

Date: 2021

**UNILATERAL UNDERTAKING**

GIVEN BY

**THE TRUSTEES OF THE CARMELITE CHARITABLE TRUST  
ST EDWARDS SCHOOL CHARITABLE TRUST  
WILLIAM MORRISON (CHELTENHAM) LIMITED**

TO

**GLOUCESTERSHIRE COUNTY COUNCIL**

Pursuant to Section 106 of the  
Town and Country Planning Act 1990 (as amended)

IN RESPECT OF

Land Adjacent to Oakhurst Rise,  
Charlton Kings, Cheltenham  
in the County of Gloucestershire

**THIS DEED** is made on the                      day of                      2021

**BY**

(1) **THE TRUSTEES OF THE CARMELITE CHARITABLE TRUST**, a trust body incorporated under Part 12 of the Charities Act 2011, on trust for **THE CARMELITE CHARITABLE TRUST** of Churchill House, Suite 320/321, 120 Bunns Lane, Mill Hill, London, a non-exempt charity (charity registration number 1061342) (“**the Trust**”)

(2) **ST EDWARDS SCHOOL CHELTENHAM TRUST** (Company Registration Number 1961978) of Cirencester Road Charlton Kings Cheltenham GL53 8EY (charity registration number 293360) (“**the Owner**”)

(3) **WILLIAM MORRISON (CHELTENHAM) LIMITED** (Company Registration Number 09900099) of Pillar House, 113/115 Bath Road, Cheltenham, Gloucestershire, United Kingdom, GL53 7LS (“**the Developer**”)

## **WHEREAS**

1. Gloucestershire County Council (**the “County Council”**) is
  - (a) a Local Planning Authority as defined in the Act and the Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act; and
  - (b) the Children and Families Authority, the Highway Authority and the Libraries Authority for Gloucestershire
  - (c) and is entitled to enforce the obligations contained in this Deed
  
2. The Trust is registered as the proprietor of the freehold of the Site with absolute title at the Land Registry under title number GR416470 subject to the leasehold title held by the Owner referred to below

3. The Owner is registered as the proprietor of the leasehold of the Site with absolute title at the Land Registry under title number GR194071
4. The Developer in the name of the Developer and the Trust submitted the Application to Cheltenham Borough Council (the "Council") which was refused by the Council.
5. The Developer wishes to develop the Property pursuant to the Planning Permission and has made the Appeal.
6. The Owner the Trust and the Developer have agreed to enter into this Deed in accordance with s.106 of the Act in order to facilitate the grant of the Planning Permission and deliver the necessary planning obligations as set out in this Deed if the Application is allowed by the Secretary of State on Appeal

**NOW THIS DEED WITNESSES** as follows:

## **7. DEFINITIONS AND INTERPRETATION**

In this Deed:

- 7.1 "Act" means the Town and Country Planning Act 1990 (as amended)
- 7.2 "Appeal" means the appeal under the Act by the Developer to the Secretary of State against the refusal of the Application by the Council
- 7.3 "Application" means the application for outline planning permission submitted to the Council for the Development and allocated reference number 20/00683/OUT for 43 Dwellings
- 7.4 "Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the Town and Country

Planning Act 1990 (as amended) ) has taken place on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of archaeological investigations and survey sampling inspections including soil investigations, investigations for the purpose of assessing ground conditions, site survey works, remedial or mitigation works in respect of any contamination or other adverse ground conditions, diversion and laying of services, demolition works, site clearance (including works to adjust ground levels on site and the removal of vegetation), access works, erection of any temporary means of enclosure and the temporary display of site notices or advertisements and “Commence Development” “Commenced” and “Commencement” shall be construed accordingly

7.5 “Dwelling” means a residential dwelling to be constructed pursuant to the Planning Permission

7.6 "Index-linked" means the sum calculated in accordance with this Deed (A) to be varied according to changes in the Relevant Index from the date of this Deed until the date upon which the said sum is paid to the County Council, as follows:

The sum payable shall be  $A \times B/C$  where B is the Relevant Index figure corresponding to the date upon which the said sum is paid to the County Council and C is the Relevant Index figure corresponding to the date of this Deed.

