

Dated 28 March 2024



BUCKINGHAMSHIRE COUNCIL

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country
Planning Act 1990

Buckinghamshire Council

And

Springquest Limited

And

Kendal Tzaraine Daniel

And

Aldermore Bank Plc

And

Orion Land & Leisure Limited

Relating to Land off Sandy Lane, Long Crendon, Buckinghamshire

Planning Ref: 22/04141/APP

DATED 28 March 2024

PARTIES:

- (1) BUCKINGHAMSHIRE COUNCIL of Walton Street Offices, Walton Street, Aylesbury, HP20 1UA in the County of Buckinghamshire (“Council”); and
- (2) SPRINGGUEST LIMITED (company number 10608936) whose registered office is 108 Whitworth Road, Rochdale, OL12 0JJ (“Owner 1”); and
- (3) KENDAL TZARAINÉ DANIEL of 65 Bicester Road, Long Crendon, Aylesbury, HP18 9EE and of 5 Bicester Road, Long Crendon, Aylesbury, HP18 9AE and of Higher Thorns Green Farm, Castle Mill Lane, Ashley, Altrincham, WA15 0QZ (“Owner 2”); and
- (4) ALDERMORE BANK PLC (company number 00947662) whose registered office is Apex Plaza, Forbury Road, Reading, RG1 1AX (“Mortgagee”); and
- (5) ORION LAND & LEISURE LIMITED (company number 04278650) whose registered office is 9a Burroughs Gardens, London, NW4 4AU (“Developer”)

Owner 1 and Owner 2 shall together be known as “the Owner”.

1 INTRODUCTION

- 1.1 The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 1.2 The Owner is the freehold owner of the Site.
- 1.3 The Mortgagee is the chargee of the Site under Legal Charge dated 29 March 2018 registered as Entries 1 and 2 in the Charges Register of title number BM244163.
- 1.4 The Developer has a legal/beneficial interest in the Site through an Option Agreement to purchase dated 18 March 2021 made between (1) Springguest Limited (2) Kendal Tzaraine Daniel and (3) Orion Land & Leisure Limited as may be amended from time to time.
- 1.5 The Developer has submitted the Application to the Council and the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed, having regard to the provisions of the development plan and the planning considerations affecting the Site.
- 1.6 The Council resolved under delegated powers to approve the Application and grant Planning Permission subject to the prior completion of this Deed.

1.7 The Parties to this Deed have given due consideration to the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No. 948 (to the extent relevant to the obligations in this Agreement) and the advice set out at paragraph 56 of the NPPF and agree that the planning obligations it contains are:

- (i) necessary to make the Development acceptable in planning terms;
- (ii) directly related to the Development; and
- (iii) fairly and reasonably related in scale and kind to the Development.

NOW THIS DEED WITNESSES AS FOLLOWS:

For the purposes of this Deed the following expressions shall have the following meanings

“1990 Act”	the Town and Country Planning Act 1990 (as amended)
“Affordable Housing Contribution”	means the sum of £143,273.00 (one hundred and forty-three thousand, two hundred and seventy-three pounds) payable pursuant to provisions of paragraph 1.1.1 of Part 1 of the First Schedule to this Deed and such monies (if received by the Council) shall be used for the provision of Off Site Affordable Housing within the administrative area of Buckinghamshire Council
“Application”	the application for full planning permission registered by the Council on 10 January 2023 and allocated reference number 22/04141/APP
“Biodiversity Net Gain Contribution”	means the sum of £1,711.89 (one thousand seven hundred and eleven pounds and eighty-nine pence) payable pursuant to provisions of paragraph 2.1.1 of Part 1 of the First Schedule to this Deed and such monies (if received by the Council) shall be used to cover the loss of 0.05 habitat units of other neutral grassland arising from the Development
“Commencement”	the date on which any material operation (as defined in section 56(4) of the 1990 Act) forming part of the Development begins to be carried out PROVIDED THAT for a material operation shall NOT be deemed to have taken place for the purposes of this Deed by any surveying, ground investigation, archaeological investigations, structural or advanced planting, site clearance, decontamination works, site preparation including earth

moving, laying of sewers and services, the erection of fences and hoardings and the creation of a site compound and "Commence Development" shall be construed accordingly

