

DATED 11th June **2025**

THE COUNCIL OF THE BOROUGH OF KIRKLEES (1)
-and-
NASAR HUSSAIN AND ABADA KAUSER (2)

AGREEMENT

Under Section 106 of the Town & Country Planning Act 1990 (as amended)
relating to
Land at, The Carlton Nursing Home, 25, Greenway, Milnsbridge,
Huddersfield, HD3 4RZ

THIS AGREEMENT is made the 11^m day of June Two Thousand and Twenty Five.

BETWEEN

THE COUNCIL OF THE BOROUGH OF KIRKLEES of Civic Centre 3, Market Street, Huddersfield, HD1 1WG (hereinafter called "the Council") of the first part; and

NASAR HUSSAIN and ABADA KAUSER both of 53 Quarmby Road, Huddersfield HD3 4HQ (hereinafter called "the Owner") of the second part;

together the "Parties" and reference to "Party" shall be construed accordingly.

WHEREAS

1. The Council is the local planning authority for the Kirklees District within which the Site is situated and by whom the planning obligations within this Agreement are enforceable.
2. The Owner is the registered freehold proprietor of the Site registered with HM Land Registry under title number YY162425.
3. The Owner has submitted the Application to the Council for planning permission in relation to the Development.
4. The Council resolved that subject to the completion of this Agreement the Planning Permission should be granted.
5. By the provisions of Section 106 of the 1990 Act any person interested in land in the area of a local planning authority may by agreement or otherwise enter into a planning obligation in respect of the land.

NOW IT IS HEREBY AGREED as follows:

1. **INTERPRETATION**

1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this clause:

"1990 Act"	means the Town and Country Planning Act 1990 (as amended);
"Administration Charge"	means 1% (one percent) of the Affordable Housing Contribution;
"Affordable Housing"	means for the purpose of this Agreement two Affordable Rented Dwellings as shown on the Affordable Housing Plan and as defined in annex 2 of the National Planning Policy Framework (as may be updated or superseded) that will be made available to people whose income is insufficient to enable them to afford housing locally on the open market;
"Affordable Housing Contribution"	means the payment to be made in lieu of the provision of on-site Affordable Housing calculated as described in the SPD;
"Affordable Housing Plan"	means Plan 1 which has been approved by the Council showing the number, location, and type, of the Affordable Housing on the Development;
"Affordable Housing Price"	means the price to be paid by the Registered Provider to the Owner for the Affordable Rented Dwellings, to be agreed at a price that is based upon

“Affordable Rent”

the transfer values set out in the Council's SPD;

means a rent which is no more than 80% of the local market rent (including service charges, where applicable) calculated using RICS approved Valuer using the Valuation methods;

“Affordable Rented Dwellings”

means 2 (two) Dwellings as shown on the Affordable Housing Plan being unit 2 (a 1 bed flat) and unit 9 (a 2 bed flat) provided in accordance with the following conditions (i) at an Affordable Rent (ii) the landlord is a Registered Provider and (iii) which complies with the definition of 'Affordable Housing for Rent' in annex 2 of the NPPF;

"Application"

means the outline planning application registered by the Council under reference number 2022/62/92842/W for the Change of use and alterations to former nursing home (C2) to form 12 apartments (C3);

“Chargee”

means any mortgagee or chargee 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 (each a

“Receiver”) of the Affordable Housing Units or any part thereof or any persons or bodies deriving title through such mortgagee or chargee or Receiver;

“Committed”

means monies 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 the Council to expend funds in the future and such monies are so expended no later than 12 (twelve) months beyond the specified repayment date;

“Commencement of Development”

means the actual date upon which the Development is begun by the carrying out on the Site of any material operation as defined by Section 56(4) of the 1990 Act save that the term "*material operation*" shall not for the purpose of this Agreement include operations in connection with any work of or associated with demolition, site clearance, remediation works, environmental or archaeological investigation, site and soil surveys, construction of access road, erection of contractors' work compound, erection of site office, construction of access road, erection of fencing to site boundary and reference to