7.7 “Inspector” means the Inspector appointed by the Secretary of State or Minister for Housing, Communities and Local Government appointed to determine the Appeal

7.8 “Occupation” means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations during

construction and “Occupied” and “Occupier(s)” shall be construed accordingly

- 7.9 Plan 1” means the plan attached to this Deed marked 'Plan 1' and referenced drawing number PL005 Rev C
- 7.10 “Plan 2” means the plan attached to this Deed marked “Plan 2” and referenced drawing number PL004 Rev D
- 7.11 “Planning Obligations” means the covenant or covenants by the Trust and Owner contained in the Second Schedule hereto
- 7.12 “Planning Permission” means any planning permission granted by the Secretary of State pursuant to the Appeal in respect of the Application and includes the approved plans thereto and any duly authorised non-material amendments thereto
- 7.13 "Qualifying Dwelling" means a Dwelling without age or health occupancy restrictions and with two or more bedrooms.
- 7.14 "Relevant Index" means a) in respect of the Libraries Contribution the RPI All Items Index, and b) in respect of the Primary Education Contribution and the Secondary Education Contribution the Extension of PUBSEC Tender Price Index of Public Sector Building Non-Housing published by the RICS and in the event of any of the said indices ceasing to be published such index/indices as the parties shall agree or in default of agreement such index/indices as shall be determined for the purposes of this Deed as being the nearest equivalent indication(s) of prices changes in the United Kingdom
- 7.15 “Site” means the land against which this Deed may be enforced as shown edged red on Plan 1 for identification purposes only and as more particularly described in Schedule 1

- 7.16 Words importing one gender shall be construed as importing any other gender
- 7.17 Words importing the singular shall be construed as importing the plural and vice versa
- 7.18 The clause and paragraph headings in the body of this Deed and in the Schedules hereto do not form part of this Deed and shall not be taken into account in its construction or interpretation
- 7.19 This Undertaking will be registered as a Local Land Charge and is entered into pursuant to Section 106 of the Act
- 7.20 None of the terms of this Deed will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it even if the terms are expressed to be for their or their successors benefit and nor shall any third party have a right of veto over any future variations of this Deed.
- 7.21 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated
- 7.22 This Deed is governed by and interpreted in accordance with the law of England and Wales
- 7.23 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party

## **8. PLANNING OBLIGATIONS**

- 8.1 The Planning Obligations are planning obligations for the purposes of Section 106 of the Act

- 8.2 The Trust and the Owner covenant with the Council as set out in Schedule 2
- 8.3 The County Council is a Local Planning Authority by whom the Planning Obligations are enforceable
- 8.4 The obligations in this Deed shall not be binding upon any plot holder statutory undertaker or mortgagee of any plot holder of any Dwelling constructed on the Site nor a receiver appointed by such mortgagee of any one or more of the Dwellings nor successors in title to those deriving title from such mortgagee or receiver

## **9. LIABILITY**

- 9.1 No person shall be liable for a breach of covenant contained in this Deed after s/he shall have parted with her/his interest in the Site or the relevant part of the Site to which the relevant covenant applies but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 9.2 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Trust and the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development

## **10. CONDITIONALITY**

- 10.1 This Deed shall be conditional on and shall only take effect on:
- 4.1.1 the grant of the Planning Permission;
  - 4.1.2 subject to clause 15.1 below, and
  - 4.1.3 Commencement of Development.

