II listed building.

2. The very extensive land and premises in question are shown outlined in red on plan 4370-01A with my Instructions. They consist of a number of buildings which comprise Ashwicke Hall itself, buildings linked to it and a number of detached outbuildings. There are extensive grounds and gardens. I have taken all this area to be the planning unit.

3. From the plans and description the accommodation and proposed uses on the site are:

(1) Ashwicke Hall: ground-floor reception and communal rooms; a cellar with a health suite, pool etc.; upper floor suites for residents.

(2) Ashwicke Court: further suite accommodation for residents.

(3) The walled garden: I am not clear what is proposed here. I have assumed either communal accommodation or further suites or care rooms.

(4) The stable block: the same comment applies to this.

(5) Milner Court: nursing bedrooms; residents' suites; eight staff bed-sits.

(6) Detached buildings: East Lodge will be the manager's accommodation. The Raizes, Sallybrook and West Lodge will be sold as leasehold private houses. I assume that these will be entirely separate and hence outside any C2 use. There will be a material change of use when this occurs.

4. The intention is to operate a twenty-eight bed nursing home and approximately eighty-two Close Care units. The Nursing Home is the core of the development and provides care throughout the accommodation both for the nursing bedrooms and the Close Care units. The latter provide suites of rooms where residents can live and where, if necessary, 24 hour care can be provided even so far as, e.g., help with bathing and dressing/undressing.

5. The characteristics of the Close Care units are:

(1) they will be sold only to those who have an individual assessment of their needs which leads to an agreed care package. There will as I understand it be a similar assessment of those who use the nursing home but in either case they will be able to use the range of communal facilities (see below).

(2) The Close Care accommodation will be sold on a leasehold basis (of which 6 units will be rented to Social Services/Health Authority) for a term of 125 years.

(3) There will be restrictions in the leases such that occupation of the units will be linked to the Nursing Home; no alterations will be allowed; and the tenant will be an 'approved occupier' - although such an occupier will be allowed to have temporary guests.

(4) A service charge will be payable in addition to the care package following the assessment.

(5) There will be no assignment, under-letting or parting with possession of the Close Care unit, save with the consent of the landlord. If the dwelling falls vacant and the landlord believes that the tenant has permanently vacated the dwelling the landlord can require the tenant to state his intentions about his occupation. He can also, subject to the precise terms of the draft lease, give a notice which will allow him to obtain a surrender of the lease of the Close Care unit by a purchase of the tenant's interest.

(6) The landlord will covenant to repair and decorate the main structure and common parts and keep them in good order.

(7) The landlord will provide communal areas and support including, e.g., heating and electricity for each unit; alarm links; 24 hour trained nursing staff; lounges; restaurant; library; laundry facilities; swimming pool;

fitness suite and spa; social programme; cleaning; IT/TV room and so on.

(8) It is perhaps worth noting that internal alterations will of course not normally require any form of planning consent (see s. 55(2)(a) of the 1990 Act) although in this case there is the complication of the listed building which may mean that listed building consent is necessary.

6. Use Class C2 refers to:

"Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)). Use as a hospital or nursing home."

By contrast use class C3 is defined as:

"Use as a dwellinghouse (whether or not as a sole or main residence) - (a) by a single person or by people living together as a family, or (b) by not more than six residents living together as a single household (including a household where care is provided for residents)."

7. The first issue is whether what is proposed falls within use class C2 or C3. That in turn depends primarily on whether the Close Care units are 'use as a dwellinghouse' within the meaning of C3 (in this context almost inevitably, it seems to me, under subparagraph (a)) and whether, if so, that is enough to take them from use for the provision of residential accommodation and care etc. or from use as a nursing home and also therefore from C2 to C3.

8. Whether a particular unit is capable of being a dwellinghouse is a question of fact. There is no definition of it in the Use Classes order. The test is whether it can afford to those who use it the facilities required for day-to-day private domestic existence (see *Gravesham BC v. SOSE* (1982) 47 P. & C.R. 142 and *Moore v. SOSE*

(1998) 77 P. & C.R. 114). Although I have not seen plans of individual suites and the nature of the accommodation, I have the clear impression, because of the reference to their 'independence' and 'self-containment', that the Close Care units are likely to pass this test, particularly if the facts in *Gravesham* are considered. But I do not think that this is enough.

9. Use class C2 refers to residential institutions of various sorts and uses for those purposes. The present use is capable of falling under the first two sub-paragraphs: "*Use for the provision of residential accommodation and care to people in need of care (other than a use falling within class C3 ...)*" and, alternatively, "*Use as a ... nursing home*". It will be noted that the latter does not have the qualification relating to Use class C3 that applies to the former.

10. The issue centres on the proposed Close Care units that are to be developed. I say that because of the Council's letter of 16th December 2004 which refers to the "*proposed mixed use of the site, a significant element of which fall within Class C3 ...*" I take that to be a reference to the nursing home on the one hand and the Close Care units on the other. But if the Close Care units are developed as proposed, is the development still within the description of "*use for the provision of residential accommodation and care*" etc. or "*use as a ... nursing home*" within use class C2? To answer that question it is necessary to look closely at how the Close Care units are intended to operate.

