

DATED

26TH JANUARY

2022

THE COUNCIL OF THE CITY OF COVENTRY

- and -

SHEARER PROPERTY REGEN LIMITED

SECTION 106 AGREEMENT

relating to

Land at CITY CENTRE SOUTH

Planning Application Ref: OUT/2020/2876



Coventry City Council

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THIS DEED is dated

26TH JANUARY

2022

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of The Council House, Earl Street, Coventry CV1 5RR (the "Owner").
- (2) **SHEARER PROPERTY REGEN LIMITED** (company number 11857308) of 41 Plantation Road, Amersham HP6 6HL (the "Developer")
- (3) **THE COUNCIL OF THE CITY OF COVENTRY** of The Council House, Earl Street, Coventry CV1 5RR (the "Council")

WHEREAS

- (A) The Owner is the registered freehold proprietor of the Owner Registered Declared Bound Land held under the title numbers shown on the Owner Registered Land Plan and forming part of the Land.
- (B) The Owner is the owner of the unregistered freehold title to the Owner Unregistered Declared Bound Land forming part of the Land.
- (C) The Owner is in the process of acquiring other interests in the Land through the exercise of its compulsory purchase powers (the Order, when made will be known as "**THE COVENTRY CITY COUNCIL CITY CENTRE SOUTH COMPULSORY PURCHASE ORDER 2022**") forming part of the Third Party Initially Unbound Land.
- (D) In this deed references to Owner shall mean in its capacity as landowner.
- (E) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated. The Land includes the Owner Declared Bound Land and the Third Party Initially Unbound Land. In this deed references to the Council shall mean in its capacity as local planning authority.
- (F) The Developer has submitted the Planning Application to the Council and the Council has resolved to grant the Planning Permission subject to the prior completion of this deed to secure the planning obligations set out herein.
- (G) The Council and the Developer have entered into a development agreement dated 21 March 2019 with respect to the development of the Land and pursuant to which the Developer may be granted one or more leasehold interests in the Land by the Council.
- (H) The Council has resolved that Planning Permission should be granted for the Development subject to the prior completion of this deed.

AGREED TERMS

1 INTERPRETATIONS

The following definitions and rules of interpretation apply in this deed:

1.1 Definitions:

Act:	means the Town and Country Planning Act 1990 (as amended from time to time);
Application Boundary Areas Plan	means the plan attached at Appendix 1 with reference Drawing No. 0451 Revision 00 or such other plan as approved by the Council in writing
Base Rate:	means the higher of 2% and the base rate from time to time of Natwest Bank PLC;
Commencement Date:	means the date of Commencement of Development;
Commencement of Development:	means the carrying out in relation to the Development of any material operation as defined by section 56(4) of the Act (and the phrase " Commence Development " shall be construed accordingly) but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Land;
Confirmatory Deed	means a deed materially in the form appended at Appendix 3
Default Interest Rate:	means 4% per annum above the Base Rate;
Development:	means the development of the Land authorised by the Planning Permission;
Dwelling	means any dwelling (including a house, flat or bungalow) permitted to be constructed pursuant to the Planning Permission and " Dwellings " shall be construed accordingly;
Index Linked:	<p>A = B x C/D where:</p> <p>A is the sum actually payable on the Specified Date</p> <p>B is the original sum mentioned in or ascertained under this deed</p>

	<p>C is the Retail Prices Index (All Items) for the month two months before the Specified Date</p> <p>D is the Retail Prices Index (All Items) for the month two months before the date of this deed</p> <p>C/D is equal to or greater than one;</p>
Land:	means the land at City Centre South shown edged red on the Site Plan;
Monitoring Officer:	means the planning officer or other officer of the Council from time to time allocated to deal with all planning obligations pursuant to section 106 of the Act;
Occupation	means first occupation for the beneficial use of the Land or part thereof (as the case may be) for the purposes authorised by the Planning Permission and for the avoidance of doubt excludes occupation for fitting out and use of the Land for show homes or marketing purposes and reference to " Occupied " and " Occupy " shall be construed accordingly;
Outline Element	means the part of the Development to be constructed on the part of the Land identified as "Outline Part" on the Application Boundary Areas Plan which for the avoidance of doubt shall exclude the areas identified by solid red edging;
Owner Declared Bound Land	means the Owner Registered Declared Bound Land and the Owner Unregistered Declared Bound Land;
Owner Registered Declared Bound Land	means the part of the Land shown shaded purple on the Owner Registered Land Plan
Owner Registered Land Plan	means the plan attached at Appendix 1 titled "OWNER REGISTERED DECLARED BOUND LAND MAP";
Owner Unregistered Declared Bound Land	means the part of the Land shown shaded yellow on the Owner Unregistered Land Plan

Owner Unregistered Land Plan	means the plan attached at Appendix 1 titled "OWNER UNREGISTERED DECLARED BOUND LAND MAP;
Phase	means a Phase of the Development;
Planning Application:	<p>means the application for hybrid planning permission validated by the Council on 26 November 2020 under reference number OUT/2020/2876 for:</p> <p>Full application:</p> <p>A. Full Application for removal of bridge link between Coventry Market roof top car park and roof top parking over existing retail units on Market Way and associated reinstatement works to roof top car park surface and balustrade, removal of existing Coventry Market basement ramp from Rover Road and associated infilling and reinstatement works, works to retaining wall to north-east of Coventry Market, removal of existing pedestrian ramp into Coventry Market off Rover Road, creation of new Coventry Market basement ramp from Queen Victoria Road and associated works to Coventry Market basement, and removal and relocation of William Mitchell mural from front elevation of the former Three Tuns Public House building in Bull Yard;</p> <p>Outline application:</p> <p>B. For part of the site (as defined within the Application Boundary Area plan) for the demolition of all existing buildings and redevelopment of the land for mixed uses, including details of the layout and scale of new development, with details of access, appearance and landscaping reserved; and</p> <p>C. For part of the site for the demolition of all existing buildings and the redevelopment of the land for mixed use, with details of access, layout, scale, appearance and landscaping reserved. The scheme comprises a mixed use redevelopment of up to 1,300 residential units (Class C3), up to 150 hotel rooms (Class C1), up to 37,500 sqm of mixed-use non-residential floorspace including Class E</p>

	Commercial, Business and Service uses, Class F.1 Learning and Non-Residential Institutions, and Sui Generis Pub or Drinking Establishment / Hot Food Takeaway / Cinema uses, hard and soft landscaping and new public open spaces including sustainable urban drainage systems, car parking provision and formation of new pedestrian and vehicular access and stopping up of existing highway;
Planning Permission:	means the planning permission granted by the Council pursuant to the Planning Application;
“Relevant Interest”	means the freehold or any leasehold interest in land of more than 7 years unexpired in the relevant land
Reserved Matters	has the same meaning as in the Town and Country Planning (Development Management Procedure) (England) Order 2015;
Reserved Matters Application	means an application to the Council for the approval of Reserved Matters in respect of the Outline Element;
Reserved Matters Approval	means approval of Reserved Matters in respect of the Outline Element;
Section 73 Consent:	means a planning permission granted pursuant to Section 73 of the Act which varies and/or removes any condition to: (a) which the Planning Permission; and/or (b) which an earlier consent under Section 73 of the Act to vary and/or remove any condition attached to the Planning Permission; was granted subject to;
Site Plan	means the plan attached at Appendix 1 with drawing number 0101 Rev 00;
Specified Date:	means the date upon which an obligation under this deed is due to be performed;
Strategic Lead for Planning:	means the present strategic lead for planning or successor in title or authorised delegated person;

“Third Party Initially Unbound Land”	means the parts of the Land other than the Owner Declared Bound Land in respect of which a Relevant Interest is owned by a person other than the Owner;
VAT:	means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax;
Working Day:	means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to this deed or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.7 References to clauses and Schedules are to the clauses and Schedules of this deed.
- 1.8 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2 STATUTORY PROVISIONS

- 2.1 This deed is made pursuant to the provisions of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner with the intention that they bind the respective interests held by it in the Land (for the avoidance of doubt as at the date of this deed being the Owner Registered Declared Bound Land and the Owner Unregistered Declared Bound Land) and its respective successors and assigns (and in relation to Third Party Initially Unbound Land subject to Confirmatory Deeds being entered into pursuant to clauses 4.3)
- 2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the Act.

- 2.4 Insofar as any clause(s) (or part thereof) of this deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed including for the avoidance of doubt the remaining part of the said clause(s) which shall be re-construed reasonably so as to give effect to the original intention of such clause insofar as possible.

3 CONDITIONALITY

- 3.1 With the exception of clauses 2, 3, 4.5.2, 5.2, 8, 9, 10, 11.1, and 12 to 25 (which take effect immediately), this deed is conditional on the grant and issue of the Planning Permission and the Commencement of Development.

4 COVENANTS TO THE COUNCIL

- 4.1 The Owner declares and undertakes that it shall comply with the planning obligations within this deed notwithstanding that such planning obligations shall not be enforceable by the Council as local planning authority against the Owner whilst and to the extent that the Owner and the local planning authority are both The Council of the City of Coventry in relation to the relevant parts of the Land.
- 4.2 Whilst the Council of the City of Coventry is the Owner the Council can seek to ensure that the planning obligations are properly performed by the Owner and the Council can seek compliance with any non-performance by giving notice to Strategic Lead for Planning seeking such compliance.
- 4.3 Subject to clause 4.6 and unless otherwise agreed in writing by the Council the Owner covenants not to Commence Development on any land which is Third Party Initially Unbound Land (or any part thereof) unless and until in respect of any and all Relevant Interests in such part of the Third Party Initially Unbound Land:
- 4.3.1 (where the Council is or has become the Owner of such Third Party Initially Unbound Land) the Owner has entered into a Confirmatory Deed in respect of such Relevant Interest(s) in such part of the Third Party Initially Unbound Land; or
- 4.3.2 (where a party other than the Council is or has become the Owner of such Third Party Initially Unbound Land) a Confirmatory Deed is entered into by a person other than the Council as Owner in respect of such a Relevant Interest(s) in such part of the Third Party Initially Unbound Land.
- 4.4 Subject to clause 4.6 and unless otherwise agreed in writing by the Council the Development shall not be Commenced on any part of the Land which is Owner Declared Bound Land other than by or directly on behalf of the Council as Owner unless and until a Confirmatory Deed is entered into by a successor in title to the Council as Owner in respect of all Relevant Interests in such part of the Owner Declared Bound Land.
- 4.5 The Owner covenants with the Council:
- 4.5.1 to observe and perform the covenants, restrictions and obligations placed upon them as contained in the Schedules hereto;

- 4.5.2 to give at least 5 Working Days written notice to the Council of the intended Commencement Date;
- 4.6 The parties acknowledge that for the purposes of Clauses 4.3 to 4.4 (inclusive) it shall be reasonable for the Council to not require:
- 4.6.1.1 the freehold interest in any part of the Land to be bound by the planning obligations contained within this deed (whether by a Confirmatory Deed or otherwise) where the Council is satisfied (acting reasonably) that a leasehold interest of sufficient duration in the said part of the Land is bound by the said planning obligations such that the relevant planning obligations are adequately secured and enforceable against the said leasehold interest and inability to enforce such planning obligations against the freehold interest will pose no material risk to the delivery or performance of the said planning obligations; or
- 4.6.1.2 any interest in any part of the Land to be bound by the planning obligations contained within this deed (whether by a Confirmatory Deed or otherwise) where the Council is satisfied (acting reasonably) that the said planning obligations are adequately secured and enforceable against other parts of the Land such that not binding the relevant interest will pose no material risk to the delivery or performance of the said planning obligations.
- 4.7 The Owner's covenants within this deed are subject to the following provisions:
- 4.7.1 discharge of an obligation in this deed or any Confirmatory Deed shall constitute discharge pursuant to this deed and vice versa; and
- 4.7.2 where an obligation in this deed requires ongoing performance or compliance performance or compliance pursuant to a Confirmatory Deed shall constitute performance or compliance for the purposes of this deed and vice versa.
- 4.8 The Developer covenants with the Council that in the event it becomes a successor in title to all or part the Land it shall comply with the obligations on the part of the Owner contained in this deed insofar as the same apply to the part of the Land so acquired by the Developer and PROVIDED THAT notwithstanding any other provision of this deed (including for the avoidance of doubt the Schedules hereto) the Developer shall otherwise have no liability under this deed.
- 5 COVENANTS BY THE COUNCIL**
- 5.1 The Council covenants with the Owner and the Developer to observe and perform the covenants, restrictions and obligations placed upon it under the Schedules hereto.
- 5.2 The Council shall within 10 Working Days of the completion of this deed grant the Planning Permission save that the Council shall not be in breach of this obligation if it shall be prevented from issuing the Planning Permission by a court order.