"Contract"	"Commence Development" shall be construed accordingly; means a contract or contracts with a Registered Provider(s) for the construction and subsequent transfer at the Affordable Housing Price of the unencumbered freehold or long-leasehold interest in the relevant Affordable Housing;
"Contribution"	means the Public Open Space Contribution, and reference to "Contribution" shall be construed accordingly;
"Development"	means the development of the Site in pursuance of the Planning Permission;
"Dwelling"	means a residential unit that may be built on the Site as part of the Development and reference to "Dwellings" shall be construed accordingly;
"Independent Surveyor"	means an independent chartered surveyor of no less than 10 (ten) years post qualification experience unconnected to any of the Parties hereto and experienced in residential development matters who shall be appointed at the Owner's cost but first approved by the Council;
"Index Linked"	means an increase or decrease to the Contributions on an annual basis or pro rata per diem from the date of this Agreement to the date of payment (or calculation as the case may be) in

accordance with the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if the All In Tender Price Index ceases to exist such index as the Council reasonably nominates;

“Market Dwellings”

means those Dwellings within the Development excluding the Dwellings which are Affordable Housing;

“Mortgagee”

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home;

“NPPF”

means the National Planning Policy Framework published by the Department for Levelling Up, Housing and Communities dated December 2024 and any document that supplements or replaces it;

“Occupation”

means the beneficial occupation under a sale lease licence or other arrangement for the purpose for which the Dwelling was granted planning permission but shall exclude occupation for the purposes of fit out or

**"Off site Public Open
Space Contribution"**

marketing or security and reference to and "**Occupy**" shall be construed accordingly;

means the sum of £24,610.05 (twenty four thousand six hundred and ten Pounds and five pence) Index Linked as a contribution towards improvements to publicly accessible open space within the vicinity of the Development and payable in accordance with the First Schedule;

**"Open Market
Value"**

means the open market value as assessed by a Valuer in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and agreed between the Council and the Owner as being the open market value of an Affordable Housing Dwelling at which the sale of an interest in the Affordable Housing Dwelling would have been completed unconditionally for cash consideration on the date of the valuation assuming:

- (a) a willing seller;
- (b) that any restrictions imposed on the Dwelling by reason of this Agreement are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the dwelling or to whom a transfer or lease may be granted or assigned; and

“Plan 1”

that both parties to the transaction had acted knowledgeably prudently and without compulsion;

means the plan attached hereto at Annex 1 (drawing number 2206/02C dated August 2022) which includes the Site location plan and the Affordable Housing Plan;

“Planning Permission”

means a planning permission which may be granted by the Council pursuant to the Application and any permissions granted in relation to the Development under Section 73 of the 1990 Act.;

“Practical Completion”

means the issue of a certificate of practical completion by the Owner's architect certifying the completion of any part of the Development so that such part can be used for the purpose and operate in the manner for which it was designed and Practically Complete and Practically Completed shall be construed accordingly;

"Reasonable Endeavours"

means that it is agreed by the Parties that the Party under such an obligation will not be required to take proceedings (including any appeal) in any court, public inquiry, or other hearing (unless specified to the contrary) but subject to these and to other terms of this Agreement such Party will be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or

	<p>sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable to expect;</p>
"Registered Provider"	<p>means a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes England for receipt of social housing grant as may be proposed by the Owner and approved by the Council;</p>
"Site"	<p>means the land known as land at Carlton Nursing Home, 25, Greenway, Milnsbridge, Huddersfield, HD3 4RZ and shown edged red on Plan 1;</p>
"SPD"	<p>means the Council's Affordable Housing and Housing Mix supplementary planning document dated March 2023 or any such document that supersedes this;</p>
"Valuation"	<p>means a report prepared by a Valuer containing details of the surveyor's opinion as to the Open Market Value in respect of a Dwelling;</p>
"Valuer"	<p>Means a Member or Fellow of the Royal Institution of Chartered Surveyors being a valuer appointed by the Registered Provider acting in an independent capacity;</p>
"Working Day"	<p>means any day except Saturdays Sundays or bank holidays and</p>

reference to "**Working Days**" shall be construed accordingly.

- 1.2 Clause headings are for reference only and shall not affect the construction of this Agreement.
- 1.3 Where more than one person is included in the expressions "the Council" and "the Owner" agreements and obligations expressed to be made or assumed by such Party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally.
- 1.4 Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.
- 1.5 The masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa.
- 1.6 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it which is for the time being in force.
- 1.7 A reference to a clause or schedule or paragraph is a reference to a clause or schedule or paragraph contained in this Agreement and does not affect the interpretation or construction of this Agreement.