11. As I have said they are capable of falling within the definition of 'dwellinghouse' but that by itself is not a complete answer. In dealing with use class C3 the test is "use as a dwellinghouse" [emphasis supplied] compared with "*use as a ... nursing home*" or (looking at the first part of use class C2) "*use for the provision of*

...". I have looked at the essential characteristics of the proposed Close Care units above. I have seen a draft lease and an outline nursing care plan. There are intended to be restrictions in the following areas:

(1) the units will be leasehold for a term of 125 years and subject to important restrictions which link them firmly to the complex and its use as a nursing home or one where residential accommodation and care is provided. The draft lease does not state the term but I take it from the other material with which I have been supplied.

(2) Although the definition of the 'tenant' under the lease does not appear to be restricted to elderly persons (and so the tenant could be, e.g., a trustee for an occupier) it is clear that only an 'Approved Occupier' can occupy the dwelling (other than as a temporary guest) (clause 4.7) and the 'Approved Occupier' is defined 'as at least one person or persons of' 65 years or over. There are provisions for obtaining the landlord's approval which can be withheld in the Landlord's complete discretion in respect of someone *under* 65 years (see cll. 1.3 and 1.4). Thus there is a clear restriction on occupation other than by the elderly. I will assume for simplicity that the tenant is the same as the occupier.

(3) The tenant cannot make material alterations, even of a non-structural nature, to the interior of the dwelling nor can he substantially change the layout (cl. 4.6(c)). That is a clear indication to me that the landlord is retaining a substantial measure of control over and above that of the ordinary landlord in a leasehold development and the purpose is, no doubt, to ensure that the character of the apartment remains that of one

to be occupied by the elderly and those in need of care.

(4) The tenant cannot 'assign underlet or part with or share the possession or occupation of the whole or any part of the dwelling' except by an approved assignment (cl. 4.8(a), (b)). In essence, this means that if the tenant dies or cannot continue to occupy the dwelling he must give notice to the landlord; the landlord can then give notice of his intention to purchase the dwelling and there are provisions for valuation; once this has taken place the landlord can serve a 'surrender notice' upon the tenant and the landlord then purchases the tenant's interest at valuation, less 10%. There are provisions which allow the landlord to start the process for surrender without waiting for the tenant's notice. These strike me as being important restrictions on a tenant's freedom of disposition which are not readily applicable to ordinary leasehold transactions but are consistent with the landlord retaining control over who occupies, how long any vacancy can be allowed to continue and maintaining the character of the complex as one for residential care and accommodation or, more simply, as a nursing home - otherwise there would be nothing to stop tenants leaving their apartments vacant or assigning them to a non-qualifying third party and thus altering the whole character of the home.

(5) There are further restrictions on assignment etc. (cl. 4.8(c), (d), (e)) which are important. In essence, these require the tenant to assign etc. only to an 'Approved Occupier'; give written notice to the landlord of his intention to assign and the price; this is so that the landlord can nominate Approved Occupiers from the waiting list at the same price and terms; alternatively, the landlord may require the

tenant to surrender the lease in the way described above. The surrender price will normally be the valuation less 10% (see cl. 4(8)(b)(iii)). And where the landlord nominates a person from his list in preference to a person with whom the tenant has made a private bargain for assignment further provisions about consideration apply. In essence, if the price negotiated from the person on the Landlord's list pays more than the price negotiated by the tenant then the tenant is to repay 50% of the excess to the landlord (cl. 4(8)(e)). Here again there is tight control by the landlord to ensure, I consider, that the character of the complex as one for residential care and accommodation and/or as a nursing home remains and that those who occupy will be occupying for such purposes and in accordance with the overall scheme. These are all restrictions one would not expect to see in an ordinary leasehold development. This is particularly true of the provisions dealing with consideration.

(6) Finally, the assignee is required to enter into direct covenants with the landlord in accordance with the terms of the lease, thus preserving the character and the terms of the scheme.

(7) The 4th Schedule contains important regulations about the use of the dwelling and the home generally. The dwelling can only be used for private residential use by an Approved Occupier or such occupier and another person approved by the Landlord. No trade or business or profession can be carried on from the dwelling. Nobody can be employed to carry out works, duties or perform any functions for the tenant in or about the home unless the landlord (who has complete discretion) consents. And the provisions of the TCPA 1990 and

any planning permissions must be complied with. Again these all allow the landlord to ensure that the character of the scheme is retained as already described.

(8) The tenant is to pay a service charge. In return for this the landlord provides a number of services some of which are specifically relevant to the provision of residential care and accommodation and/or nursing home facilities (cl. 5). Thus the landlord is to keep open a sitting room between specified hours. Each dwelling is to have an alarm link to a central control for emergency medical/nursing cover. There is to be a security system. The landlord is to provide and maintain the gas and electricity for the dwelling and to provide hot water and heating (an unusual provision in leases of modern flats); he is also to provide trained nursing staff on a 24 hour basis; he will provide regular refuse collections from the dwelling and will provide newspaper deliveries and a library. Having provided these facilities the tenant is given the right to use them, particularly the services of the nurse and the nursing and care facilities at the complex and the right to use the restaurant and bar there and any other services which may be made available by the landlord (1st Schedule part II), subject to paying for such facilities as are not included in the service charge. Again these are all clearly related to the use of the complex as one providing residential care and accommodation and nursing home care and show the clear link between the dwelling and the nursing home facilities.