- 5.3 Notwithstanding clause 24 the Council covenants that in the event that any party enters into a Confirmatory Deed the covenants given in clause 5.1 shall be deemed to be equally given to party defined as the "Owner" within the relevant Confirmatory Deed.

6 INDEXATION

- 6.1 All financial contributions payable to the Council shall be Index Linked.
- 6.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner/Developer (as the case may be) in writing.

7 RELEASE

- 7.1 No person shall be liable for any breach of a covenant, restriction, obligation or other provision contained in this deed where such covenant, restriction, obligation or provision relates to a part of a Land in which they hold no interest nor after parting with all of its interest in the Land, or parting with its interest in that part of the Land to which the relevant covenant, restriction, obligation or provision relates, save in respect of any breach subsisting prior to parting with such interest PROVIDED THAT the Owner (and its successors in title and/or assigns to the Land) shall be deemed not to have any interest in the Land where they only retain the benefit of any right or exception or reservation and/or covenant or restriction.

8 MORTGAGEES

- 8.1 It is acknowledged and declared that this deed has been entered into by the Owner with the intent that the planning obligations shall be binding on the Land and that the security of a mortgage/charge over the Land shall take effect subject to this deed provided that any mortgagee shall only be liable for any breach that itself has caused whilst mortgagee in possession of the Land and shall not be liable for any pre-existing breach.

9 DETERMINATION OF DEED

- 9.1 If the Planning Permission is quashed revoked or otherwise withdrawn or expires within the meaning of sections 91, 92 and 93 of the Act or is revoked or modified in accordance with sections 97 to 100 inclusive of the Act without the consent of the Owner or Developer this deed shall cease to have effect (but without prejudice to the rights of the parties in respect of any antecedent breach) with the exception of clause 12.

10 LOCAL LAND CHARGE

- 10.1 This deed is a local land charge and shall be registered as such by the Council.

11 COUNCIL'S COSTS

- 11.1 The Developer shall pay to the Council on or before the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.
- 11.2 The Owner shall pay to the Council on or before the Commencement of Development the sum of £15,000 as a contribution towards the Monitoring Officer's costs of monitoring the implementation of this deed.

12 INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Council by the date it is due, the Owner/Developer (as the case may be) shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

13 DISPUTES

- 13.1 Any dispute, controversy or claim arising out of or relating to this deed, including but not limited to any question regarding its breach, existence, validity or termination or the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

13.1.1 the tribunal shall consist of one arbitrator appointed jointly by the parties;

13.1.2 in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;

13.1.3 the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and

the seat of the arbitration shall be London.

14 NO FETTER OF DISCRETION

- 14.1 Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority.

15 NO COMPENSATION PAYABLE

- 15.1 No compensation shall be payable by the Council as a result of the obligations contained in this deed.

16 WAIVER

- 16.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner/Developer (as the case may be) in performing or observing any of the obligations terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said obligations terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owner/Developer (as the case may be).

17 FUTURE PERMISSIONS

- 17.1 Nothing in this deed shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission whether or not on appeal.

18 AGREEMENTS AND DECLARATIONS

- 18.1 The parties agree that:

- 18.1.1 nothing in this deed constitutes a planning permission;
- 18.1.2 nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.
- 18.1.3 the provisions of this deed shall not be binding on any statutory undertaker which has acquired part of the Land for purposes connected to their statutory functions provided always that such statutory undertaker shall not themselves carry out any part of the Development.
- 18.1.4 except for the obligations restricting the Occupation of Dwellings in paragraph 2.1 of Schedule 2 the provisions of this deed shall not be binding upon any person whose interest in the Land is restricted to being an individual purchaser of any individual Dwelling and their successors in title, assigns or their mortgagee provided always that such individual purchaser, including their successors in title, assigns or their mortgagee, shall not themselves carry out any part of the Development

19 FURTHER SECTION 73 CONSENTS

- 19.1 Subject to the proviso to this clause if any Section 73 Consent is granted after the date of this deed:
- 19.1.1 the obligations in this deed shall relate to and bind such Section 73 Consent; and
 - 19.1.2 the definitions of Planning Application, Development and Planning Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself

PROVIDED THAT:

- 19.2 nothing in this clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;
- 19.3 to the extent that any of the obligations in this deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and
- 19.4 the Council reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it desirable to do so.

20 FORM OF NOTICES

- 20.1 Any notice or other communication to be given under this deed must be in writing and must be:

- 20.1.1 delivered by hand; or

- 20.1.2 sent by pre-paid first class post or other next working day delivery service; or

- 20.1.3 by commercial courier.

- 20.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

- 20.2.1 to the Council (including in its capacity as the Owner) at Place Directorate, Streetscene and Regulatory Services, Development Management, Coventry City Council, PO Box 15, Council House, Coventry, CV1 5RR and marked for the attention of the Head of Planning;

- 20.2.2 to the Developer at its registered address from time to time.

or as otherwise specified by the relevant party by notice in writing to each other party.

- 20.3 Any notice or other communication given in accordance with this clause will be deemed to have been received:

- 20.3.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

- 20.3.2 if sent by pre-paid first class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting; or

- 20.3.3 if delivered by commercial courier on the date and at the time that the courier's delivery receipt is signed.

21 NOTIFICATIONS

21.1 The Owner agrees with the Council:

21.1.1 where this deed imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date the relevant Owner on whose part of the Land the same relates shall give to the Council notice of the Specified Date not more than 5 Working Days after the occurrence of such Specified Date;

21.1.2 if the relevant Owner fails to give the notice required under clause 21.1.1 the Council shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Owner of its determination.

22 CERTIFICATES AND CANCELLATION OF ENTRIES

22.1 On the written request of the Owner/Developer (as the case may be) (or any one of them) at any time after each or all of the obligations under this deed have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

22.2 Following the performance and full satisfaction of all the terms of this deed or if this deed is determined pursuant to clause 9 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner/Developer (as the case may be) (or any one of them) cancel all entries made in the local land charges register in respect of this deed.

23 VALUE ADDED TAX

23.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

23.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

24 THIRD PARTY RIGHTS

24.1 Subject to clause 5.3 a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

25 GOVERNING LAW

25.1 This deed is governed by and interpreted in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The common seal of **THE COUNCIL OF THE CITY OF COVENTRY**

was affixed to this document in the presence of:

[Handwritten signature]

Authorised signatory



EXECUTED as a deed

(but not delivered until dated) by

SHEARER PROPERTY REGEN LIMITED

acting by two Directors or a

Director and the Secretary:-

)
)
)
)
)
)
)
Director

[Handwritten signature]

GUY STEARER

[Handwritten signature]

Director/Secretary

STEWART UNDERWOOD

SCHEDULE 1 - VIABILITY REVIEWS

1. DEFINITIONS

The following definitions and rules of interpretation apply in this Schedule:

Benchmark Land Value

means the sum of £0, on the assumption that the acquisition (and associated costs) of the existing Council and third party owned land within the Land will be funded by the West Midlands Combined Authority (WMCA).

If the acquisition and (associated costs) of the Land is not funded by the WMCA, the Benchmark Land Value should be established at the Revised Viability Assessment or Second Revised Viability Assessment or Third Revised Viability Assessment in line with the Viability Planning Practice Guidance in support of the National Planning Policy Framework.

Affordable Housing

means low cost housing as defined in national regional and local policy from time to time and to include affordable rented and affordable ownership homes made available to those whose incomes are insufficient to enable them to afford to meet their housing needs locally within the administrative area of the Council on the open market

Affordable Housing Provider

has the meaning given to it in Schedule 2

Build Costs

means the sum of:

- (a) the estimated Build Costs (including Construction Contingency) remaining to be incurred at the Review Date; and
- (b) the Build Costs actually incurred at the Review Date.

For the avoidance of doubt Build Costs include preliminary costs and overheads and profit.

Construction Contingency	5% of Build Costs not incurred at the Review Date as defined in the Original Viability Assessment.
Council's Decision	the determination made by the Council in respect of the Development Surplus (if any) pursuant to the Revised Viability Assessment or the Second Revised Viability Assessment or the Third Revised Viability Assessment taking into account all national and local planning policy in effect at the date of the determination and including whether the Development Surplus should be applied towards Off-Site Affordable Housing, Identified Infrastructure or the provision of Affordable Housing.
Deferred Infrastructure Contribution	the sum properly assessed by the Council or determined by the Dispute Expert pursuant to the Revised Viability Assessment or the Second Revised Viability Assessment or the Third Revised Viability Assessment to be used by the Council towards the provision of Identified Infrastructure
Development Surplus	means the calculation of an amount using the following formula: $A - B = C$ Where: A = Gross Development Value B = Gross Development Cost C = the Development Surplus
Discounted Market Rent	means a rent of no more than 80% of the local Market Rent (and Service Charges if any)
External Consultant	means the external consultant(s) appointed by the Council to assess the information submitted pursuant to this Schedule

Expert

means an expert appointed in such case that there is dispute between the Owner/Developer (as the case may be) and the Council in respect of any Revised Viability Assessment or the Final Revised Viability Assessment, such expert being an independent person and chartered surveyor with at least 5 years relevant experience agreed by the parties or in default of agreement appointed on the application of either party or by or at the direction of the President for the time being of the Royal Institution of Chartered Surveyors.

Finance Costs

5.5% as defined in the Original Viability Assessment

Gross Development Cost

means the sum of:

- (a) Build Costs;
- (b) Construction Contingency;
- (c) Professional Fees;
- (d) Planning Obligation Costs;
- (e) Finance Costs;
- (f) Letting & Disposal Fees;
- (g) Scheme Target Return;
- (h) Benchmark Land Value; and
- (i) Additional costs of development not fixed or included in the Original Viability Assessment.

Gross Development Value

means the sum of:

- (a) all gross receipts from any sale of a component of the development at the Review Date with detailed supporting evidence;
- (b) the Market Value of any component of the development that are yet to be disposed of based on detailed comparable evidence.
- (c) all Public Subsidy; and

- (d) any Development related income from other sources.