2. **GENERAL**

- 2.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.
- 2.2 Subject to clause 2.5, the Owner covenants with the Council to observe the restrictions and perform the obligations contained in the First Schedule with the intent that those restrictions and obligations shall bind the Owner and each and every part of the Site

- 2.3 The Council covenants with the Owner to observe the restrictions and perform the obligations contained in the Second Schedule and where applicable in the First Schedule.
- 2.4 The expression "the Owner" shall include their successors in title and assigns and the expression "the Council" shall include its respective successor authority.
- 2.5 No person shall be bound by the terms of this Agreement or shall be liable for breach of any covenants, restrictions, duties, provisions or obligations contained in this Agreement after he or it shall have parted with his or its interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 2.6 This Agreement shall not be binding upon:
- 2.6.1 a purchaser an occupier or a tenant of individual Dwellings or if it shall be a Mortgagee and / or Chargee and / or their respective successors in title and / or receiver appointed by the Mortgagee and / or Chargee of a Dwelling; or
- 2.6.2 an occupier or tenant or a purchaser of a site or sites required for statutory infrastructure purposes in relation to the Development.
- 2.7 This Agreement shall not become effective until the following conditions are satisfied:
- 2.7.1 the Planning Permission has been granted; and
- 2.7.2 the Commencement of Development has occurred (except where otherwise specifically stated in this Agreement).
- 2.8 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner or its successors in title this Agreement shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any Party prior to such date.

- 2.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 2.10 This Agreement is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered by the Council as such on completion.
- 2.11 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.
- 2.12 Wherever this Agreement requires the approval agreement determination or consent of the Council such approval agreement determination or consent shall be provided in writing and is not to be unreasonably withheld or delayed.
- 2.13 Unless otherwise stated this Agreement is governed by and interpreted with the law of England.
- 2.14 It is agreed that any Mortgagee and / or Chargee and / or their respective successors in title and / or receiver appointed by the Mortgagee and / or Chargee of the Owner or the Owner' successors in title shall have no liability under this Agreement unless and until it becomes a Mortgagee in possession of the Site or the part of the Site in relation which its charge relates in which case it too will be bound by the obligations as if it were a person deriving title from the Owner or the Owner' successors in title as the case may be.
- 2.15 The Owner shall pay the Council's reasonable legal costs incurred in the preparation of this Agreement in the sum of £1,500.
- 2.16 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application (and the Council is satisfied in its reasonable discretion that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Agreement shall be to both the

Planning Permission and a new planning permission granted pursuant to Section 73 of the 1990 Act and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.

3 VAT

3.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax properly payable.

4 WAIVER

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

5 NOTICES

5.1 All notices, requests and demands or other written communications to or upon the Parties pursuant to this Agreement shall be deemed to have been properly given or made if dispatched by first class letter or facsimile transmission to the Party to which such notice, request, demand or other written communication is to be given or made under this Agreement and addressed as follows (or to such other address as the Party to whom the notices, requests, demands or other written communication is to be given or made shall from time to time notify in writing to the other Parties as its address for the purposes of this Clause 5.1):

5.1.1 To the Council: Service Director: Legal Governance and Commissioning Legal Services, Legal Services Kirklees Council PO Box 1720 Huddersfield HD1 9EL

5.1.2 In respect of Affordable Housing to Housing Officer, Regeneration and Housing on email ref: Housing.Regeneration@kirklees.gov.uk

5.1.3 To the Owner at 53 Quarmby Road, Huddersfield HD3 4HQ.

6 **DISPUTES**

6.1 Any dispute arising between the Parties as to their respective rights, duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with Clause 6.2 below to the determination of an Independent Surveyor.

6.2 Any reference to an Independent Surveyor in accordance with Clause 6.1 above shall be to a reputable Independent Surveyor unconnected to any of the Parties hereto and experienced in developments of this nature who shall be agreed between the Parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Independent Surveyor shall be final and binding upon the Parties to the dispute and the Parties hereby agree to act in accordance with the decision (save for manifest error) and if the Parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Independent Surveyor shall act as an expert pursuant to the terms of this Clause 6.2 then each of the Parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include

authority to determine in what manner all the costs of the referral (whether incurred by the Parties to the dispute or the Independent Surveyor himself) shall be paid.

7 JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and the Parties submit to the exclusive jurisdiction of the courts of England.