(9) In summary, the way in which the lease is drafted and the obligations and rights which are intended to be placed upon the parties seem to me to show that the Close Care units are related to the provision of residential care and accommodation

and the function of the nursing home and are not independent units in any meaningful sense. They would not detract from, but would complement, the nursing home use. Because of the clear links and restrictions which I have described it seems to me to be artificial to consider them as separate planning units. Their use is plainly linked to and part of the overall nursing home and/or residential care and accommodation uses. In this connection, it is also perhaps worth noting that McCullough J. in *Gravesham* (at p. 146) stressed the distinction between a dwellinghouse and institutions where people may spend 24 hours a day but are plainly not dwellinghouses. Although his analogy cannot be pressed too far, it is I think of some assistance in the circumstances of this case. It also may be relevant to take into account the quality of the user (see at p. 147) as part of taking into account all the relevant circumstances to solve what is stressed to be an issue of fact.

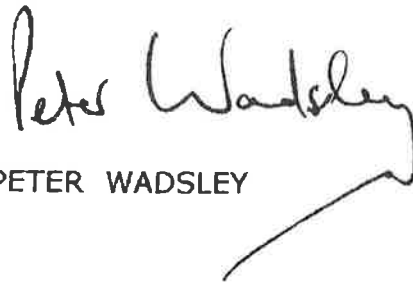
12. It is relevant to stress one other feature of the scheme. Although I have (unsurprisingly) concentrated on a number of legal issues, I am instructed that the way in which Ashwicke Hall is to be run means that the occupants whether of the Close Care units or the nursing home part must have a Care Plan to deal with their medical needs. Thus there will be an initial assessment by nursing staff on taking up residence; an organised plan of care will then be produced; it will be constantly monitored and evaluated. It is described as an "Individualised Nursing Care" procedure.

13. The charges (as I have indicated above) will be the service charge under the lease and a Care Charge for nursing and related care. Since individual assessments will vary, a range of 'Support Bands' are provided ranging from 'A', where relatively little support is required, to 'F', where there is a 12 hour full nursing service and,

e.g., visits throughout the night.

14. All this emphasises the nursing and care aspects of the proposed use. Having said that, I am not sure exactly where the emphasis of the scheme should be placed. I suppose that it is on the 'use for the provision of residential accommodation and care to people in need of care' within the meaning of the first part of class C2. That is because of the predominance of the Close Care units. That is sufficient for present purposes but, if it becomes necessary to consider it, it is also fair to say that I have assumed (as will be clear from what I have said above) that, potentially, there is a 'nursing home' use within class C2 of the 1987 Use Classes Order. That is because the scheme properly emphasises that nursing home care is at the core of the development. I consider therefore that the proposed use does not fall into class C3 for the reasons given above namely, that the use is essentially a residential accommodation and care use or an institutional nursing home use and the way in which the Close Care units are to be set up and run will not amount to a use as a dwellinghouse. They will be an essential part of the other use(s).

15. If my Instructing Solicitors have any queries I hope they will not hesitate to contact me whether by telephone or otherwise.



PETER WADSLEY

St. John's Chambers,
Small Street,
Bristol BS1 1DW

25th February 2005.

APPENDIX 3

Appeal Decision

Inquiry held on 16 and 17 December 2014

Site visit made on 18 December 2014

by Richard McCoy BSc MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 February 2015

Appeal Ref: APP/P1425/A/14/2220421

Land at Gradwell End, Mill Lane, South Chailey, Lewes, East Sussex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Retirement Villages Group Ltd against the decision of Lewes District Council.
 - The application Ref LW/13/0620, dated 10 September 2013, was refused by notice dated 13 December 2013.
 - The development proposed is the erection of C2 accommodation comprising 40 nursing and dementia rooms and 40 extra care units with associated support facilities together with on-site parking provision and landscaping.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of C2 accommodation comprising 40 nursing and dementia rooms and 40 extra care units with associated support facilities together with on-site parking provision and landscaping at land at Gradwell End, Mill Lane, South Chailey, Lewes, East Sussex in accordance with the terms of the application Ref. LW/13/0620, dated 10 September 2013, subject to the conditions in the attached Annex.

Main Issues

2. These are the effect of the proposal on the character and appearance of the area and whether this would be a suitable location for a residential institution having regard to national and development plan policies in respect of sustainable development.

Reasons

Background and policy

3. The appeal site is located on the edge of South Chailey in the vicinity of the former Pouchlands Hospital. It extends to around 2.8 hectares and incorporates a marked change in level running from north to south. It lies immediately to the south of the dwellings situated on Gradwell End and The Martlets. To the east is situated Chailey School (a large secondary school), along with a playing field and woodland (the eastern part of the site is subject to a woodland Tree Preservation Order (TPO)). Further dwellings stand to the west and north-west with open countryside to the south, while to the north-west is a doctor's surgery. A bridleway passes close by.