Identified Infrastructure

The following contributions:

- a) £2,110,699 (Index Linked) to be used towards acute care interventions provided by NHS University Hospital Coventry and Warwickshire;
- b) £862,778 (Index Linked) to be used towards off-site primary medical care and health care facilities within the Council's administrative boundary;
- c) £11,661.598 (Index Linked) to be used towards education improvements broken down as follows:
 - i. £3,398,872 as an early years / primary school contribution to be used towards increasing provision at Hearsall Academy, Earlsdon and Spon Gate;
 - ii. £591,651 as a primary special education needs contribution to be used towards increasing provision at Woodfield Special School, Sherbourne Fields School or Baginton Fields School;
 - iii. £5,616,600 as a secondary education contribution to be used towards increasing provision at Finham Park, Barrs Hill, Sidney Stringer and Cardinal Newman;
 - iv. £1,265,607 as a post-16 years of age education contribution to be used towards increasing provision at Finham Park, Barrs Hill, Sidney Stringer and Cardinal Newman; and
 - v. £788,868 as a secondary and post sixteen years of age special education needs contribution to be used towards increasing provision at Woodfield School or Sherbourne Fields School;

- d) £5,000 to be used as travel plan monitoring costs

Letting & Disposal Fees

means the sum of:

- (a) Commercial letting agent & legal fees – 15% of the first years commercial Market Rent;
- (b) Investment Fees – 1% sales agent and 0.5% sales legal fees of the total commercial, build to rent and hotel Gross Development Value; and
- (c) Estate Agent Fees – 1% sales agent, 1% marketing and 0.5% sales legal fees of total residential sales Goss Development Value.
- (d) Traditional Affordable Housing – 0.5% sales legal fees of traditional affordable residential forward sold to a Registered Provider or Affordable Housing Provider.

Market Housing Unit

means a Dwelling other than an Affordable Housing Unit (where it has been determined that Affordable Housing Units will be required pursuant to this Schedule) to be constructed pursuant to the Planning Permission

Market Rents

means the market rent of a Dwelling at the point of letting on the assumption that the Dwelling is a Market Housing Unit and not an Affordable Housing Unit.

Market Value

means the price at which the sale of any component of the Development would have been completed unconditionally for cash consideration on the relevant Review Date based on detailed comparable market evidence (including evidence of rental values achieved for any component of the Development which has been disposed of but not sold) and assuming the following:

- (a) a willing seller and a willing buyer;
- (b) that no account is taken of any additional bid by a prospective purchaser with a special interest; and
- (c) that both parties to the transaction have acted knowledgeably, prudently and without compulsion.

Maximum Contribution	£14,640,075 (Index Linked).
Off-Site Affordable Housing	means Affordable Housing outside of the Property but within the Council's administrative area.
Off-Site Affordable Housing Contribution	<p>means a sum for the provision of Off-Site Affordable Housing to be calculated on the following basis, but not to exceed a level equivalent to the provision of a total of 25% of Dwellings as Affordable Housing:</p> <ul style="list-style-type: none"> - the monetary equivalent of the provision of up to twenty five per cent (25%) (by Dwelling) Affordable Housing across the Phase to which the Revised Viability Assessment, Second Revised Viability Assessment or Third Viability Assessment (as the case may be) relates and to be calculated at the time of the Revised Viability Assessment, Second Revised Viability Assessment or Third Viability Assessment (as the case may be) as the difference between the residual land value of the Development including any Affordable Housing provision already delivered (or required to be delivered pursuant to the provisions of this deed) on-site as part of the Development and the residual land value of assuming that the Development delivers 25% Affordable Housing on-site.
Original Affordable Housing Proportion	means 0% of the Dwellings
Planning Obligation Costs	<p>means the sum of the cost of:</p> <ul style="list-style-type: none"> (a) the estimated planning obligations remaining to be incurred at the Review Date; and (b) the planning obligations actually incurred at the Review Date.
Public Subsidy	means funding from the Council together with any additional public subsidy secured by the Owner/Developer (as the case may be) to support the delivery of the Development

Proceedings	means an application under the Town and Country Planning Act 1990 (as may be amended) or such equivalent statutory provision or other legal proceedings in respect of the Planning permission including an application to a higher court appealing against a judgment in respect of an application made under the above given in a lower court.
Professional Fees	10% of Build Costs as defined in the Original Viability Assessment.
Registered Provider	means a provider of Social Housing who is registered with Homes England under Part 2 of the Housing and Regeneration Act 2008 who is either on the Council's list of preferred Registered Providers as set out at Appendix 5 of this deed or any other provider of Social Housing who is agreed in writing with the Council
Review Date	means the date that the Revised Viability Assessment and Second Revised Viability Assessment and Third Revised Viability Assessment are triggered in accordance with paragraphs 3, 4, and 5 of this Schedule respectively.
Revised Affordable Housing Proportion	means the maximum reasonable proportion of Affordable Housing demonstrated through the Revised Viability Assessment or Second Revised Viability Assessment or Third Revised Viability Assessment to be no more than 25% of the total Dwellings.
Revised Viability Assessment	means an updated viability assessment to be submitted by the Owner/Developer (as the case may be) to the Council under Paragraph 3 of this Schedule which will be in the same form as the Original Viability Assessment, which will update the Gross Development Value, Gross Development Cost and phasing and cashflow timings of costs and receipts in order to calculate the Development Surplus.
Revised Viability Review Date	means the date of the submission of the first Reserved Matters Application
Scheme Target Return	means the sum of:

- (a) 12.5% Gross Development Value on residential build to rent (including Discounted Market Rent) components of the Development;
- (b) 15% Gross Development Value on commercial components of the Development;
- (c) 12.5% Gross Development Value on hotel and medical centre components of the Development;
- (d) 17.5% Gross Development Value on residential build for sale components of the Development; and
- (e) 6% Gross Development Value on traditional affordable residential components of the Development (which are forward sold to a Registered Provider or Affordable Housing Provider).

Second Revised Assessment

Viability

means an updated viability assessment to be submitted by the Owner/Developer (as the case may be) to the Council under Paragraph 4 of this Schedule which will be in the same form as the Original Viability Assessment, and the Revised Viability Assessment which will update the Gross Development Value, Gross Development Cost and phasing and cashflow timings of costs and receipts in order to calculate the Development Surplus.

Third Revised Assessment

Viability

means an updated viability assessment to be submitted by the Owner/Developer (as the case may be) to the Council under Paragraph 5 of this Schedule which will be in the same form as the Original Viability Assessment, the Revised Viability Assessment and the Second Viability Assessment which will update the Gross Development Value, Gross Development Cost and phasing and cashflow timings of costs and receipts in order to calculate the Development Surplus.

Viability Review

The parties covenant:

2. COST AND PROCESS OF REVIEW

- 2.1 The Owner shall pay the reasonable costs incurred by the Council in appointing an External Consultant to review any Revised Viability Assessment due under paragraph 3 and the Second Revised Viability Assessment due under paragraph 4 and the Third Viability Assessment due under paragraph 5.
- 2.2 Following submission to the Council of the Revised Viability Assessment or the Second Revised Viability Assessment or the Third Revised Viability Assessment, the Council shall as soon as reasonably practicable and in any event within 10 Working Days either:
- 2.2.1 confirm to the Owner/Developer (as the case may be) that the Revised Viability Assessment or the Second Revised Viability Assessment or the Third Revised Viability Assessment is ready to review; or
- 2.2.2 request such further information as is reasonable in the circumstances having regard to the purpose of the Revised Viability Assessment or the Second Revised Viability Assessment or the Third Revised Viability Assessment.
- 2.3 For the avoidance of doubt the Council's actions under paragraph 2.2.1 shall not be deemed to amount to agreement of any of the matters contained in the Revised Viability Assessment or the Second Revised Viability Assessment or the Third Revised Viability Assessment or preclude the Council from seeking further relevant information during the course of negotiations.
- 2.4 The Owner/Developer shall supply the Council with the further information requested under paragraph 2.2.2 as soon as reasonably practicable and in any event within 10 Working Days (unless otherwise agreed in writing by the Council).
- 2.5 The Council shall as soon as reasonably practical confirm in writing to the Owner/Developer (as the case may be) whether it agrees or disagrees with the conclusions contained in such documents submitted to it under this paragraph and in any event within the following timeframes, whichever is later (unless otherwise agreed in writing between the Council and the Owner/Developer (as the case may be)):
- 2.5.1 within 25 Working Days of receipt of the information under paragraph 3.1, 4.1 or 5.1; or
- 2.5.2 within 25 Working Days of receipt of the information under paragraph 2.4 where the Council has requested further information
- and such confirmation shall not unreasonably withheld or delayed.
- 2.6 In the event that the Council disagrees with the conclusions contained in the Revised Viability Assessment or the Second Revised Viability Assessment or the Third Revised Viability Assessment (or any of the other documents submitted under paragraph 2.4), the Council and the Owner/Developer (as the case may be) will have a further period of 25 Working Days beginning on the date the Council provides its confirmation under paragraph 2.5 in which to discuss the Revised Viability Assessment or the Second Revised Viability Assessment or the Third Revised Viability Assessment in order to reach an agreed position.

- 2.7 In the event that after the 25 Working Days period under paragraph 2.6 a written agreement is not reached between the Council and the Owner/Developer (as the case may be) each shall be entitled to refer the dispute or disagreement to an Expert.
- 2.8 The parties shall be entitled to make submissions to the Expert within 28 Working Days of his appointment and shall provide (or procure that others provide) the Expert with such assistance and documents as the Expert may reasonably require for the purpose of making a decision.
- 2.9 The Expert shall be required to prepare a written decision and give notice of the decision to the parties within 28 Working Days after receipt of any representations
- 2.10 The Expert shall act as an expert and not as a an arbitrator and shall determine the dispute or disagreement and shall provide reasons for his determination in writing. The decision of the Expert shall be final and binding on the parties in the absence of manifest error or fraud and the costs shall be borne equally by the parties unless otherwise directed by the Expert

3. REVISED VIABILITY ASSESSMENT

- 3.1 The Owner/Developer shall submit the Revised Viability Assessment on the Revised Viability Review Date.
- 3.2 Following approval of the Revised Viability Assessment in accordance with paragraph 1 above if the Revised Viability Assessment indicates that a Development Surplus is generated then the Council shall notify the Owner/Developer (as the case may be) within 10 Working Days in writing of the Council's Decision. If the event the Council's Decision (whether pursuant to Expert Determination or otherwise) determines the Development Surplus:
- 3.2.1 is required for the provision of Off-Site Affordable Housing the Owner/Developer (as the case may be) shall pay the Off-Site Affordable Contribution to the Council; and/or
- 3.2.2 is required for the provision of Identified Infrastructure the Owner/Developer (as the case may be) shall pay the Deferred Infrastructure Contribution to the Council; and/or
- 3.2.3 is required for the provision of Affordable Housing the provisions of Schedule 2 shall apply.
- 3.3 Subject to paragraph 3.4 in the event the Council's Decision determines that the Development Surplus shall deliver the Off-Site Affordable Housing Contribution and/or Deferred Infrastructure Contribution (as the case may be) the same shall be paid to the Council by the Owner/Developer (as the case may be) prior to Occupation of more than 65% of the Dwellings in the Phase to which the Revised Viability Assessment relates and no further Dwellings beyond 65% in such Phase shall be Occupied until the Off-Site Affordable Housing Contribution and/or Deferred Infrastructure Contribution (as the case may be) has been paid to the Council and for the avoidance of doubt the amount of the

Off-Site Affordable Housing Contribution and/or Deferred Infrastructure Contribution (as the case may be) shall not exceed the Development Surplus pursuant to the Revised Viability Assessment and for the further avoidance of doubt the Owner/Developer shall not be required to comply with the provisions of paragraph 3.4.