- 10.2 The Trust and the Owner shall be released from any planning obligation in this Deed that the Inspector states in his/her decision letter is not necessary to enable the Planning Permission to be granted
- 4.3 This Deed shall not be enforceable against the owner of the drainage land as shown by the area of land identified on Plan 2 referenced drawing No. PL004 Rev D hatched black annexed hereto where that is its only interest in the Site
- 10.4 The Developer the Trust and the Owner covenant not to Commence Development whilst the current lease dated 20<sup>th</sup> November 1990 between the School and Trust subsists over any part of the Site shown edged red on Plan1 for identification purposes only and the Owner remains in legal occupation

## **11. WAIVER**

- 11.1 Failure by the County Council at any time to enforce the provisions of this Deed or to require performance strictly or otherwise by the Trust or Owner of any of the conditions, covenants, agreements, or obligations of this Deed or any failure or delay by the County Council to exercise any act right or remedy shall not:
- (a) be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation; nor
  - (b) affect the validity of this Deed or any part thereof or the right of the County Council to enforce any provision
- 11.2 and any variation of this Deed agreed between the Trust the Owner and the County Council shall not vitiate the remainder of the Deed which shall remain in full force and effect subject to such agreed amendments



**12. CONSENT TO REGISTRATION**

The Trust and Owner hereby consent to the registration of this Deed by the County Council as a Local Land Charge and if the County Council so requires with the Land Registry

**13. CHANGE IN OWNERSHIP**

The Owner and/or the Trust shall give the County Council immediate written notice of any change in ownership of any of their interests in the Site (save for any transfer or lease in respect of any Dwelling) such notice to give details of the transferee's or lessee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan

**14. WARRANTY**

The Trust and Owner hereby respectively warrant to the County Council that they have not leased mortgaged charged or otherwise created any interest in their respective interests in the Site other than as already stated above at the date of this Deed

**15. COMMUNITY INFRASTRUCTURE LEVY (“CIL”) REGULATIONS**

15.1 If in determining the Appeal the Secretary of State or his Inspector expressly states in the Appeal decision letter that any of the Planning Obligation as contained in this Deed: -

- a) is not a material planning consideration; or
- b) can be given no weight in determining the Appeal; or
- c) does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the Community and Infrastructure Regulations; or
- d) is otherwise unlawful

then such planning obligation shall not be enforceable pursuant to this Deed and shall cease to have effect within this Deed save as set out in the Inspector’s decision letter

15.2 In respect of any item of infrastructure for which any contribution payable under the terms of the Deed is expressed to be payable then the obligation to pay the same under the terms of this Deed shall be offset by any Community Infrastructure Levy payment received by the County Council for the same purposes to ensure that the Owner would not (in both paying the Community Infrastructure Levy and complying with the planning obligations in this Deed) pay twice in respect of a matter that has been or is to be funded pursuant to this Deed

**THE FIRST SCHEDULE**

**The Site**

The land shown edged red on Plan 1 annexed hereto referenced drawing number PL005 Rev C being part of the land known as land at St Edward’s

School, Charlton Kings, Cheltenham, GL52 6NR and forming part of the freehold title registered at the Land Registry under title number GR416470 and part of the leasehold title registered at the Land Registry under title number GR194071.

## **THE SECOND SCHEDULE**

### **Covenants by the Owner – the Planning Obligations**

The Trust and the Owner hereby covenant with the County Council to pay the following financial contributions to the County Council (but so that this obligation is a joint obligation to procure a single payment and not independent obligations for two such payments) with no charitable intention and on the understanding and subject to the trusts that each contribution is to be used solely for the purpose stated in this Deed to meet the identified needs arising as a consequence of the implementation of the Planning Permission and otherwise returned if not so used together with late payment interest (if applicable) calculated on a daily basis and compounded quarterly from the due return date until payment at 4% p.a. over HSBC Bank plc base rate from time to time in force) at the times set in this Schedule namely:

1. "Libraries Contribution" means the Index-linked sum of £196.00 per Dwelling (the County Council's figure)

such sum to be paid by the Owner to the County Council in accordance with the provisions of this Second Schedule to be used only towards a project at Charlton Kings Library that can be demonstrated as providing a quantifiable and proportionate increase in the capacity of Charlton Kings Library commensurate with the expected additional demand on library services arising as a consequence of the proposed Development