"Development"	the Development of the Site by the formation of 5 detached dwellings with access and associated works, including rebuilding limestone rubble wall on west side of Sandy Lane, and works to demolish and rebuild a replacement garage for No. 65 Bicester Road as set out in the Application
"Development Manager"	the Council's senior development management officer or any other officer to whom they delegate some or all of their functions under this Deed
"Disposal"	the sale, transfer, option, gift exchange, declaration of trust, assignment, lease for a term exceeding 3 years and including a contract for any such disposal and "Disposals" "Dispose" and "Disposed of" shall be construed accordingly
"Dwellings"	The housing built on Site pursuant to the Planning Permission and reference to "Dwelling" shall mean any one of the houses comprising the Development and for the avoidance of doubt, reference to "Dwellings" or "Dwelling" within this Deed shall exclude the Existing Dwelling.
"Existing Dwelling"	Means the dwelling located on the Site in existence at the date of this Deed and known at 65 Bicester Road Long Crendon, Aylesbury HP18 9EE and any replacement, variation or extension thereof.
"Index"	The All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation
"Interest"	interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time
"Monitoring Fee"	the sum of £1,156.00 (one thousand one hundred and fifty-six pounds) to be paid towards the Council's costs of monitoring the obligations in this Deed pursuant to the terms of this Deed
"NPPF"	The National Planning Policy Framework published in December 2023 or such policy document as supersedes or replaces it;

“Occupation” and “Occupied” and “Occupier”	occupation for the purposes permitted by the Planning Permission but not including occupation by the personnel engaged in any construction, fitting out or marketing facility
“Off Site Affordable Housing”	means housing designed to meet the needs of eligible households whose incomes are not sufficient to allow them to access appropriate housing on the open market
"Parties"	the parties to this Agreement and the word "Party" shall mean any one of them
“Plan 1”	the plan attached to this Deed and marked Plan 1
“Planning Permission”	the full planning permission subject to conditions granted pursuant to the Application including without limitation any Planning Permission granted on appeal by the Secretary of State and/or to any planning permission subsequently granted (“Subsequent Permission”) under section 73 or 73A of the 1990 Act which permits non-compliance with any of the conditions attached to the Planning Permission and the Planning Permission shall be construed to include the Development as stated in the Subsequent Permission PROVIDED THAT with regard to the Subsequent Permission no new material planning considerations have arisen since the granting of the Planning Permission that, in the view of the local planning authority, requires a Deed of Variation to be executed in respect of the Planning Obligation(s) or a new Unilateral Undertaking/ Planning Agreement under Section 106 of the 1990 Act to be executed
"S106 Monitoring Officer"	the Council's S106 Monitoring Officer for the time being or their successor post or any other officer to whom they delegate their S106 monitoring functions
“Site”	the land known as land lying to the west of Bicester Road, Long Crendon, Aylesbury and 65 Bicester Road, Long Crendon, Aylesbury, HP18 9EE and registered at the Land Registry under title numbers BM223994 and BM244163 against which this Deed may be enforced as shown edged red on the Plan 1
“Working Day”	means any day excluding Saturdays, Sundays and any bank holidays or other public holidays in England and “Working Days” shall be construed accordingly

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations, and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension, or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.
- 2.8 Any obligation, covenant, undertaking or agreement by any party to this Deed not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit, procure or allow the doing of that act or thing.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act and section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 with the intention that it shall bind the Parties interests in the Site
- 3.2 The covenants, restrictions and requirements imposed upon the Parties under this Deed create planning obligations pursuant to section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Parties and to the extent that any of the obligations are not planning obligations within the 1990 Act they are entered into

pursuant to the powers contained in section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers

4 CONDITIONALITY

4.1 This Deed shall come into effect upon the issue of the Planning Permission except for clause 7.1, 9, 13, 14 and 15 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS AND MORTGAGEE'S CONSENT

5.1 The Owner covenants with the Council: -

5.1.1 as set out in the First Schedule;

5.1.2 not to encumber or otherwise deal with their interest in the Site or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Agreement are rendered impossible to carry out;

5.1.3 To notify the Council's S106 Monitoring Officer within five (5) Working Days of the occurrence of the following dates Commencement of the Development; and

5.1.4 that there are no interests (legal or equitable) required for the purposes of S106 in the Site other than detailed in this Deed.

5.2 The Owner shall indemnify the Council for any expenses or liability arising in respect of breach by the Owner of any obligations contained in this Agreement

5.3 The Mortgagee acknowledges and declares that this Deed has been entered into by Owner 2 with its consent and that the Site shall be bound by the covenants and obligations contained in this Deed and that the operation and exercise of their interest shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the covenants and obligations as if it were a person deriving title from Owner 2

6 THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Developer

6.1.1 as set out in the Second Schedule

6.1.2 Following receipt of any payments or financial contributions from the Developer pursuant to any obligations contained in this Deed,

- (a) to place the payments or financial contributions on deposit in the Council's Bank accounts (as the Council in its sole discretion shall decide) and to attribute a rate of interest thereon; and
- (b) to apply such payments or financial contributions only for the purposes specified in this Deed provided that the Council will be entitled to treat any accrued interest as if it were part of the principal sum paid by the Developer and for the avoidance of doubt the Council may apply all or any part of such payments to costs already incurred at the date of payment in pursuit of the purposes specified in this Deed.