- 3.4 Subject to paragraph 3.3 if the Revised Viability Assessment indicates that it is viable for the Revised Affordable Housing Proportion to be provided on-site and the Council's Decision determines that the Development Surplus shall be used towards such purposes:

3.4.1 in the event that the Revised Viability Assessment has been agreed between the Council and the Owner/Developer (as the case may be) on or prior to the date of approval of the first Reserved Matters Application the Revised Affordable Housing Proportion shall be delivered within the Phase to which the first Reserved Matters Application relates; or

3.4.2 in the event that the Revised Viability Assessment has not been agreed between the Council and the Owner/Developer (as the case may be) on or prior to the date of approval of the first Reserved Matters Application the Revised Affordable Housing Proportion shall be delivered within the relevant Phase to which the first Reserved Matters Application relates with no more than 65% of the Dwellings in the relevant Phase being Occupied until the proportion of the Affordable Housing has been agreed with the Council

and in either case the size and location of the said Affordable Housing shall be submitted by the Owner/Developer (as the case may be) to the Council for approval as soon as reasonably practicable thereafter with no more than 65% of the Dwellings in the relevant Phase to be Occupied until the proportion of the said Affordable Housing has been approved by the Council and for the avoidance of doubt the Owner/Developer (as the case may be) shall not be required to comply with the provisions of paragraph 3.3

4. SECOND REVISED VIABILITY ASSESSMENT

- 4.1 Upon the submission of a Reserved Matters Application for the Phase containing the 500th Dwelling the Owner/Developer (as the case may be) shall submit the Second Revised Viability Assessment.
- 4.2 No more than 65% of the Dwellings within this Phase shall be Occupied until the Second Revised Viability Assessment submitted under paragraph 4.1 has been approved by the Council or determined by an Expert in accordance with paragraphs 2.7 to 2.10.
- 4.3 Following approval of the Second Revised Viability Assessment in accordance with paragraph 4.2 above if the Second Revised Viability Assessment indicates that a Development Surplus is generated then the Council shall notify the Owner within 25 Working Days in writing of the Council's Decision. In the event the Council's Decision (whether pursuant to Expert Determination or otherwise) determines the Development Surplus:

- 4.3.1 is required for the provision of Off-Site Affordable Housing the Owner/Developer (as the case may be) shall pay the Off-Site Affordable Contribution to the Council; and/or
 - 4.3.2 is required for the provision of Identified Infrastructure the Owner/Developer (as the case may be) shall pay the Deferred Infrastructure Contribution to the Council; and/or
 - 4.3.3 is required for the provision of Affordable Housing the provisions of Schedule 2 shall apply.
- 4.4 Subject to paragraph 4.5 in the event the Council's Decision determines that the Development Surplus shall deliver the Off-Site Affordable Housing Contribution and/or Deferred Infrastructure Contribution (as the case may be) the same shall be paid to the Council by the Owner/Developer (as the case may be) prior to Occupation of 65% of Dwellings in the Phase to which the Reserved Matters Application referred to in paragraph 4.1 relates and for the avoidance of doubt the amount of the Off-Site Affordable Housing Contribution and/or Deferred Infrastructure Contribution (as the case may be) shall not exceed the Development Surplus pursuant to the Second Revised Viability Assessment and for the further avoidance of doubt the Owner/Developer shall not be required to comply with the provisions of paragraph 4.5
- 4.5 Subject to paragraph 4.4 if the Second Revised Viability Assessment indicates that it is viable for Revised Affordable Housing Proportion to be provided on-site and the Council's Decision determines that the Development Surplus shall be used towards such purposes:
- 4.5.1 in the event that the Second Revised Viability Assessment has been agreed between the Council and the Owner/Developer (as the case may be) on or prior to the date of approval of the Reserved Matters Application referred to in paragraph 4.1 the Revised Affordable Housing Proportion shall be delivered within the Phase to which such Reserved Matters Application relates; or
 - 4.5.2 in the event that the Second Revised Viability Assessment has not been agreed between the Council and the Owner/Developer (as the case may be) on or prior to the date of approval of the Reserved Matters Application referred to in paragraph 4.1 the Revised Affordable Housing Proportion shall be delivered within a future Phase of the Development

and in either case the size and location of the said Affordable Housing shall be submitted by the Owner/Developer (as the case may be) to the Council for approval as soon as reasonably practicable thereafter with no more than 65% of the Dwellings in the relevant Phase to be Occupied until the proportion of the said Affordable Housing has been approved by the Council and delivered in accordance with the provisions of Schedule 2 and for the avoidance of doubt the Owner/Developer (as the case may be) shall not be required to comply with the provisions of paragraph 4.4

5. THIRD REVISED VIABILITY ASSESSMENT

- 5.1 Upon the submission of a Reserved Matters Application for the Phase containing the 800th Dwelling the Owner/Developer (as the case may be) shall submit the Third Revised Viability Assessment.
- 5.2 No more than 65% of the Dwellings within this Phase shall be Occupied until the Third Revised Viability Assessment submitted under paragraph 5.1 has been approved by the Council or determined by an Expert in accordance with paragraphs 2.7 to 2.10.
- 5.3 Following approval of the Third Revised Viability Assessment in accordance with paragraph 5.1 above if the Third Revised Viability Assessment indicates that a Development Surplus is generated then the Council shall notify the Owner within 25 Working Days in writing of the Council's Decision. If the event Council's Decision (whether pursuant to Expert Determination or otherwise) determines the Development Surplus:
- 5.3.1 is required for the provision of Off-Site Affordable Housing the Owner/Developer (as the case may be) shall pay the Off-Site Affordable Contribution to the Council; and/or
 - 5.3.2 is required for the provision of Deferred Infrastructure the Owner/Developer (as the case may be) shall pay the Deferred Infrastructure Contribution to the Council; and/or
 - 5.3.3 is required for the provision of Affordable Housing the provisions of Schedule 2 shall apply.
- 5.4 Subject to paragraph 5.5 in the event the Council's Decision determines that the Development Surplus shall deliver the Off-Site Affordable Housing Contribution and/or Deferred Infrastructure Contribution (as the case may be) the same shall be paid to the Council by the Owner/Developer (as the case may be) prior to Occupation of 65% of Dwellings in the Phase to which the Reserved Matters Application referred to in paragraph 4.1 relates and for the avoidance of doubt the amount of the Off-Site Affordable Housing Contribution and/or Deferred Infrastructure Contribution (as the case may be) shall not exceed the Development Surplus pursuant to the Third Revised Viability Assessment and for the further avoidance of doubt the Owner/Developer shall not be required to comply with the provisions of paragraph 5.5
- 5.5 Subject to paragraph 5.4 if the Third Revised Viability Assessment indicates that it is viable for Revised Affordable Housing Proportion to be provided on-site and the Council's Decision determines that the Development Surplus shall be used towards such purposes:
- 5.5.1 in the event that the Third Revised Viability Assessment has been agreed between the Council and the Owner/Developer (as the case may be) on or prior to the date of approval of the Reserved Matters Application referred to in paragraph 5.1 the Revised Affordable Housing Proportion shall be delivered within the Phase to which such Reserved Matters Application relates; or

- 5.5.2 in the event that the Third Revised Viability Assessment has not been agreed between the Council and the Owner/Developer (as the case may be) on or prior to the date of approval of the Reserved Matters Application referred to in paragraph 5.1 the Revised Affordable Housing Proportion shall be delivered within a future Phase of the Development

and in either case the size and location of the said Affordable Housing shall be submitted by the Owner/Developer (as the case may be) to the Council for approval as soon as reasonably practicable thereafter with no more than 65% of the Dwellings in the relevant Phase to be Occupied until the proportion of the said Affordable Housing has been approved by the Council and delivered in accordance with the provisions of Schedule 2 and for the avoidance of doubt the Owner/Developer (as the case may be) shall not be required to comply with the provisions of paragraph 5.4.

6. MISCELLANEOUS

- 6.1 Notwithstanding any other provision of this deed:

6.1.1 no Phase of the Development shall be required to provide greater than 25% (twenty five per cent) of the Dwellings within that Phase as Affordable Housing unless in any Phase or Phases a higher percentage level of Affordable Housing is agreed between the Council and the Developer/Owner (as the case may be); and

6.1.2 the total sum of any Deferred Infrastructure Contribution(s) paid pursuant to this deed shall in no circumstances exceed the Maximum Contribution.

7. PUBLIC SUBSIDY

- 7.1 Nothing in this Deed shall prejudice any contractual obligation on the Owner/Developer (as the case may be) to repay or reimburse any Public Subsidy using any surplus profit that is to be retained by the Owner/Developer (as the case may be) following the application of the Revised Viability Assessment and Second Revised Viability Assessment and Third Revised Viability Assessment.

SCHEDULE 2 - AFFORDABLE HOUSING

Part 1

1. DEFINITIONS

For the purposes of this Schedule the following words shall have the following meanings:

"Affordable Housing"	means subsidised Social Rented Housing and Intermediate Housing provided to eligible households whose needs are not met by the market and where eligibility is determined with regard to local incomes and local house prices. Such housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative Affordable Housing provision (or such other definition of affordable housing as may be agreed between the Owner/Developer and the Council having regard to any updated definitions in the NPPF).
"Affordable Housing Provider"	means a company (whether trading for profit or otherwise) charity voluntary body or other organisation not being a Registered Provider that is established wholly or partly for or whose objectives include the acquisition management letting and sales of Affordable Housing and who is approved by the Council
"Affordable Housing Scheme"	means a scheme in relation to a Phase for the provision of Affordable Housing in that Phase including the location mix tenure and type of each Affordable Housing Unit in that Phase which shall (unless otherwise agreed by the Council) be provided at a tenure mix as determined in accordance with the

relevant viability review for the Phase pursuant to Schedule 1 SAVE THAT no Phase shall be required to provide greater than 60% of the Affordable Housing Units within that Phase as Social Rented Housing nor greater than 40% of the Affordable Housing Units within that Phase as Intermediate Housing.

"Affordable Housing Scheme Document"

means a document which sets out details of the Affordable Housing Scheme and which covers matters to be approved by the Council under this Schedule subject to any later variation of such document as may be agreed in writing between the Council and the Owner/Developer from time to time.

"Affordable Housing Unit"

means an affordable housing unit to be constructed and provided as Affordable Housing as part of the Development pursuant to the relevant Affordable Housing Scheme.

"Affordable Rented Housing"

means housing let by Registered Providers or an Affordable Housing Provider to households who are otherwise eligible for Social Rented Housing but where the affordable rent is subject to controls that require a rent of no more than 80% of the local Market Rent (and Service Charges if any) and defined in accordance with the definition of "Affordable housing for rent" at Annex 2 of the NPPF July 2021.

"Base Rent"

means the annual rent of each individual Affordable Housing Unit divided by the number of weeks over which such rent is

"Chargee"

collected in each year excluding the Service Charge.

means any mortgagee or chargee of the Registered Provider or Affordable Housing Provider or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator

"Choice Based Lettings Scheme"

means a scheme between the Council and Registered Provider or Affordable Housing Provider who provides Social Rented Housing within the Council's area comprising arrangements for the priority allocation of such housing.

"Discounted Sale Affordable Housing"

means each and every Affordable Housing Unit comprising Intermediate Housing as may be included within the Affordable Housing Scheme approved by the Council and designated for sale by the Owner/Developer to eligible Local People at a discount from Market Value. Such discount shall be sufficient to enable each of the relevant Affordable Housing Units to meet the criteria of Affordable Housing and in any event shall not be less than 20% of Market Value as shall be determined at the point of sale of each such relevant Affordable Housing Unit in perpetuity.

"First Time Buyer"

means a prospective purchaser who has not been the owner of any other housing (whether as outright owner or with

mortgages or other loan finance) either in whole or part at any previous time within the United Kingdom and who cannot otherwise afford to rent or buy housing generally available on the open market within Coventry.

"Homes England"

means either the Regulator of Social Housing which is the Government's agency for the regulation of social housing or Homes England (as applicable) as established under the Housing and Regeneration Act 2008 or any statutory predecessor or successor thereof or other government body with the function of regulation of social housing.