4. Proposed is the erection of a nursing and care complex. This would provide for those aged 65 and over with care needs ranging from facilitating independent living, to nursing and dedicated dementia care. It would also provide domiciliary care to people in their own homes, and day care services to the wider elderly community. I heard that the proposal would serve the needs of the northern parishes within the District Council area.
5. This proposal is a further iteration of previous schemes at the site and represents an overall reduction in built development from those schemes. It differs from the most recent scheme to be refused planning permission insofar as the number of units has been reduced by 30%, the scale and form of the proposed development has been reduced, and the number of proposed parking spaces has been reduced and moved further away from the northern boundary.
6. Saved Policy CT1 of the adopted Lewes District Local Plan (LP) defines settlement boundaries for the District. The appeal site stands outside the defined settlement boundary for South Chailey although CT1 (j) allows for the provision of essential/service facilities to meet community needs for which a rural location is required. Saved LP Policy ST3 sets out criteria in respect of design, appearance, residential amenity and highways matters that each development should satisfy while saved LP Policies T1 and T2 require developments to make provision for buses, manage travel demand and reduce non-car modes of travel. Saved Policy ST1 permits development where the infrastructure required to service it is provided. The parties agreed that South Chailey is a *Local Village* with a limited range of services.
7. It is common ground that the Council is unable to demonstrate a 5 year supply of deliverable sites in respect of housing land. The Council estimates its current supply at around 1.66 years. Under National Planning Policy Framework (NPPF) paragraph 49, relevant policies for the supply of housing in the LP cannot be considered up to date and housing applications should be considered in the context of the sustainable development. I return to this matter below after having first of all considered the issue of the effect of the proposal on the character and appearance of the area.

Character and appearance

8. The appeal site stands on the edge of the village. It has an overgrown character with much of it covered in dense scrub. The proposal would include a large central building with smaller blocks arranged around and about. I observed that views into and out of the appeal site are constrained by existing mature vegetation along the boundaries. It is proposed that the boundary planting and much of the tree cover within the site would be retained and enhanced with tree removal restricted to a few lesser quality specimens.
9. The immediate surroundings are characterised by low density housing of varying styles with larger scale buildings to be found at Chailey School. In general, the size, scale, height, and grain of nearby built development is quite diverse, varying from small domestic to large institutional. These characteristics are reflected in the proposal buildings with 5 distinct blocks of buildings, varying in scale from domestic cottages to the larger care home. At the heart of the proposal is a semi-enclosed courtyard around which the majority of the accommodation would be arranged. This picks up the layout employed at the former Pouchlands Hospital.

10. As there is no prevailing design style to be found in the buildings in the vicinity of the appeal site, the proposed approach of reflecting the general Sussex vernacular, incorporating scaling, detailing and styling from the cottages, country houses and farm buildings of the surrounding countryside, in my judgement, is acceptable in this instance.
11. The proposed scale, height and massing would be in keeping with the surrounding built form. Furthermore, the layout would retain a sufficient amount of open space to give the development an open character such that the existing mature planting and tree belt within the site would not be crowded out by built form. This existing planting and tree belt could be safeguarded and enhanced by way of suitably worded conditions attached to any grant of planning permission. In which case, although it would extend the built up area of the village, the proposal would not have a detrimental effect on the character of the rural area.
12. Moreover, the Council's Landscape Capacity Study 2013 concluded that the appeal site had a low/medium landscape value and moderate character and visual sensitivity. On this basis, the Council considered, with regard to South Chailey, that owing to the generally well screened secluded landscape, there may well be opportunities for further development on the edge of this settlement which will not have an adverse effect on the wider countryside and will contribute to the vitality of community life (paragraph 22.21 of the Study).
13. I observed that the site is largely screened in mid and long range views by existing topography and vegetation. The appellant's submitted Landscape and Visual Impact Assessment (LVIA) includes a zone of theoretical visibility and 8 viewpoints. These demonstrate that the topography of the site would be respected by the siting and layout of the proposal, the retention and enhancement of existing tree and vegetation cover would maintain its verdant character and views towards and from the South Downs escarpment from the village edge would not be harmfully changed.
14. While the development would be apparent from the nearby bridleway, I nevertheless consider that the retained and enhanced boundary planting, the placing of domestic scale buildings close to this boundary of the site and the vernacular appearance of the proposed buildings would enable the proposal to integrate itself politely into its surroundings. In my judgement, this would maintain the landscape character of the area and prevent any loss of visual amenity to the landscape's appearance.
15. Against this background, although there would be some loss of open countryside, there would be no harmful change to the character and appearance of the local landscape. Accordingly, the proposal would not conflict with saved LP Policy ST3.

Sustainable development

16. The NPPF confirms that there are 3 dimensions to sustainable development: economic, social and environmental. With regard to the economic role, the proposal would provide construction work and create employment at the care home complex. It would also provide facilities which would be available to existing residents of the village and would offer care services to those in need within the local community. These are matters which assist in the performance of a social role by supporting the local community.