7 MISCELLANEOUS

- 7.1 The Developer shall pay to the Council on the execution of this Deed the Council's reasonable legal costs incurred in the negotiation, preparation, settlement and execution of this Deed and the Monitoring Fee PROVIDED THAT if Planning Permission is not granted the Council shall promptly repay the Monitoring Fee to the Developer.
- 7.2 No provisions of Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed shall be registerable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent, or expression of satisfaction is required by the Developer and/or the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed by the Council and any such agreement, consent, approval, or expression of satisfaction shall be given by the Development Manager unless otherwise stated in this Deed.
- 7.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked, or otherwise withdrawn or expires prior to the Commencement of Development.
- 7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or relevant part or parts of it) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and provided that the party who shall have

parted with its entire interest in the Site shall have served any notice which it may have been required by to give pursuant to clause 9.

- 7.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site (or part or parts of it) in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.9 Without prejudice to the Council's statutory rights of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.
- 7.10 The covenant and obligations contained in this Deed shall not be binding upon nor enforceable against any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.
- 7.11 The covenants and obligations contained in this Deed shall not be enforceable against an owner/Occupier or tenants or their successors in title (or in either case their respective mortgagees) of a Dwelling PROVIDED THAT on the date of first Disposal of the Dwelling any payment which has become due as at the date of such Disposal pursuant to the provisions of Part 1 and Part 2 of the First Schedule has been made and FOR THE AVOIDANCE OF DOUBT an owner/Occupier or tenant or their successors in title (or in either case their respective mortgagees) of that Dwelling shall not be liable for any payment that was not due at the date of the first Disposal of that Dwelling nor for any payment that becomes due after the date of first Disposal of that Dwelling.
- 7.12 The exemption from liability in clause 7.11 shall be suspended for Dwellings in the event that at the time of first Disposal any payments pursuant to provisions of paragraph 1.1.1 of Part 1 of the First Schedule to this Deed and/or pursuant to provisions of paragraph 2.1.1 of Part 2 of the First Schedule to this Deed are outstanding and shall remain suspended until all outstanding payments plus the required Interest shall have been paid and PROVIDED THAT any restriction on Occupation in this Deed shall remain enforceable against any owner/occupiers or tenants (or their mortgagees) occupying a Dwelling in breach of such restriction.
- 7.13 The covenants and obligations contained in this Deed shall not be enforceable against an owner/occupier or tenants or their successors in title (or in either case their respective mortgagees) of the Existing Dwelling.

8 WAIVER

- 8.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from

enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

9.1 The Developer and the Owner each separately agree with the Council to promptly give written notice to the Council of any change in their respective ownership of their respective interests in the Site occurring before the obligations to pay the Affordable Housing Contribution pursuant to provisions of paragraph 1.1.1 of Part 1 of the First Schedule to this Deed and the Biodiversity Net Gain Contribution pursuant to provisions of paragraph 2.1.1 of Part 2 of the First Schedule to this Deed have been discharged and such notice shall give details of the transferee's/disponnee's (as the case may be) full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation subject to that Disposal where the Disposal relates to only part of the Site PROVIDED ALWAYS that no notice shall be required to be given in respect of the Disposal of any Dwelling or the Existing Dwelling.

10 INDEXATION

10.1 The Affordable Housing Contribution and the Biodiversity Net Gain Contribution referred to as due in the First Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which the relevant sum is payable.

11 INTEREST

11.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12 VAT

12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

13 JURISDICTION

13.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.

14 DELIVERY

14.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed (and all relevant counterparts) has been dated.