"Initial Let"

means the first tenancy of each newly constructed and previously un-occupied Affordable Housing Unit to be offered for rent within the Development.

"Independent Valuer"

a member of the Royal Institution of Chartered Surveyors or other relevant recognised professional body engaged in surveying and/or valuation appointed by the Owner/Developer at its own cost but first approved by the Council, and the phrase "Independent Valuers" shall be construed accordingly.

"Intermediate Housing"

means housing for sale or rent provided at a cost above Social Rented Housing but below Market Value or Market Rent meeting the criteria of Affordable Housing. Such housing may include Shared Equity, Shared Ownership, Discounted Sale Affordable Housing, Affordable Rented Housing, Intermediate Rent or other approved

affordable home ownership products (where a discount or subsidy from Market Value applies to provide for affordability) as may be agreed between the Owner/Developer, the Registered Provider or Affordable Housing Provider and the Council.

"Intermediate Rent"

means Affordable Housing available for private letting either through the Owner or the Registered Provider or an Affordable Housing Provider at a Base Rent above that for Social Rented Housing but below Market Rent subject to the Base Rent and Service Charge (if any) for an Affordable Housing Unit comprising Intermediate Rent not exceeding 80% of the Market Rent and 80% of the Service Charge (if any).

"Local Help to Buy Agent"

means the organisation approved by the Homes England from time to time to administer its affordable home ownership programme.

"Local People"

means persons who:

- (a) in the case of Affordable Housing comprising Social Rented Housing or Affordable Rented Housing in Coventry are eligible to obtain such Affordable Housing under the Choice Based Lettings Scheme;
- b) in the case of Intermediate Housing have a total household income at or below the average household income level for Coventry as published by the Council at the point of sale or letting of the Affordable Housing Unit comprising Intermediate Housing and who:

- (i) live within Coventry or within 3 miles of the Coventry boundary; or
- (ii) are moving to Coventry to take up employment or to be near to relatives resident within the Coventry boundary or within 3 miles of the Coventry boundary; or
- (iii) otherwise meet the affordability criteria of the Local Help to Buy Agent for Affordable Housing comprising Intermediate Housing in Coventry including provision for an eligible First Time Buyer.

"Market Housing Unit"

means each and every Dwelling (other than an Affordable Housing Unit) to be constructed pursuant to the Development.

"Market Rent"

means the market rent of a Dwelling at the point of letting on the assumption that the Dwelling is a Market Housing Unit and not an Affordable Housing Unit.

"Market Value"

means the market value of the relevant Affordable Housing Unit at the point of sale as validated by an Independent Valuer on the assumption that the Dwelling was otherwise a Market Housing Unit and not an Affordable Housing Unit.

"NPPF"

means the Government's National Planning Policy Framework dated 2021 or any subsequent revision or update of this document issued by the Government.

"Phase"

means a Phase of the Development in which Affordable Housing is to be provided as determined pursuant to the Schedule 1.

"Practical Completion"

means completion of the construction of any Market Housing Unit or Affordable Housing Unit together with all associated infrastructure works and service connections to such a standard that any such Market Housing Unit or Affordable Housing Unit is fit for human habitation, free of patent defects and complies with the Planning Permission to enable beneficial Occupation.

"Registered Provider"

means a provider of Affordable Housing who is registered with the Homes England under Part 2 of the Housing and Regeneration Act 2008 who is on the Council's list of Preferred Registered Providers as set out in Appendix 5 of this deed subject always to paragraph 2.5 of this Schedule.

"Retail Prices Index"

means the Retail Price Index published by the Office for National Statistics (or such other index as may be agreed between the parties).

"Revised Affordable Housing Proportion"

has the meaning given in Schedule 1.

"Service Charge"

means the amount chargeable by the Owner, Registered Provider or Affordable Housing Provider as the case may be to the tenant of each Affordable Housing Unit to cover services to be provided by the Owner, Registered Provider or Affordable Housing Provider having regard to the Landlord and Tenant Acts 1985 and 1987 as amended.

"Shared Equity"

means Intermediate Housing where the purchaser (which may include a First Time Buyer) acquires an Affordable Housing Unit in part with a conventional mortgage (usually up to 75% of the Dwelling's Market Value including deposit) from a lender

offering mortgages for residential property purchase together with an equity loan provided by the Registered Provider, Affordable Housing Provider or Owner as applicable for the balance of the Market Value in accordance with a detailed scheme to be agreed with the Council prior to commencement of construction of any Affordable Housing Unit intended for sale on such terms (unless otherwise agreed in writing by the Council).

"Shared Ownership"

means housing provided by an Affordable Housing Provider or a Registered Provider or the Owner as applicable which is made available on the basis of part rent and part sale in proportions agreed between the relevant seller and the buyer/tenant.

"Social Rented Housing"

means housing owned by local authorities and private Registered Providers or Affordable Housing Providers which is subject to the Homes England guideline target rents regime and which is made available to people who are registered under the Choice Based Lettings Scheme.

Part 2

2. AFFORDABLE HOUSING OBLIGATIONS

The Owner covenants with the Council as follows In the event that pursuant to Schedule 1 it is determined that Affordable Housing is to be provided within a Phase:

2.1 Prior to Occupation of 65% of the Dwellings comprised in that Phase:

- 2.1.1** the Owner/Developer shall submit to the Council for its formal written approval an Affordable Housing Scheme in respect of that Revised Affordable Housing

Proportion attributable to such Phase (to be set out in an Affordable Housing Scheme Document);

- 2.1.2 prior to submitting the Affordable Housing Scheme Document for that Phase to the Council for approval as referred to at paragraph 2.1.1 of this Schedule the Owner/Developer shall consult the Council on the scope of the Affordable Housing Scheme for that Phase including but not limited to the location, phasing, delivery programme, arrangements for transfer of the Social Rented Housing to a Registered Provider or Affordable Housing Provider, and operation of the Intermediate Housing, type, mix, tenures and sizes, of the Affordable Housing Units to be provided in that Phase being representative of the range of Dwelling types to be included in the Development as a whole as provided for by the Planning Permission.
- 2.1.3 no more than 65% of Dwellings in that Phase shall be Occupied until the Affordable Housing Scheme for that Phase has been submitted to and approved in writing by the Council. The development shall then proceed in strict accordance with the approved Affordable Housing Scheme.
- 2.1.4 no more than 65% of Dwellings in that Phase shall be Occupied until the Affordable Housing Units in that Phase have been constructed and those Affordable Housing Units have been transferred to a Registered Provider on an Affordable Housing Provider (save in respect of any Affordable Housing Units being disposed of direct to eligible Local People) in accordance with the Affordable Housing Scheme and written notification of such transfer has been received by the Council.
- 2.2 To procure that the Affordable Housing Units in each Phase will be constructed in accordance with the Affordable Housing Scheme set out in the Affordable Housing Scheme Document for that Phase.
- 2.3 In respect of the Affordable Housing Units comprising Social Rented Housing the Owner/Developer shall use reasonable endeavours to conclude an agreement with Registered Provider or Affordable Housing Provider selected by the Owner for the transfer of those Affordable Housing Units.
- 2.4 In respect of the Affordable Housing Units comprising Intermediate Housing, the Owner/Developer may either:

- 2.4.1 transfer those Affordable Housing Units to a Registered Provider or Affordable Housing Provider for letting or disposal as appropriate to Local People on an Affordable Rented Housing or Shared Ownership basis; or
 - 2.4.2 directly dispose of those Affordable Housing Units to eligible Local People on a Shared Equity basis in accordance with the requirements set out in Part 3 to this Schedule; or
 - 2.4.3 directly dispose of those Affordable Housing Units to eligible Local People on a Discounted Sale Affordable Housing basis in accordance with the requirements set out in Part 4 to this Schedule; or
 - 2.4.4 let those Affordable Housing Units to eligible Local People on an Intermediate Rent basis in accordance with the requirements set out in Part 5 of this Schedule.
- 2.5 Pursuant to the preceding paragraphs of this Schedule, should it become necessary for the Owner/Developer to seek any alternative Registered Provider or Registered Providers to those specified in the Council's list of Preferred Registered Providers set out in Appendix 2 to this deed the Owner/Developer shall give written notice to the Council specifying the reasons therefor and supplying appropriate evidence. The Owner/Developer shall consult with the Council on the selection of any such alternative Registered Provider and the Council's decision on selection shall be given in writing with both parties acting reasonably in the matter.
- 2.6 Following approval by the Council of an Affordable Housing Scheme Document under paragraph 2.1 of this Schedule, the Owner/Developer and the Registered Provider or Affordable Housing Provider in the case of Affordable Housing Units comprising Social Rented and/or Intermediate Housing (where the Registered Provider or Affordable Housing Provider is to acquire such Affordable Housing Units) may be permitted to agree alternative dwelling types and plot numbers in respect of such Affordable Housing Units provided they have the prior approval of the Council.
- 2.7 From the date of Practical Completion of an Affordable Housing Unit and its availability for Occupation it shall not be used other than for Affordable Housing save that the obligations in this Schedule shall not be binding on:
- 2.7.1 any Chargee provided that it has first complied with the following:

- (a) the Chargee shall prior to seeking to dispose of any of the Affordable Housing Units arising from any default under the terms of its mortgage or charge or otherwise give not less than 4 weeks' prior notice to the Council of its intention to dispose and:
- (b) if the Council responds within 4 weeks from receipt of the notice served under paragraph (a) indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing Units then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to complete such transfer. However the Chargee shall not be required to act in a manner that is contrary to its duties under the charge or mortgage;
- (c) if the Council does not serve its response to the notice served under paragraph (a) within 4 weeks the Chargee shall be entitled to dispose of the relevant Affordable Housing Units free of the provisions of this Schedule which shall determine absolutely with respect to the said Affordable Housing Unit;
- (d) if the Council or any other person cannot within 8 weeks of the date of service of its response under paragraph (b) above complete a transfer referred to in paragraph (b) then provided that the Chargee shall have complied with its obligations under paragraph (a) the Chargee shall be entitled to sell the relevant Affordable Housing Units free of the provisions of this Schedule which shall determine absolutely with respect to the said Affordable Housing Units

PROVIDED ALWAYS THAT none of the provisions in paragraph 2.7.1 shall place the Chargee under any obligation to dispose of the Affordable Housing Units for any sum less than the monies outstanding pursuant to the mortgage or charge inclusive of principal monies, interest, costs and charges. Furthermore, the Chargee shall not be required to act contrary to its duties under the charge or mortgage and the Council shall give full consideration to protect the interest of the Chargee in respect of monies outstanding under the charge or mortgage; or

2.7.2 a person acquiring one of the Affordable Housing Units pursuant to any form of statutory right to acquire binding upon the then owner of the relevant Affordable Housing Unit or the mortgagee chargee or receiver of the relevant Affordable Housing Unit following such acquisition; or

2.7.3 a lessee of one of the Affordable Housing Units under a Shared Ownership scheme (if any) who has taken a transfer of the freehold reversion of that

lease or who has staircased to 100% of the equity therein or the purchaser from or the mortgagee chargee or receiver of the lessee of that unit

- 2.7.4 any purchaser from a mortgagee of an individual Affordable Housing Unit following any default of the individual mortgagor.