2. "Primary Education Contribution" means either

a) the Index-linked sum of **£6,187.31** per Qualifying Dwelling (the County Council's figure)

or

b) the Index-linked sum of **£2,844.65** per Qualifying Dwelling (the EFM PPR figure)

as determined by the Inspector in the Inspector's decision notice, such sum to be paid by the Owner to the County Council in accordance with the provisions of this Second Schedule to be used only towards a project that delivers a permanent increase in the number of children that can be admitted to Reception Class each year in one of the mainstream primary schools in the Charlton Kings Primary Planning Area such that the total Admission Number of the schools in the planning group at the date of this Deed (and excluding any temporary increase) exceeds the current total figure of 150.

3. "Secondary Education Contribution" means either

a) the Index-linked sum of **£3,898.00** per Qualifying Dwelling (the County Council's figure)

or

b) the Index-linked sum of **£2,615.56** per Qualifying Dwelling ((the EFM PPR figure)

as determined by the Inspector in the Inspector's decision notice, such sum to be paid by the Owner to the County Council in accordance with the provisions of the Second Schedule to be used only towards a project that delivers a permanent increase in the number of children that can be admitted to Year 7 each year in one of the mainstream secondary schools in the Cheltenham Secondary Planning Area (including The Leckhampton High School proposed to open in September 2021) such that the total Admission Number of the schools in the planning group at

the date of this Deed together with that of The Leckhampton High School (and excluding any temporary increase) exceeds the figure of 1179 (being current usual total figure of 999 plus 180).

4. "Post-16 Education Contribution" means either

a) the Index-linked sum of **£1,610.84** per Qualifying Dwelling (the County Council's figure)

or

b) the Index-linked sum of **£612.12** per Qualifying Dwelling (the EFM PPR figure)

as determined by the Inspector in the Inspector's decision notice, such sum to be paid by the Trust and the Owner to the County Council in accordance with the provisions of the Second Schedule to be used only towards a project that delivers a permanent increase in the number of children that can be admitted to post-16 studies in one of the mainstream secondary schools in the Cheltenham Secondary Planning Area (including The Leckhampton High School proposed to open in September 2021) (and excluding any temporary increase) exceeds the current figure of 1562.

5. In relation to paragraph 5.14 of the Travel Plan submitted by the Developer as of April 2020 the Owner shall on occupation provide a £750.00 voucher to the purchaser of a Dwelling constructed within the Development or self-build plot to be used for the provision of e-bikes

5. The Primary Education Contribution will be payable with a first instalment of fifty per cent (50%) payable prior to the occupation of any Dwelling and a second instalment of fifty per cent (50%) payable prior to the occupation of twenty (20) Dwellings

6. The Secondary Education Contribution will be payable with a first instalment of fifty per cent (50%) payable prior to the occupation of any Dwelling and a second instalment of fifty per cent (50%) payable prior to the occupation of twenty (20) Dwellings
  
7. The Post-16 Education Contribution will be payable with a first instalment of fifty per cent (50%) payable prior to the occupation of any Dwelling and a second instalment of fifty per cent (50%) payable prior to the occupation of twenty (20) Dwellings
  
8. The Libraries Contribution will be payable with the first instalment of fifty percent (50%) payable prior to the occupation of any Dwelling and a second instalment of fifty per cent (50%) payable prior to the occupation of twenty (20) Dwellings

**IN WITNESS** whereof this instrument has been executed as a Deed by the Owner the Trustee and the Developer the day and year first before written