14.2 This Deed may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same Deed.

15 NOTICES

15.1 In this clause:

15.1.1 'The Council's address' means the address of the Council shown on the first page of this Deed or such other address as the Council may from time to time notify to the Developer and the Owner and its successors as being its address for service for the purposes of this Deed

15.1.2 'The address of Owner 1' means the address shown on the first page of this Deed or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed

15.1.3 'The address of Owner 2' means the addresses shown on the first page of this Deed or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed

15.1.4 'The address of the Mortgagee' means the address shown on the first page of this Deed or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed

15.1.5 'The address of the Developer' means the address shown on the first page of this Deed or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed

15.2 Any notice or other communication given or made in accordance with this Deed shall be in writing and:

15.2.1 May (in addition to any other effective mode of service) be delivered personally or sent by registered or recorded delivery or prepaid first class letter post or its equivalent

15.2.2 Shall in the case of a notice or other communication to the Council be served on the Council at the Council's address addressed to its Planning S106 Monitoring Officer

15.2.3 Shall in the case of a notice or other communication to Owner 1 be served on Owner 1 at the address of Owner 1

15.2.4 Shall in the case of a notice or other communication to Owner 2 be served on Owner 2 at the addresses of Owner 2

15.2.5 Shall in the case of a notice or other communication to the Mortgagee be served on the Mortgagee at the address of the Mortgagee

15.2.6 Shall in the case of a notice or other communication to the Developer be served on the Developer at the address of the Developer

15.3 Notices shall not be sent by email or DX

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written

THE FIRST SCHEDULE

Developer's Covenants with the Council

The Developer covenants with the Council as follows;

Part 1 – Affordable Housing Contribution Provisions

1 AFFORDABLE HOUSING CONTRIBUTION

1.1 The Owner hereby covenants with the Council:-

1.1.1 To pay the Affordable Housing Contribution to the Council prior to the first Occupation of any Dwelling and not to cause permit or suffer the first Occupation of any Dwelling comprising the Development unless and until the Affordable Housing Contribution has been paid to the Council and for the avoidance of doubt the provisions of this clause 1 shall not restrict the occupation of the Existing Dwelling.

Part 2 – Biodiversity Net Gain Contribution Provisions

2 BIODIVERSITY NET GAIN CONTRIBUTION

2.1 The Owner hereby covenants with the Council:-

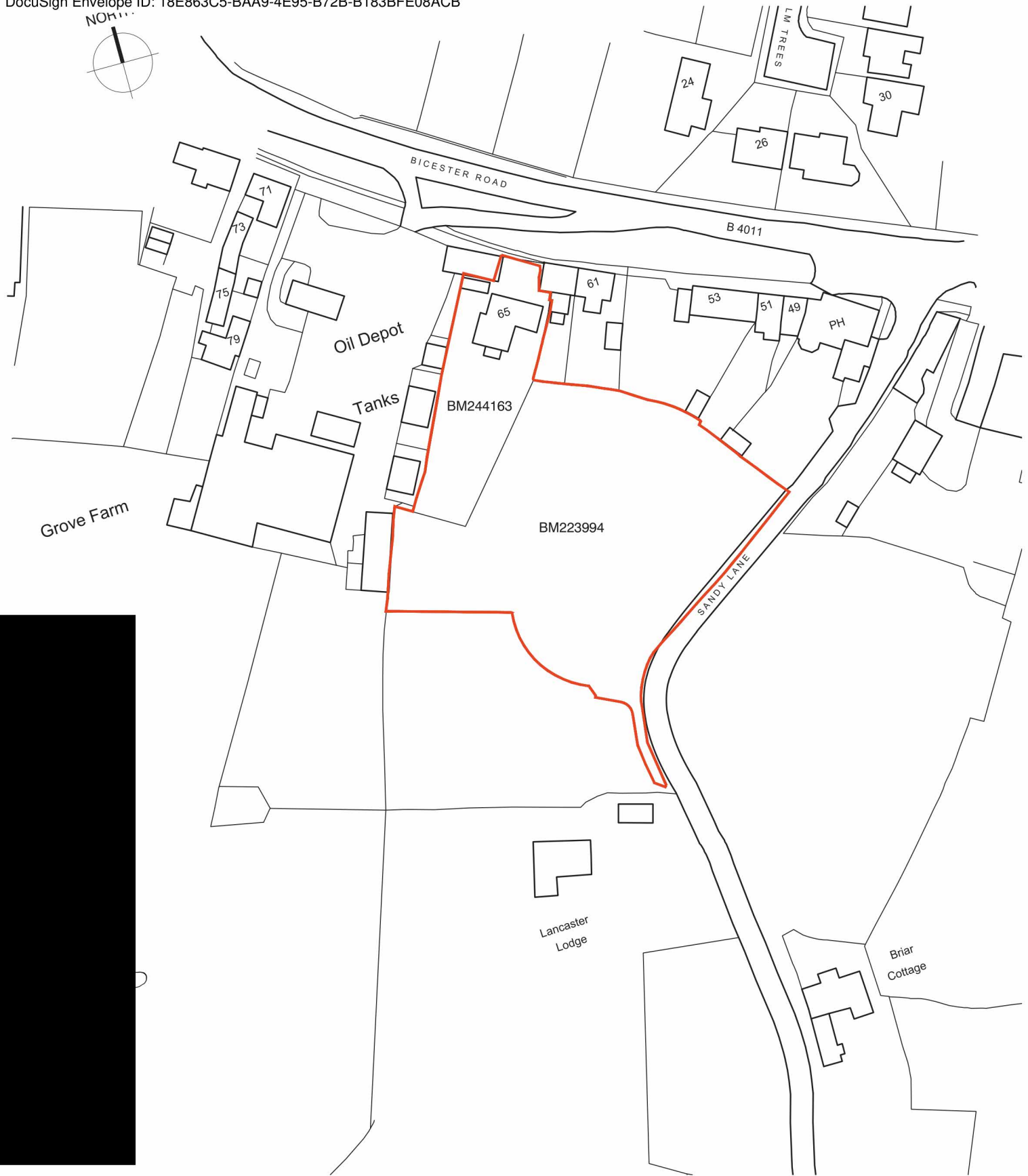
2.1.1 To pay the Biodiversity Net Gain Contribution to the Council prior to the Commencement of the Development and not to cause permit or suffer the Commencement of the Development until the Biodiversity Net Gain Contribution has been paid to the Council