17. In terms of the environmental role, the proposal would be centrally located to serve the northern rural part of the District where there is an identified need for additional elderly care provision. While I note the intention to reduce bus services to the local area, given the nature of the care provided and elderly age of residents, I consider most would be disinclined to travel by car. In addition, the provision of a dedicated minibus serving the needs of residents and staff, and the use of a Travel Plan, both of which would be secured through a S.106 Agreement which I deal with below, would ensure that the proposal would not generate significant numbers of additional car journeys.
18. It is proposed to provide outreach domiciliary care to the wider community. This would be likely to lead to a reduction in the amount of travelling done by health care professionals as the facility would be locally based to serve the community. This local provision of outreach and residential care would create a net overall reduction in travel distances by friends, relatives and professional care workers. Moreover, the NPPF and National Planning Practice Guidance (PPG) advise that different measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. I am satisfied that the opportunity to minimise the need to travel by car would be taken in this instance and could be secured through the submitted S.106 agreement.
19. A Transport Statement of Common Ground was agreed with the County Council as Highway Authority and notwithstanding the alterations to the bus timetable that have occurred since that document was signed, I heard nothing in evidence that would lead me to conclude that the matters agreed in that document were ill judged, or that subject to the suggested highways conditions the proposal would be prejudicial to highway safety. Accordingly, notwithstanding the limited local services on offer in South Chailey, I am satisfied that overall, the proposal would amount to sustainable development and would not conflict with saved LP Policies ST3, T1 and T2.

Other matters

20. It is agreed between the main parties that the adopted LP does not identify any suitable or available alternative sites for a C2 use such as that proposed. In addition, the Council's most recent Strategic Housing Land Availability Assessment identified the appeal site as suitable for development. I note that while the LP and the adopted and emerging Neighbourhood Plans for parishes in the north of the District make no specific provision for elderly accommodation needs, the County Council's Adult Care Unit has identified a need for the proposal in this area. I note that the 65+ population is one of the fastest increasing age cohorts in the District and that up to 2030 the 85+ age group will increase by around 516. The numbers of those within these age ranges requiring care accommodation due to long term medical needs will also increase.
21. I heard from interested parties that alternative sites were available. However, taking account of the likely growth in need over the coming years, the supply of care accommodation across the District and in neighbouring Council areas is not expected to keep pace with the increasing need. I also heard that when new provision is made available it is quickly taken up, as was the case at St Georges Ditchling. Furthermore, there is no other facility in the District which

offers the range of provision and continuum of care within a single facility such as that proposed.

22. Furthermore, the issue of need was considered at length in the officer report to Committee. I can find no reason to disagree with the conclusion therein that there is a shortfall in elderly care provision in Lewes District and east Sussex and the proposal would be a purpose built facility designed to cater specifically for the needs of an ageing population by providing a range of care and facilities not currently available in the area. Against this background, I am satisfied that it has been demonstrated that this part of the District has a pressing need for this type of elderly care facility.
23. With regard to the effect of the proposal on the living conditions of nearby residents, I am satisfied that the reduction in size of the proposal from that previously put forward, allied with the intervening distance, topography and mature boundary planting would ensure that their living conditions in terms of outlook, overlooking, overshadowing, and noise and disturbance would not harmfully change. This could be further safeguarded by attaching suitably worded conditions to any grant of planning permission in respect of landscaping, boundary treatment, lighting and noise.
24. The submitted Ecological Assessment demonstrates that the proposal would not have a detrimental impact on any protected species subject to mitigation relating to receptor sites. This could be secured by means of the submitted Planning Obligation which I deal with below.
25. Pouchlands Farmhouse is a Grade II listed building located to the west of the appeal site, at a lower level with mature boundary planting in between. The proposed layout would result in the development stepping down in scale towards the western boundary such that the closest built development to the listed building would take the form of single storey cottages, around 40m distant. This would reflect the existing scale and grain of the development in the vicinity of the listed building. The cottage closest to the listed building would be orientated side on to minimise the sightlines between the two. Furthermore, the existing mature trees within the appeal site would remain the defining characteristic of the view over and from the listed building towards the proposal.
26. Having special regard under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to the desirability of preserving the settings of listed buildings, where those settings would be affected by the proposed development, I consider that the proposed layout, intervening distance, topography and large area of mature woodland, would result in the development having a very limited impact on the setting of the heritage asset. As such, giving considerable weight to the desirability of preserving the setting of the listed building, I consider that the effect of the proposal on the significance of the heritage asset as a development within its setting would be negligible and the setting of the heritage asset would be safeguarded from harm.

Planning Obligation

27. The submitted Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990 would provide a contribution in respect of a Travel Plan audit fee, the provision of extra care units, the

restriction on the transfer of interest in the site, the provision of a dedicated minibus for use by residents and employees, the making available of the facilities and services to non-residents, the provision of highway works, the provision of a Travel Plan, the provision of domiciliary care, the making available of a maximum of 4 nursing care beds within the Nursery Care Unit to Adult Social Care, the making available of day care provision for residents and non-residents and the provision of a protected species receptor site.

28. From my assessment, the Planning Obligation would comply with the requirements of saved LP Policy ST1. In my judgement, the Planning Obligation provisions are directly related to the development and reasonably related in scale and kind. As such it passes the tests set out in the NPPF and satisfies the requirements of regulation 122 of The Community Infrastructure Levy Regulations 2010. I can therefore give it considerable weight.