**SIGNED** as a **Deed** by **ST EDWARDS**  
**SCHOOL CHELTENHAM TRUST**

acting by two Trustees

.....  
Trustee

.....  
Trustee

Executed as a Deed by  
**THE TRUSTEES OF THE  
CARMELITE CHARITABLE  
TRUST**

Under an authority under s261  
of the Charities Act 2011

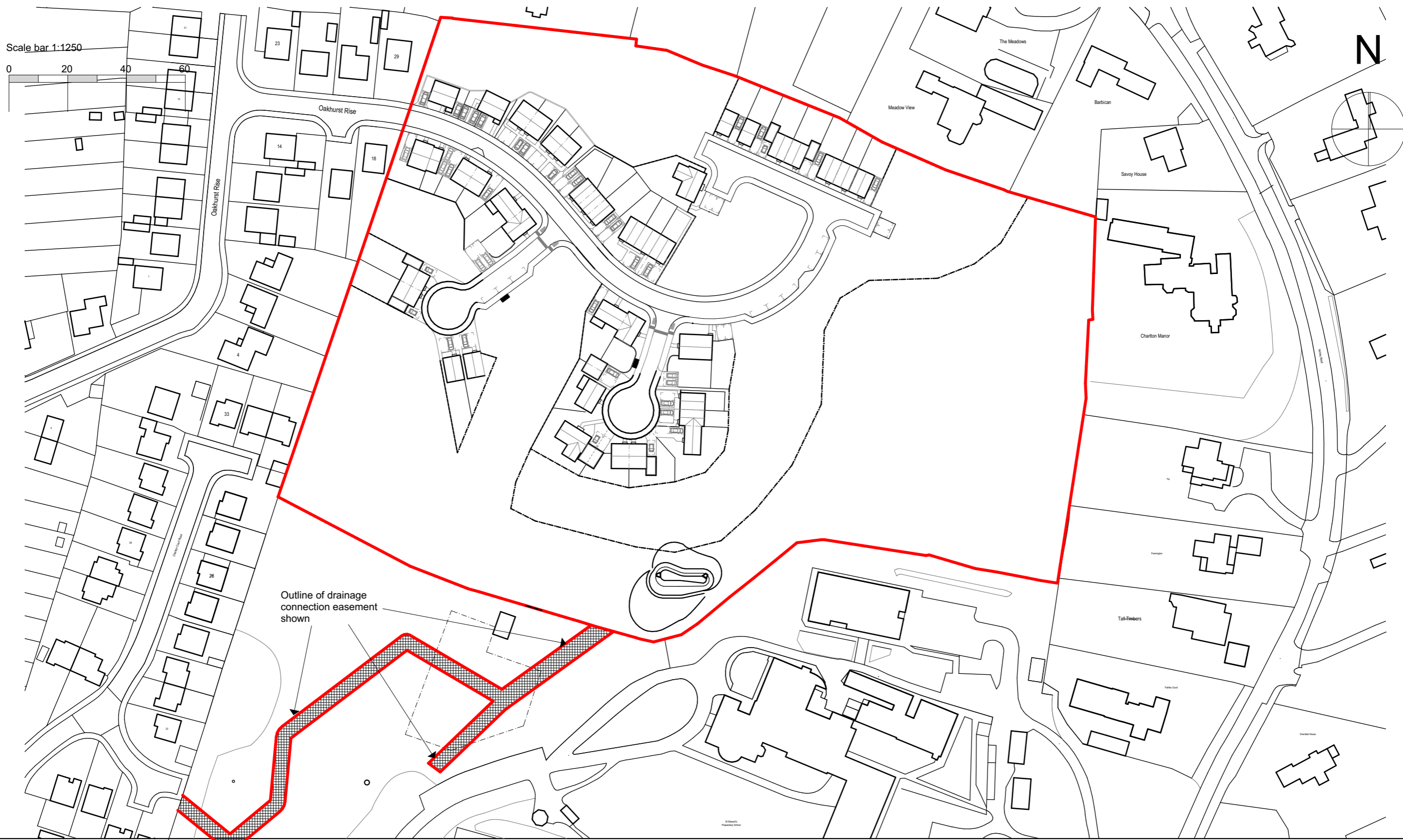
.....  
Trustee

.....  
Trustee

**SIGNED** as a Deed by **WILLIAM  
MORRISON (CHELTENHAM)  
LIMITED** acting by two Directors

.....  
Director

.....  
Director



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- Preliminary
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- Tender
- Construction issue
- As Built

**RIBA**  
Chartered Practice



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4. Engineering information is indicative only and should be taken from structural engineers design.