THE SECOND SCHEDULE
Council's Covenants

1. THE Council hereby covenants with the Developer:
 - 1.1. To operate abide by and comply with the arrangements terms conditions and obligations for the purposes set out in the First Schedule hereto
 - 1.2. If the sums paid to the Council or any part thereof is not committed for the purposes specified herein ten (10) years after the date of receipt then the Council covenants with the person or persons who makes payment of the same to repay to the person or persons who paid the said sums all or any of the remaining balance that remains unspent together with interest which has accrued thereon from the date of receipt of payment by the Council to the date of repayment at base rate of the Bank of England.
 - 1.3. For the avoidance of doubt, for the purposes of clauses 1.2 above any sum (or part thereof) shall be deemed to have been committed if the Council has entered into any contract or given any undertaking (whether enforceable in law or otherwise) the performance or fulfilment of which will require it to expend funds in the future

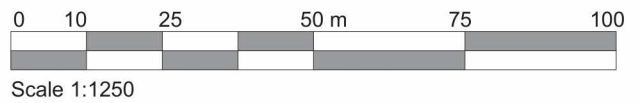
PLAN 1

SITE PLAN



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LOCATION PLAN
(1:1250)



ASCOT DESIGN
Timeless architecture

Ascot Design Ltd,
Berkshire House
39-51 High Street,
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Status	PLANNING
Client	ORION LAND AND LEISURE LTD
Project Title	LAND WEST OF SANDY LANE, LONG CRENDON, HP18 9EE

Rev.	Date	Detail
DRAWING Title		
LOCATION PLAN		
Scale:	Date	Drawn
1:1250 @ A4	DEC' 22	-
DRAWING No.		Rev.
21 - J3643 - LP10		-

SIGNED as a Deed by



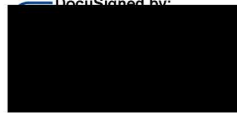
SPRINGGUEST LIMITED

Signature of Director264264B4AC704F1.....

acting by a single director

in the presence of

Signature of witness:



Name (in BLOCK CAPITALS): Samuel Peter Cope

Address: Loom Cottage, 7 Lacey Green, wilmslow Cheshire, SK9 4BA

Occupation: Director

SIGNED as a Deed by

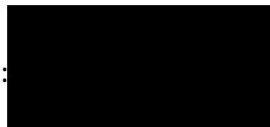


KENDAL TZARAINÉ DANIEL

Signature:

in the presence of

Signature of witness:



Name (in BLOCK CAPITALS): Samuel Peter Cope

Address: Loom cottage, 7 Lacey green, wilmslow, sk9 4ba

Occupation: Director

EXECUTED as a Deed by

ALDERMORE BANK PLC

acting by its attorney (full name of attorney)

in the presence of

Signature:

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

Occupation:

SIGNED as a Deed by

ORION LAND & LEISURE LIMITED

Signature of Director



acting by a single director

in the presence of

Signature of witness:



Name (in BLOCK CAPITALS): Denton King

Address: 78 Ufton Road, London N1 4HH

Occupation: Project Manager

**THE COMMON SEAL of
BUCKINGHAMSHIRE COUNCIL**
was affixed in the presence of:



Sealed By: Legal and Democratic Services
Sealed Time: 20 March 2024 | 13:52 GMT

BC-S-1211

Authorised Signatory