8 DELIVERY

The provisions of this Agreement (other than this Clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed as a Deed

FIRST SCHEDULE
(Owner's Planning Obligations)

The Owner covenants with the Council as follows:

Part 1 GENERAL AFFORDABLE HOUSING

1. To provide the Affordable Housing in accordance with the Affordable Housing Plan and in accordance with the Planning Permission.
2. The Owner shall notify the Council of the Practical Completion of each Affordable Housing Dwelling within 14 days thereof.
3. In order to enable the Council to comply with its obligations in relation to monitoring Affordable Housing for the Government the Owner shall provide information regarding start of site, completion and sale of each Affordable Housing Dwelling to the Council when requested. The Owner shall not cause or permit the Occupation of more than 50% of the Market Dwellings until the Affordable Housing Dwellings have been constructed and are ready for Occupation;
4. Nothing in this Schedule shall prevent any of the Market Dwellings from being voluntarily provided as Affordable Housing in addition to the Affordable Housing Dwellings and in such case such Market Dwellings the Owner will notify the Council in writing of any such change and any additional Affordable Housing Dwellings shall not be an obligation for the purposes of this Agreement.
5. Not later than the Commencement of Development, the Owner shall offer the Affordable Rented Dwellings to one or more Registered Provider(s) at the Affordable Housing Price together with providing details to the Council of the Registered Provider(s) to whom the Affordable Rented Dwellings have been offered (the "**Initial Offer**").
6. Following the date of the Initial Offer the Owner shall use Reasonable Endeavours to enter into a Contract for the Affordable Rented Dwellings to a Registered Provider(s) at the Affordable Housing Price. This provision may be repeated as often as is necessary (subject to paragraph 8 of this Part 1 of the First Schedule) until such

time as a Registered Provider shall have confirmed its willingness subject to contract to purchase the Affordable Rented Dwellings at the Affordable Housing Price.

7. In the event that:

7.1 despite using its Reasonable Endeavours, the Owner has not entered into a binding contract with a Registered Provider(s) for the transfer of the Affordable Rented Dwellings within a period of 24 (twenty-four) calendar months from the date of the Initial Offer (or such shorter period of time that may be agreed in writing by the Council); and

7.2 the Owner has produced evidence in writing to the reasonable satisfaction of the Council that it has used all reasonable endeavours throughout the 24 (twenty-four) month period to enter into such binding contract, the Owner will be free to offer such dwellings for sale on the open market but the provisions of paragraph 7.3 to 7.5 inclusive of this Schedule shall apply:

7.3 the Owner shall serve a written notice on the Council confirming that they intend to sell some or all of the Affordable Rented Dwellings on the open market ("**Owner's Notice**")

7.4 the Owner shall within 28 (twenty eight) Working Days of the date of the Owner's Notice pay to the Council the relevant Affordable Housing Contribution and the Administration Charge; and

7.5 following written confirmation by the Council upon receipt of the Affordable Housing Contribution and Administration Charge, such confirmation to be provided as soon as possible upon receipt (and in any event within 10 Working Days) the Owner may dispose of such Affordable Dwelling(s) on the open market free of the provisions of this Schedule.

8. **AFFORDABLE RENTED DWELLINGS**

8.1 The following provisions of this paragraph 8 shall apply to any Affordable Housing Dwellings that are to be provided as Affordable Rented Dwellings in accordance with the approved Affordable Housing Plan.

8.2 The Owner shall not let or otherwise permit the letting of any Affordable Rented Dwellings to any person(s) other than in accordance with the following

(a) at an Affordable Rent; and

(b) the rent of each letting shall be calculated prior to the grant of any new tenancy to ensure that it is an Affordable Rent.

8.3. The Owner shall not cause or permit the occupation of any Affordable Rented Dwellings other than in accordance with the Council's Choice Based Letting System "Choose 'n' Move" or such successor policy and the Registered Provider shall enter into a Nominations Agreement to be agreed with the Council.

Part 2 OFF SITE PUBLIC OPEN SPACE CONTRIBUTION

1. To pay the Off Site Public Open Space Contribution to the Council prior to the Occupation of more than 50% (fifty per cent) of the Dwellings and not to cause or permit the Occupation of more than 50% (fifty per cent) of the Dwellings until the Off Site Public Open Space Contribution has been paid to the Council.

SECOND SCHEDULE
(The Council's Covenants)

The Council hereby covenants with the Owner:

Part 1 GENERAL

1. That on the reasonable written request of the Owner at any reasonable time or times after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof and / or at any reasonable time after all of the planning obligations under this Agreement have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the register of local land charges.