Part 3

3. SHARED EQUITY

- 3.1 Pursuant to Part 2 paragraph 2.4.2 of this Schedule, in respect of any Affordable Housing Units to be disposed of on a Shared Equity basis, the basis of the Shared Equity scheme is to be agreed with the Council as part of the Affordable Housing Scheme proposals to be submitted by the Owner under paragraph 2.1 of this Schedule.
- 3.2 The Shared Equity scheme under paragraph 2.4.2 of this Schedule shall take into account the following requirements:
- 3.2.1 the equity loan that the Owner would be required to provide (for the balance of purchase price remaining after a conventional mortgage including deposit have been taken into account) shall be to Local People who are eligible for the purchase of an Intermediate Housing unit on Shared Equity terms;
 - 3.2.2 the equity loan repayment period will be 10 years extendable at the discretion of the Owner/Developer with buyers able to make full or partial repayments (minimum of 5% of the Market Value) at any time;
 - 3.2.3 the initial interest or charge free period must be not less than 5 years from the date of purchase;
 - 3.2.4 the interest payable after the initial charge free period shall not exceed 1.75% of the value of the equity loan unless otherwise agreed with the Council at the time the Affordable Housing Scheme is agreed under paragraph 2.1 of this Schedule and will not increase thereafter by more than 1% above the Retail Price Index annually for the preceding 12 month period;
 - 3.2.5 the minimum proportion of the Market Value that must be made available as a Shared Equity loan shall be 20%;

- 3.2.6 the Owner/Developer to consult with the Local Help to Buy Agent on the identification of suitable eligible Local People to be considered for acquisition on a Shared Equity basis;
- 3.2.7 any other relevant provisions required to ensure compliance with Affordable Housing criteria including requirements for Local People to purchase such Affordable Housing.

Part 4

4. DISCOUNTED SALE AFFORDABLE HOUSING

- 4.1 Pursuant to Part 2 paragraph 2.4.3 of this Schedule, in respect of any Affordable Housing Units to be disposed of on a Discounted Sale Affordable Housing basis, the following provisions shall apply:
 - 4.1.1 disposal shall be to eligible Local People at a sum not exceeding 75% of the Market Value (as shall be determined at the point of the relevant transfer of the Affordable Housing Unit designated for Discounted Sale Affordable Housing).

Part 5

5. Intermediate Rent

- 5.5 Pursuant to Part 2 sub-paragraph 2.4.4 of this Schedule, in respect of any Affordable Housing Units proposed to be let as Affordable Housing for Intermediate Rent (either by the Owner, Registered Provider or an Affordable Housing Provider) details of the Intermediate Rent proposals to be submitted by the Owner as part of the Affordable Housing Scheme Document proposals under paragraph 2.4.4 of this Schedule shall include (but not be limited to) the following:
 - 5.5.1 procedures for management, maintenance and future major repair of the Affordable Housing Units over the life of the Development to ensure its effective operation in complying with the Affordable Housing obligations contained in this Schedule over the long term;
 - 5.5.2 details of the proposed allocation of the Affordable Housing Units and lettings policies having regard to Local People whose incomes are at or below the

average for Coventry at the time of each letting and equal opportunities policies, complaints procedures;

- 5.5.3 the proposed Base Rent and Service Charge for each relevant Affordable Housing Unit for Intermediate Rent at the time of Initial Let following completion of each Affordable Housing Unit having regard to the requirement for Intermediate Rent Affordable Housing Units to be let at Base Rents and Service Charges not exceeding 80% of Market Rent and Service Charges respectively;
- 5.5.4 the basis for applying future Base Rent and Service Charge increases;
- 5.5.5 prior to the Initial Let of each such Affordable Housing Unit for Intermediate Rent, submission of a Market Rent valuation for each such Affordable Housing Unit for the purposes of agreeing the Base Rent and Service Charge at a level not exceeding 80% of those valuations respectively with such valuations being determined by an Independent Valuer;
- 5.5.6 any other particulars that the Council may reasonably request to enable it to consider approval of any Affordable Housing proposed for Intermediate Rent.

SCHEDULE 3 - MURAL

1 DEFINITIONS

The following definitions and rules of interpretation apply in this Schedule:

All Necessary Consents

means all planning permissions and development consents and agreements required for the implementation of the Mural Relocation Strategy as approved by the Council and all other permissions, licences and approvals under any statute, bye law or regulation of any competent authority and which are necessary to enable the requirements of the Mural Relocation Strategy as approved by the Council to be implemented, carried out and completed

All Reasonable Endeavours

means that the obligor shall take all steps that are reasonably required to achieve the stated outcome and not merely some of them but shall not be obliged to take any step beyond that which any reasonable commercial company would take to achieve the stated outcome or which involves beginning or becoming involved in legal proceedings

Block B

means the area identified "Block B" on the Mural Relocation Plan

Block C

means the area identified "Block C" on the Mural relocation Plan

Block E

means the area identified as "Block E" on the Mural Relocation Plan

Mural

means The Three Tuns Mural located in Bull Yard being a Grade II listed heritage asset with Historic England List Entry Number 1393443

Mural Relocation Plan

means the plan attached at Appendix 1 and contained within the Development Principle Document Revision B dated March 2021 and submitted to the Council as part of the Planning Application.

Mural Relocation Strategy

means a strategy for the removal, temporary storage and relocation (including an estimated time frame for such works) of the Mural to a prominent location within or close

to the Land in accordance with the provisions of paragraph 2 of this Schedule

Public Square 1

means the area identified as "PS1" on the Mural Relocation Plan

2 Mural Relocation Strategy

- 2.1 Prior to the Commencement of Development of the Phase in which the Mural is located the Owner/Developer (as the case may be) shall submit the Mural Relocation Strategy to the Council for approval (such approval not to be unreasonably withheld or delayed) in accordance with the provisions of paragraphs 2.2 to 2.4 of this Schedule.
- 2.2 Subject to paragraphs 2.3 and 2.4 of this Schedule the Mural Relocation Strategy must provide for the relocation of the Mural to one of the following locations:
- 2.2.1 the Warwick Row elevation of Block C;
 - 2.2.2 a location within Public Square 1 (and in such circumstances the Mural must be provided in protective casing); or.
 - 2.2.3 the Hertford Street elevation of Block B
- 2.3 Subject to paragraph 2.4 of this Schedule in the event that it is not technically feasible to relocate the Mural in one of the locations identified in paragraph 2.2 of this Schedule the Owner/Developer (as the case may be) shall submit the Mural Relocation Strategy to the Council (such approval not to be unreasonably withheld or delayed) in a form which provides reasons for the same and for the relocation of the Mural to a location which:
- 2.3.1 enables a visual relationship between the Mural and the post-war architectural elements of Coventry's townscape, such as Coventry Market and Broadgate House;
 - 2.3.2 enables both elevations of the Mural to be experienced;
 - 2.3.3 enables the Mural to be experienced from the public realm;
 - 2.3.4 enhances or preserves its significance as a heritage asset; and
 - 2.3.5 is suitably sheltered to protect the long term integrity of the Mural.
- 2.4 In the event that it is not technically feasible to relocate the Mural either to one of the locations identified in paragraph 2.2 of this Schedule or in accordance with the provisions of paragraph 2.3 of this Schedule the Owner/Developer (as the case may be) shall submit the Mural Relocation Strategy to the Council (such approval not to be unreasonably withheld or delayed) in a form which provides reasons for the same

and for the Mural to be relocated to a location which preserves or enhances the Mural's significance as a heritage asset.

- 2.5 Following approval of the Mural Relocation Strategy the Owner/Developer (as the case may be) shall use All Reasonable Endeavours to obtain All Necessary Consents for the implementation of the Mural Relocation Strategy as approved and shall thereafter fully implement the same.

SCHEDULE 4 - COVENANTS BY THE COUNCIL

1. Interest Bearing Account

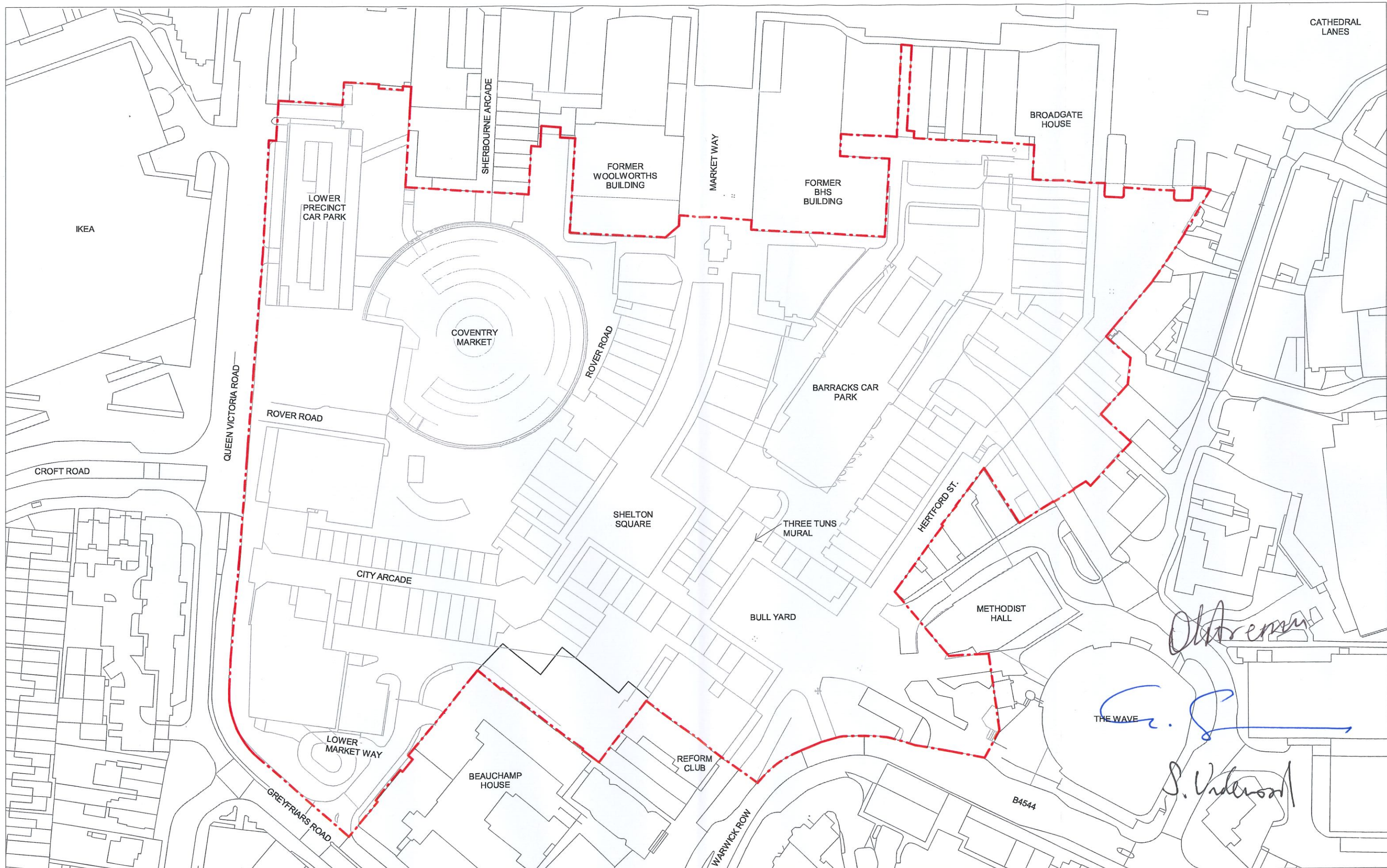
- 1.1. To pay all financial contributions received from the Owner/Developer (as the case may be) under the terms of this deed into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable.