Conclusions

29. The Council has stated a conflict with Policy CT1. This policy seeks to direct development to within tightly drawn settlement boundaries irrespective of whether or not there would be adverse impacts on the countryside. This is not wholly consistent with the principles set out in paragraph 17 of the NPPF (which this policy pre-dates) which promote sustainable development taking account of the different roles and character of different areas. Furthermore, the Council cannot demonstrate an up to date 5 year housing land supply (including C2 dwellings). In which case, Policy CT1 is not fully compliant with the NPPF and this reduces its weight in this matter. In addition, this proposal would contribute towards the supply of C2 dwellings for which there is a demonstrable need in the area. In any event, criterion (j) of Policy CT1 is permissive of the provision of essential/service facilities to meet community needs for which a rural location is required. I consider this criterion applies in this instance given the local need that has been identified.
30. While the proposal would result in the loss of a green field on the village edge, I have concluded that it would not conflict with saved LP Policies ST1, ST3, T1, and T2. I have also found that the proposal would be in conformity with the 3 dimensions of sustainable development as set out in the NPPF and would preserve the setting of the listed building. Against this background, for the reasons given above, I conclude that the appeal should be allowed.

Conditions

31. The parties suggested several conditions which were discussed at the Inquiry. I have considered all of the conditions and where necessary amended the wording in the interests of clarity and in the light of the advice within the NPPF and the PPG. In the interests of good planning, it is necessary to impose conditions setting out time limits for the development and to relate development to the submitted plans. I shall also attach conditions regarding the submission of full details in respect of external materials, levels, details of joinery, balconies, CHP plant, waste/recycling storage facilities, and boundary treatment in the interests of safeguarding residential and visual amenity, and achieving a sustainable development.
32. Conditions regarding the routing of drainage/underground services, treatment of retained trees, prohibition of works near tree roots and landscaping are necessary in the interests of tree protection and visual amenity. In addition,

conditions are required to secure the submission of a Construction Environment Management Plan, to deal with any contamination risk and remediation, to attenuate any noise and provide ventilation to dispose of and treat any cooking odours, all in the interests of residential amenity. Conditions are also necessary in respect of a lighting scheme, a receptor site for wildlife, management of Japanese Knotweed and a Surface Water Management Plan in the interests of residential amenity, safeguarding protected species, environmental protection and to reduce flood risk.

33. In the interests of highway safety I shall attach conditions regarding the access details, provision of tactile paved crossing points, surface water drainage, lighting, wheel washing during construction, turning space provision, car parking, and cycle and mobility scooter parking. Furthermore, a condition is necessary to restrict the use of the development to Class C2 in the interests of proper planning along with a condition to restrict delivery hours in the interests of residential amenity, and conditions to secure the implementation and completion of an archaeological investigation to protect the archaeological interest of the site.
34. Finally, a condition is required to ensure full details of the measures to be taken to divert the existing drainage/sewage apparatus that crosses the site in the interests of protecting public infrastructure.

Richard McCoy

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Whale of Counsel	Instructed by the Council's Solicitor
He called	
Mr P Woodhams BSc	Parker Dann
MRTPI	

FOR THE APPELLANT:

Mr S Bird QC	Instructed by Mr M Carpenter Enplan UK Ltd
He called	
Mr P Walsh BSc	Care & Operations Director, Retirement Villages Ltd
Dip(Adult Nursing)	
Mr M Hymas Dip Arch	Director, LCE Architects
RIBA	
Mr N Appleton MA	Executive Chairman, Contact Consulting (Oxford) Ltd
Mr B Hilder DipLA CMLI	Associate, Enplan UK Ltd
Mr C Rawlinson Eur.Ing	Managing Director, Transport Planning Associates
B.Eng(Hons) C.Eng	
MCIHT CMILT MIOD	
Mr M Carpenter MRTPI	Planning Director, Enplan UK Ltd

INTERESTED PERSONS:

Mr R Trussell	Local resident
Mrs J Barnes	Local resident
Ms J Tingle	Local resident
Mr A Fallon-Khan on behalf of Lady Bury	Local resident
Mr L Rashbrook	Local resident
Mrs N Durrant	Local resident
Mr J Gould	Chair of the Trustees of the Grantham Trust
Mr J Kay	CPRE Sussex
Councillor P Gardiner	Member of the Council's Planning Committee

DOCUMENTS

- 1 List of appearances for the appellant
- 2 Evidence of Councillor P Gardiner
- 3 Evidence of Ms J Tingle
- 4 Evidence of Mr J Gould
- 5 Evidence of Mr J Kay
- 6 Evidence of Mrs Durrant
- 7 Evidence of Mr Trussell
- 8 Evidence of Ms J Barnes
- 9 Evidence of Mr Fallon-Khan
- 10 Interim housing projections table
- 11 Cabinet decisions minutes 16 December 2014
- 12 List of conditions