Rev A - Layout ammended to reflect LA Affordable houing needs - May 2020  
Rev B - Layout ammended to reflect GCC Highways comment re parking - June 2020  
Rev C - Drainage easement hatched - November 2020  
Rev D - Revision indicating position of Self build / Custom Build Units - January 2021

Drawing title: Proposed Block Plan

Client: William Morrison (Cheltenham) Ltd & The Trustees of the Carmelite Charitable Trust

Drawn by: AH Checked: JE

Project No: 16.20.034

Project: Land off Oakhurst Rise,  
Charlton Kings,  
Cheltenham

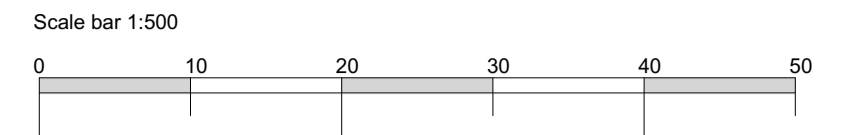
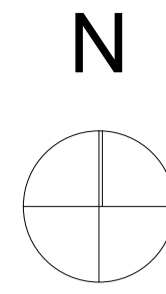
Scale: 1:1250 @ A3

Date: April 2020

Project / Drawing No: PL004 Rev D



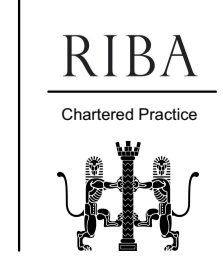
Land off Oakhurst Rise,  
Charlton Kings,  
Cheltenham



Open Market Units						
Ref	Type	Bedrooms	Beds	Spaces	No. Off	G.I.A sq/m / Total G.I.A sq/m
Pa	2.0	2	4	2	89.9	179.80
Hi	2.5	4	6	16	107.5	1720.00
Dy	2.0	3	5	3	108.5	217.00
Tb	2.0	3	5	3	117.5	352.5
An	2.0	4	8	2	150.4	300.8
					25	2770.10
Affordable Units						
Ref	Type	Bedrooms	Beds	Spaces	No. Off	G.I.A sq/m / Total G.I.A sq/m
Af 1	M(Uf)	1	2	2	50	100.00
Af 2	M(Gf)	1	2	2	50	100.00
Af 3	2.0	1	2	1	50	50.00
Af 4	M(Gf)	2	4	1	71	71.00
Af 5	M(Uf)	2	4	1	71	71.00
Af 6	2.0	2	4	3	79	237.00
Af 7	2.0	2	4	3	67	201.00
Af 8	2.0	3	5	3	82	246.00
Af 9	2.0	3	6	1	95	95
Af 10	2.0	4	7	1	108	108
<b>Totals</b>					<b>18</b>	<b>1279.00</b>
					<b>No. Off</b>	<b>Total G.I.A sq/m</b>
					<b>43</b>	<b>4049.10</b>

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- Preliminary
- Feasibility
- Planning
- Building Regulations
- Tender
- Construction issue
- As Built



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 4. Engineering information is indicative only and should be taken from structural engineers design.

Rev A - Layout amended to reflect LA Affordable housing needs - May 2020  
 Rev B - Layout amended to reflect GCC Highways comment re parking - June 2020  
 Rev C - Revision indicating position of Self build / Custom Build Units - January 2021

Drawing title: Site Plan  
 Client: William Morrison (Cheltenham) Ltd & The Trustees of the Carmelite Charitable Trust  
 Drawn by: AH Checked: JE  
 Project No: 16.20.034

Project: Land off Oakhurst Rise, Charlton Kings, Cheltenham  
 Scale: 1:500 @ A1  
 Date: April 2020  
 Project / Drawing No: PL005 Rev C