2. Repayment of Contributions

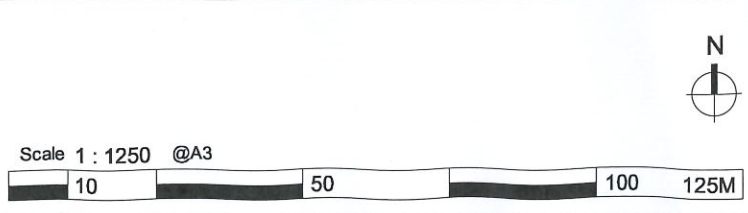
- 2.1. To use all financial contributions received from the Owner/Developer (as the case may be) under the terms of this deed for the purposes specified in this deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner/Developer (as the case may be) and the Council shall agree.
- 2.2. To pay to the payee such amount of any payment made by to the Council under this deed which has not been spent or committed for expenditure in accordance with the provisions of this deed within ten years of the date of receipt by the Council of such payment together with accrued interest for the period from the date of payment to the date of refund.
- 2.3. To provide to the Owner/Developer (as the case may be) (or any one of them) such evidence as the Owner/Developer (as the case may be) (or any one of them) shall reasonably require in order to confirm the expenditure of the financial contributions paid by the Owner/Developer (as the case may be) under this deed.

APPENDIX 1 - PLANS


Site Plan



Coventry City Centre South
 PARAMETER PLANS - EXISTING SITE PLAN
 PROJECT REFERENCE: 764-COS
 DRAWING No.: 0101
FOR APPROVAL
 ISSUE DATE: NOV 2020 REVISION:00



KEY:
 - - - - - Application Boundary

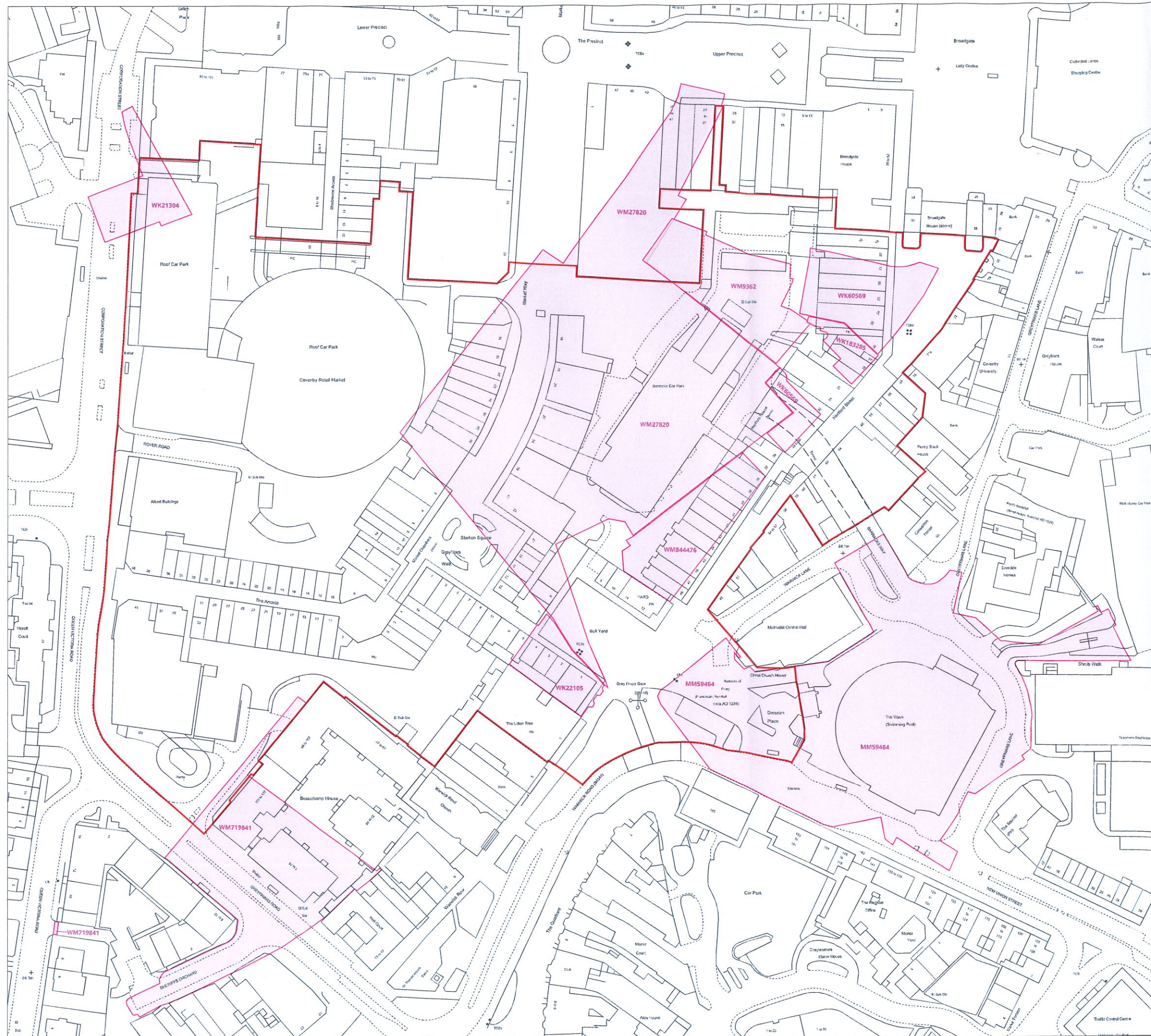


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Owner Registered Land Plan

OWNER REGISTERED DECLARED BOUND LAND MAP



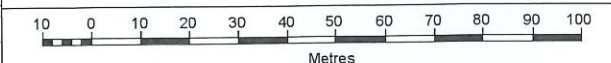
Key:

Registered Freehold Owned By
Coventry City Council

Application Boundary

Olafur

G. C.
S. Underwood



Date: 14/01/2022

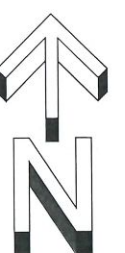
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Sheet Number: Sheet 1 of 1

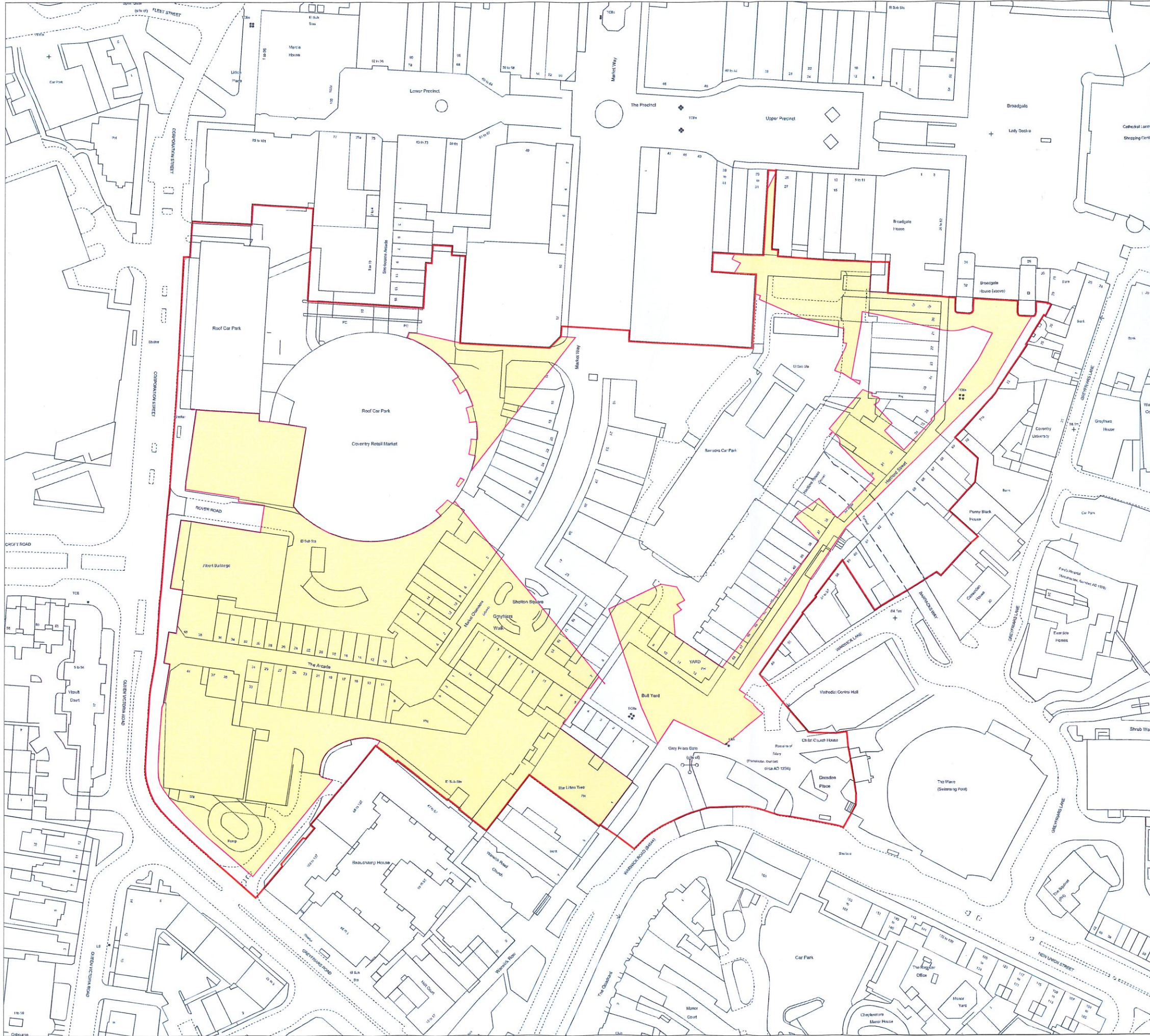
Scale: 1:750 @A1

Where applicable the plot boundaries show the general boundary of the registered land, it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground.

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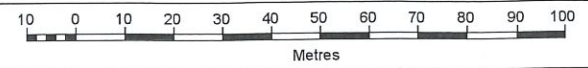
OWNER UNREGISTERED DECLARED BOUND LAND MAP



Key:

-  Unregistered Freehold Owned By Coventry City Council
-  Application Boundary

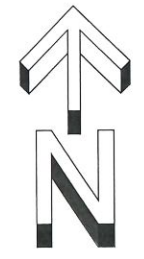
Olafremu
S. Underwood
C. C.