- 13 Amended list of conditions
- 14 Signed and dated Planning Obligation

Annex

Conditions

- 1) The development shall be begun not later than the expiration of 3 years from the date of this decision.
- 2) The development must be carried out in complete accordance with the following approved documents: Location Plan 12840/PA001 REV A, Existing Site Plan 12840/PA003 REV A, Proposed Block Plan 12840/PA005 REV A, Proposed Site Plan 12840/PA006 REV A, Proposed Block A Floor Plan(s) 12840/PA/010 REV A, Proposed Block A Elevations 12840/PA/012 REV A, Proposed Block B Floor Plan(s) 12840/PA/013 REV A, Proposed Block B Elevations 12840/PA/015 REV A, Proposed Block C Floor Plan(s) 12840/PA/016 REV A, Proposed Block C Elevations 12840/PA/018 REV A, Proposed Block D Plan(s) & Elevations 12840/PA/019 REV A, Proposed Block E Ground Floor Plans 12840/PA/020 REV A, Proposed Block E First Floor Plans 12840/PA/021 REV A, Proposed Block E Roof Plans 12840/PA/022 REV A, Proposed Block E Elevations 12840/PA/023 REV A, Proposed Block E Elevations 12840/PA/024 REV A, Proposed Block E Elevations 12840/PA/025 REV A, Proposed Block E Plant Room Plan 12840/PA/026 REV A, Proposed Site Sections 12840/PA/030 REV A, Proposed Site Sections 12840/PA/031 REV A and Illustrative Landscape Masterplan 2013 02-285-201 REV A.
- 3) Before the development hereby approved is commenced on site, details and samples of all external materials and surfacing materials (which should be impermeable) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) Prior to commencement of development on site, full details of finished floor levels and ridge heights in relation to the existing and surrounding ground levels, set against an Ordnance Datum Point, have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) No development shall take place until, details of all windows, doors, balconies, and rooflights have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of the on-site CHP plant have been submitted to and approved by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.
- 7) Prior to commencement of development, full details of waste, refuse and recycling storage facilities, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

- 8) Prior to commencement of development on site, full details of the boundary treatment, which shall include post and rail fencing along the southern boundary, shall be submitted to and approved in writing by the Local Planning Authority and thereafter the development shall be carried out in accordance with the approved details.
- 9) Prior to commencement of development on site, full drainage details and routing of all underground services in relation to protected tree routes, shall be submitted to and approved in writing by the Local Planning Authority, and thereafter the development shall be carried out in accordance with that consent.
- 10) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of 1 year from the date of the commencement of use of the approved development.
 - (a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, unless for health and safety reasons, without the prior written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).
 - (b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
 - (c) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the Local Planning Authority.
- 11) A landscape management plan, including long term objectives, management responsibilities and maintenance schedules for all landscape areas, including the woodland unit subject to Tree Preservation Order (No.7) 2008 shall be submitted to and approved in writing by the Local Planning Authority before occupation of the development or any phase of the development, whichever is the sooner. The landscape management plan shall be carried out as approved.
- 12) No development shall take place until details of both hard and soft landscape works have been submitted to and approved by the Local Planning Authority. These works shall be completed by the end of the first planting season following occupation of the development. If within a period of 5 years from the date of planting a tree it (or it's replacement) is removed, uprooted destroyed or dies, another tree of the same species and size as that originally planted shall be planted at the same place.

- 13) No ground works or construction works shall take place until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The approved plan shall set out the arrangements for managing all environmental effects of the development during the ground works and construction period; including all traffic, a workers travel plan, temporary site security fencing, securing of and details of the security and acoustic fencing to the boundary with neighbouring properties, artificial illumination, storage and removal of demolition waste, safe storage and safe removal of any contaminating materials, noise, vibration, dust, air pollution and odour and shall be implemented in full throughout the duration of the construction works. It shall also include details of all signage on the approaches to the site, their wording and location, advising of the restricted delivery times, traffic routing to and from the site, holding areas for vehicles, and the use of banksman to control removals and traffic movements to and from the site. During construction, movements to and from the site shall not take place during the school rush hour times of 08:30 - 09:00 and 14:45 - 15:45 daily Mondays to Fridays during term times.
- 14) Prior to the commencement of development, the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:
- (a) A preliminary risk assessment which has identified:
 - (i) all previous uses
 - (ii) potential contaminants associated with those uses
 - (iii) a conceptual model of the site indicating sources, pathways and receptors
 - (iv) potentially unacceptable risks arising from contamination at the site.
 - (b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - (c) The site investigation results and the detailed risk assessment (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- The scheme shall be implemented as approved.
- 15) Prior to occupation of any part of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in

accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

- 16) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

- 17) Before the development hereby permitted commences a written scheme shall be submitted for written approval by the Local Planning Authority which specifies the provisions to be made for the control of noise emanating from plant and ancillary equipment. Before occupation of the proposed buildings the agreed scheme shall be fully implemented.

A written scheme of attenuation measures to mitigate any adverse impacts identified in the acoustic assessment by EAS Ltd's Noise Impact Assessment (September 2013 - ref: Enplan/3A/Gradwell/Noise) shall be submitted to the Local Planning Authority.

- (a) The scheme shall demonstrate by calculation how the proposal will meet a 3dB lower than existing background noise level standard expressed as LA90 1hr standard at the nearest residential boundary;
 - (b) There shall be no tonal noise emitted from the site as defined in BS4142:1997;
 - (c) The scheme shall identify post-installation monitoring points within the curtilage of the proposed site that are in close proximity to the noise sources which will be used to verify that the scheme meets the predictions on completion;
 - (d) The scheme shall be submitted for written approval by the Local Planning Authority and shall be fully implemented before the use commences; and
 - (e) The scheme shall then be tested to confirm that it meets the predictions on completion using the agreed post-installation monitoring points, and a written report submitted to the Local Planning Authority for its written approval.
- 18) (a) Prior to the installation of the ventilation system for the disposal and treatment of cooking odours from the premises, the applicant should submit a design specification outlining the proposed extraction/ventilation system to the Local Planning Authority;
- (b) Prior to the commencement of the use, the applicant shall, following the testing of the installation, submit certification from a member of the Heating and Ventilating Contractor's Association, or other suitably qualified person, to the Local Planning Authority, confirming that the installation meets its design specification agreed;