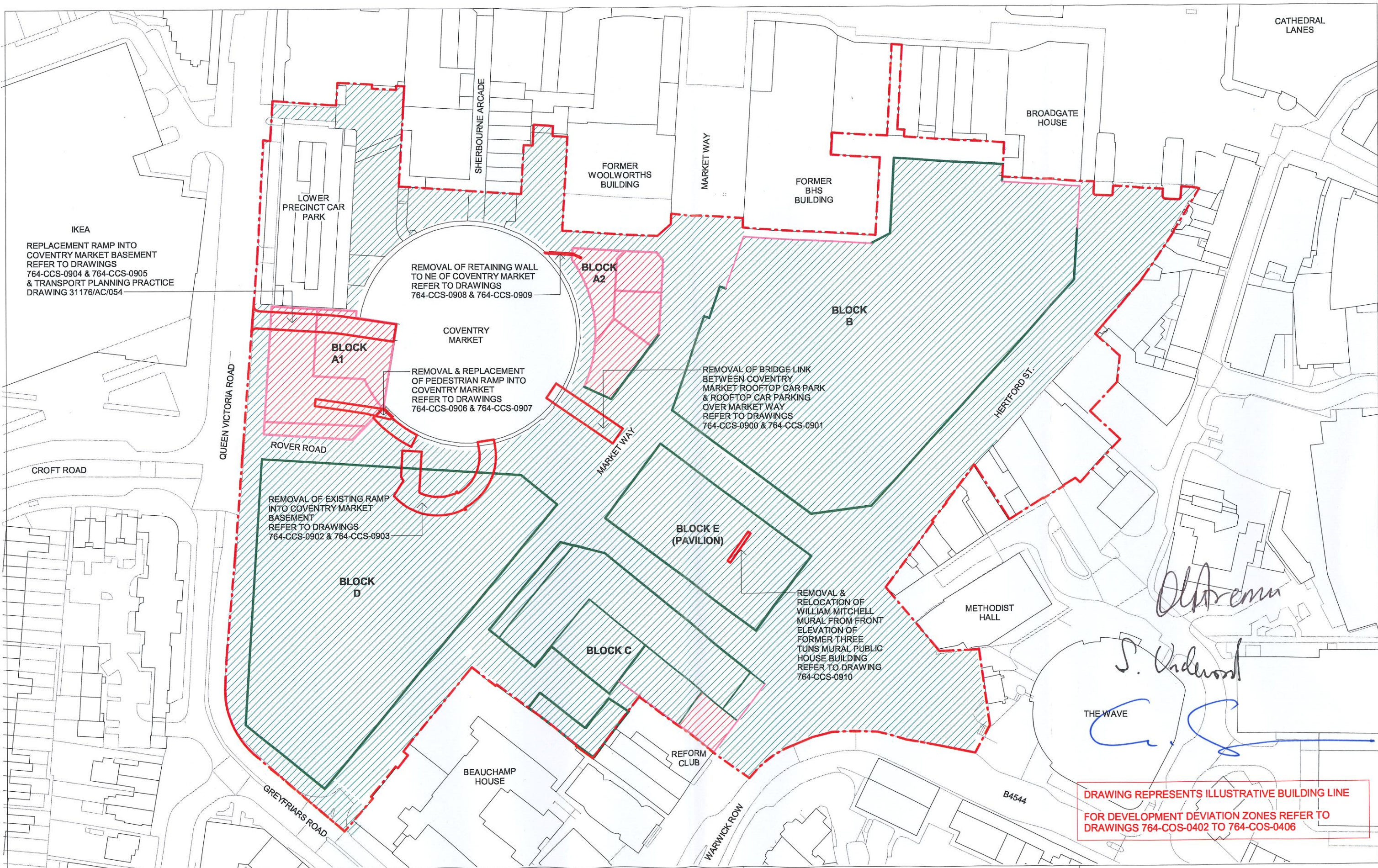
Date: 14/01/2022
Version Number: v1.0
Sheet Number: Sheet 1 of 1
Scale: 1:750 @A1

Where applicable the plot boundaries show the general boundary of the registered land, it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground.

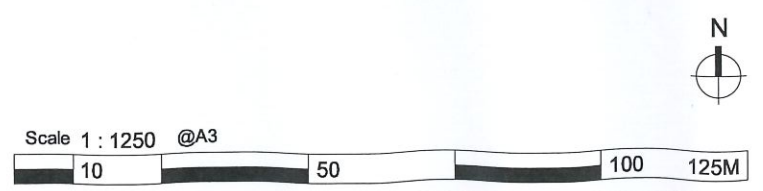
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Owner Unregistered Land Plan



Coventry City Centre South
APPLICATION BOUNDARY AREAS
PROJECT REFERENCE: 764-COS
DRAWING No.: 0451
FOR APPROVAL
ISSUE DATE: NOV 2020 REVISION:00



- KEY:**
- Application Boundary
 - Outline Part - Appearance, Access, Landscaping Reserved - Refer to drawings 764-COS-0800 TO 764-COS-0815 For Details
 - Outline Part - All Matters Reserved
 - Full Application Part - Refer to drawings 764-COS-0900 TO 764-COS-0910 For Details



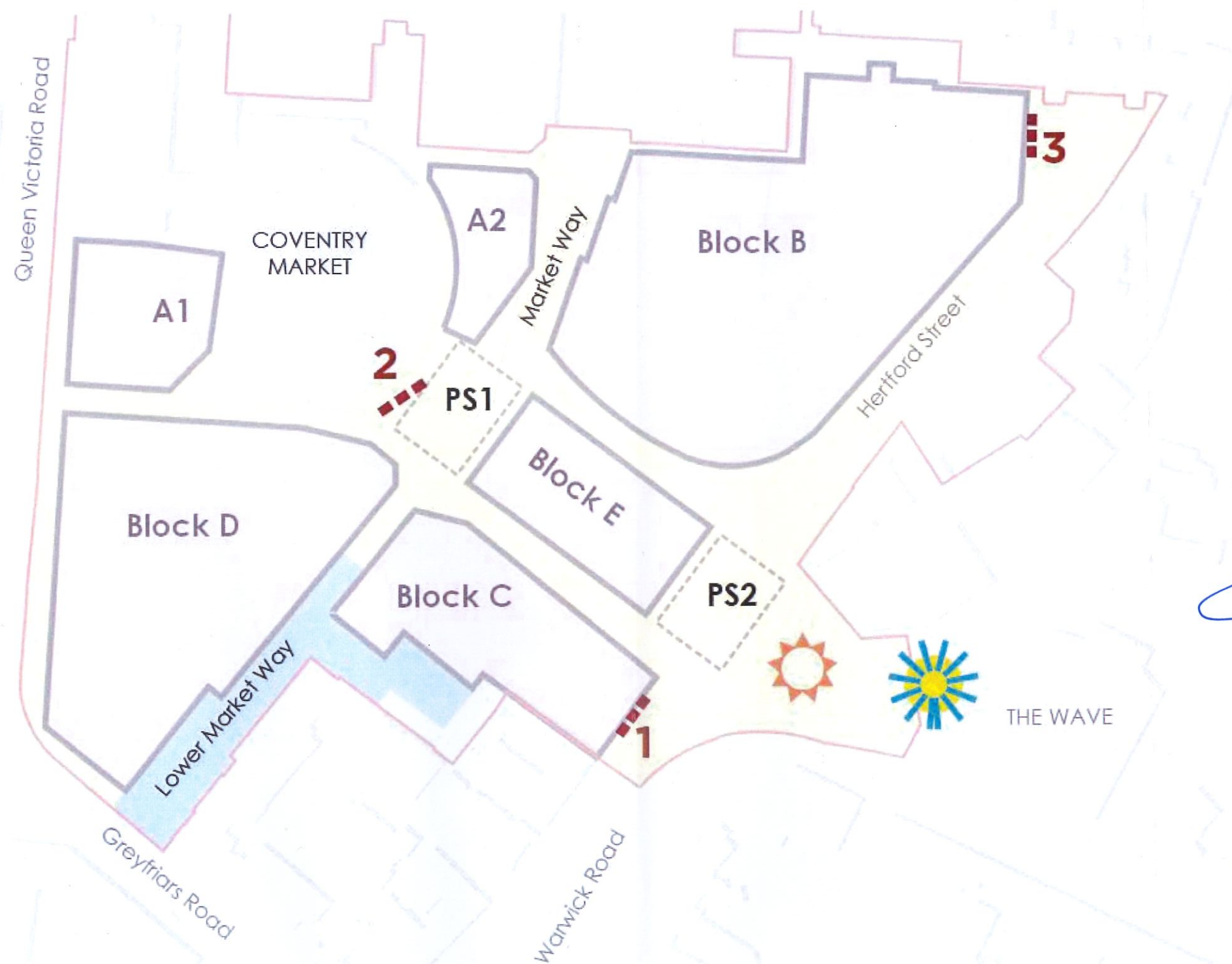
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DRAWING REPRESENTS ILLUSTRATIVE BUILDING LINE
FOR DEVELOPMENT DEVIATION ZONES REFER TO
DRAWINGS 764-COS-0402 TO 764-COS-0406

Application Boundary Areas Plan

Mural Relocation Plan



S. Underwood
C. S.
Ala Trema

Illustrative locations for the Three Tuns Mural

APPENDIX 2 - LIST OF PREFERRED REGISTERED PROVIDERS

- 1 The following Registered Providers are those who have Affordable Housing in Coventry and are the Council's preferred Registered Providers for the development and operation of new and additional Affordable Housing in Coventry:

Accord Housing Association

Bromford Housing Group

Stonewater (formerly Jephson Housing Association)

Midland Heart Limited

Orbit Housing Association

Whitefriars Housing Group

Optivo

- 2 In the event that any of the Registered Providers set out in clause 1 to this Appendix have ceased to be a preferred Registered Provider at the time the Owner seeks to conclude an agreement for the transfer of Affordable Housing under Schedule 2, the Owner shall have regard to the Council's list of preferred Registered Providers in being at that time.

APPENDIX 3 - FORM OF CONFIRMATORY DEED

Dated []

CONFIRMATORY DEED BY WAY OF UNILATERAL UNDERTAKING BY:

(1) [Owner of Land]

TO:

(2) The Council of the City of Coventry (the Council)

Recitals

- A The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Land is situated.
- B The Owner is registered at HM Land Registry as proprietor with [freehold][leasehold] [title absolute] of the Land under title numbers [].
- C The Land forms part of the Development Land.
- D The Owner intends to develop the Land in accordance with the Planning Permission which was granted on [date] subject to the S106 Agreement.
- E This Deed is provided under Section 106 of the 1990 Act so as to bind the Land into the planning obligations contained within S106 Agreement.

AGREED TERMS

1 Interpretation

- 1.1 Unless otherwise defined herein the definitions in this Deed shall be as in the S106 Agreement save that the following expressions shall unless the context otherwise requires have the following meanings:

Deed	means this Deed
Development Land	has the meaning given to the term "Land" in the S106 Agreement

Land means the Land as shown for indicative purposes [edged][coloured] on the Plan

Plan means the plan attached at Schedule 1 hereto

S106 Agreement means the agreement made under section 106 of the Act between (1) the Council (2) Shearer Property Regen Limited dated [] a copy of which is attached at Schedule 2 or any variation thereto

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that no such amendment, extension or re-enactment shall apply to this Deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

- 1.10 A reference to writing or written does not include faxes or e-mail.
- 1.11 An obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.13 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.14 This Deed is supplemental to the S106 Agreement.

2 Statutory Provisions

- 2.1 This Deed is made pursuant to section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and to the extent that this Deed includes planning obligations for the purposes of Section 106 of the Act then those obligations relate to the S106 Agreement and are enforceable by the Council as the local planning authority for the area within which the Land is situated against the Owner and any person deriving title from the Owner and shall run with the Land and shall bind the Owner its successors in title and assigns PROVIDED THAT the Owner (and its successors in title and/or assigns to the Land) shall be deemed not to have any interest in the Land where they only retain the benefit of any right or exception or reservation and/or covenant or restriction
- 2.2 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory

instruments orders and regulations in the exercise of their functions as a local authority, planning authority.

3 Effect of this Deed

This Deed is supplemental to the S106 Agreement and the Owner agrees that the effect of this Deed is to ensure that the covenants, restrictions and obligations contained in the S106 Agreement bind the Land and are enforceable against the Owner (subject at all times to the provisions of the S106 Agreement).

4 Effective Date

The provisions of this Deed shall come into force on the date hereof.

5 Covenants to the Council

The Owner covenants with the Council to observe and perform the covenants, restrictions and obligations set out on the part of "the Owner" in the S106 Agreement subject to the terms of the S106 Agreement so as to bind its interests in the Land.

6 Determination of Deed

If the Planning Permission is quashed revoked or otherwise withdrawn or expires within the meaning of sections 91, 92 and 93 of the Act or is revoked or modified in accordance with sections 97 to 100 inclusive of the Act without the consent of the Owner this Deed shall cease to have effect.

7 Local Land Charge

This Deed is a local land charge and shall be registered as such by the Council.

8 Third Party Rights

No person other than a party to this Deed and their respective successors and permitted assigns shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

9 Governing Law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

[EXECUTION CLAUSE OF OWNER AS DEFINED IN DEED]

[SCHEDULE 1 - PLAN]

[SCHEDULE 2 – S106 AGREEMENT]