- (c) A maintenance and management scheme for the ventilation and filtration systems shall be submitted to, and shall be approved in writing, by the Local Planning Authority prior to the commencement of the use and shall thereafter be implemented as approved; and
 - (d) Mechanical and electrical installations shall be suitably arranged to ensure that the ventilation system is in operation during periods when the premises are preparing and/or cooking of food, all to the written satisfaction of the Local Planning Authority.
- 19) Prior to the installation of the ventilation and filtration systems at the site, a maintenance and management scheme shall be submitted to, and approved in writing by the Local Planning Authority prior to the commencement of the use and shall thereafter be implemented as approved.
- 20) Before the development hereby permitted commences a written scheme shall be submitted for written approval by the Local Planning Authority which specifies a detailed lighting design based upon the recommendations outlined in the Lighting Design strategy and visual impact assessment (Enplan dated October 2013).
- 21) No development shall commence until;
 - a) details of the layout of the Receptor Site, the proposed pond and associated wetland habitat enhancement together with details of the site's future management and maintenance is submitted to and approved in writing by the Local Planning Authority in accordance with the recommendations set out in the Nature Conservation Report.
 - b) such works have been completed in accordance with such approval.
 - c) any Protected Species have been relocated to the Receptor Site in accordance with a detailed mitigation strategy prepared in accordance with the recommendations set out in the Nature Conservation Report and submitted to and approved by the Local Planning Authority.
- 22) Following completion of the approved works pursuant to condition 20 above, these works shall be managed and maintained for the lifetime of the development.
- 23) Prior to the commencement of development, a detailed method statement for the long-term management/eradication of Japanese Knotweed (*Fallopia japonica*) on the site shall be submitted to and approved in writing by the Local Planning Authority. The method statement shall include proposed measures to prevent the spread of Japanese Knotweed during any operations such as mowing, strimming or soil movement. It shall also contain measures to ensure that any soils brought to the site are free of the seeds/root/stem of any invasive plant covered under the Wildlife and Countryside Act 1981. Development shall proceed in accordance with the approved method statement.
- 24) No development shall commence until a Surface Water Management Plan showing detailed surface water site management plans and catchment impact assessment on the existing surface water drainage network has been submitted to and approved by the Local Planning Authority. The Surface Water Management Plan shall be implemented as approved.

- 25) The new access shall be in the position shown on the submitted plan and laid out and constructed in accordance with the attached SK/03 diagram prior to occupation of the development hereby permitted.
- 26) No development shall commence until a scheme for the installation of tactile paving crossing points at the Mill Brooks junction with Mill Lane has been submitted to and approved by the Local Planning Authority. The approved scheme shall be implemented prior to the occupation of the development.
- 27) Prior to the commencement of development on site, detailed drawings, including levels, sections and constructional details of the proposed road/s, surface water drainage, outfall disposal and any street lighting to be provided, shall be submitted to the Local Planning Authority for written approval. The development shall be carried out in accordance with the approved details.
- 28) During any form of earthworks and/or excavations that are carried out as part of the development, suitable vehicle wheel washing equipment to remove surplus mud/soil should be provided within the site, to the approval of the Local Planning Authority, to prevent contamination and damage to the adjacent roads. The equipment shall be used on all vehicles leaving the site for the perpetuity of the development phase.
- 29) The development shall not be occupied until a turning space for vehicles has been provided and constructed in accordance with details which shall be submitted to and approved by the Local Planning Authority and the turning space shall thereafter be retained for that use and shall not be used for any other purpose.
- 30) The development shall not be occupied until parking areas have been provided in accordance with details to be submitted to and approved by the Local Planning Authority and the areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.
- 31) The development shall not be occupied until cycle parking and mobility scooter parking areas have been provided in accordance with the approved plans and the areas shall thereafter be retained for that use and shall not be used other than for the parking of cycles and mobility scooters.
- 32) The following activities must not be carried out under any circumstances:
 - (a) No fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree.
 - (b) No works shall proceed until the appropriate Tree Protection Barriers are in place, with the exception of initial tree works.
 - (c) No mixing of cement or use of other materials or substances shall take place within a Root Protection Area (RPA), or close enough to a RPA that seepage or displacement of those materials or substances could cause them to enter a RPA
- 33) The development hereby approved shall be restricted solely to Class C2 of the Town & Country Planning (Use Classes) (Amended) Order 1987.

- 34) Deliveries in association with the operation and functioning of the care home shall be restricted to 09:00 - 17:00 Mondays to Fridays, from 10:00 - 17:00 on Saturdays and at no time on Sundays or Bank Holidays.
- 35) No development shall take place until the developer has secured the implementation of a programme of archaeological work, in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority.
- 36) The development hereby permitted shall not be occupied until the archaeological site investigation and post investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) have been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition [35] to the satisfaction of the Local Planning Authority, in consultation with the County Planning Authority.
- 37) Prior to commencement of development on site details of the measures to be taken to divert the existing drainage/sewage apparatus that crosses the site shall be submitted to and approved in writing by the Local Planning Authority in consultation with and approval of Southern Water.