Part 2 CONTRIBUTIONS

1. To issue a receipt on request in writing for the Contribution.
2. Upon receipt to place the Contribution in a separate interest bearing account
3. Subject to paragraph 5 of this Second Schedule, to apply the Contribution and any interest accrued towards the purpose specified in this Agreement in order to address impacts which directly arises from the Development and not to apply the Contribution for any other purpose and the Council shall (on the reasonable written request of the payee or the payee's nominee) provide evidence that the Contribution has been so applied.

Part 3 REPAYMENT

1. In the event the Contributions or any part or parts thereof are not expended or Committed within 10 (ten) years of the date of final payment of the relevant Contribution then the sum or sums not expended plus interest accrued (if applicable) will be repaid to the person who paid the sum or sums or its nominee.

THE CORPORATE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH)
OF KIRKLEES was hereunto affixed)
but not delivered until the date hereof)
)



.....

In the presence of: -)



.....

Assistant Director: Legal and Governance and Commissioning /

Authorised Signatory

SIGNED as a DEED by NASAR HUSSAIN



(FULL SIGNATURE)

In the presence of: -

Witness's signature: ____

Name (print): _

Occupation: _

Address:



SIGNED as a DEED by ABADA KAUSER

[Redacted Signature]

(FULL SIGNATURE)

the presence of: -

Witness's signature:

Name (print): _

Occupation:

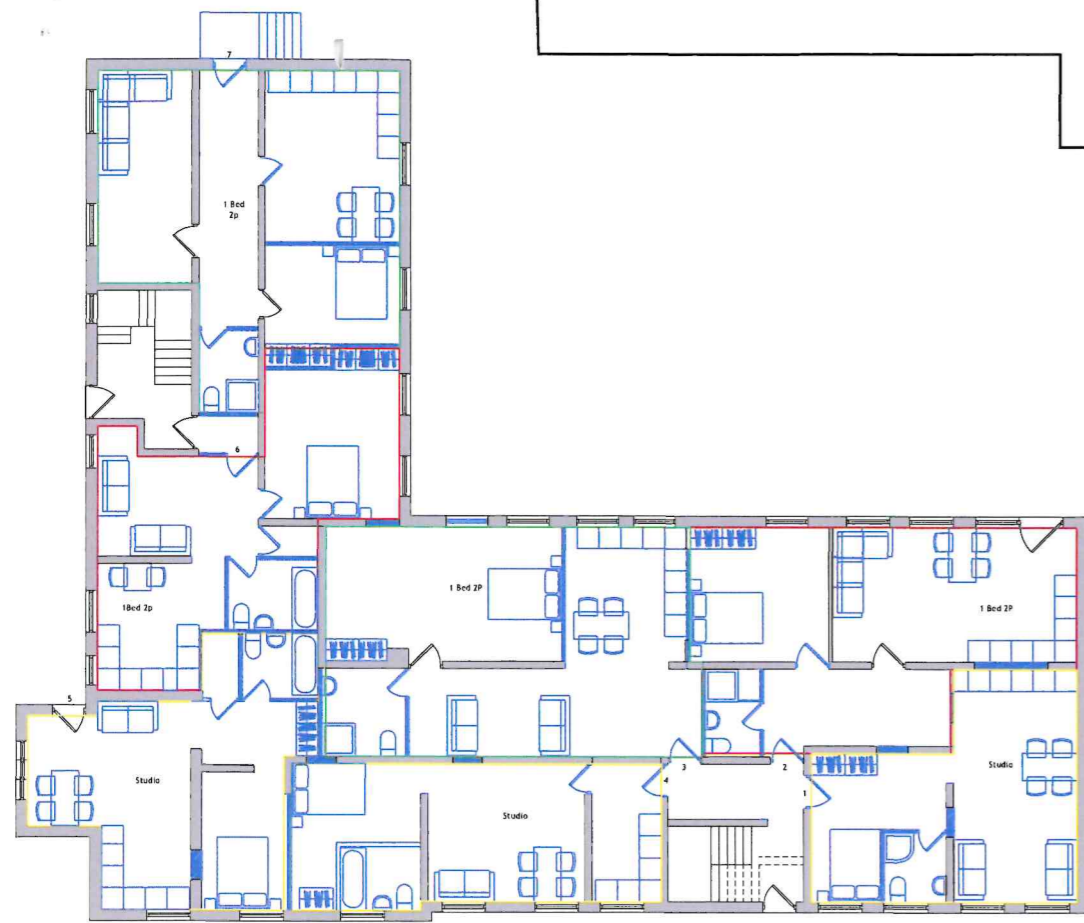
Address:

[Redacted Witness Information]

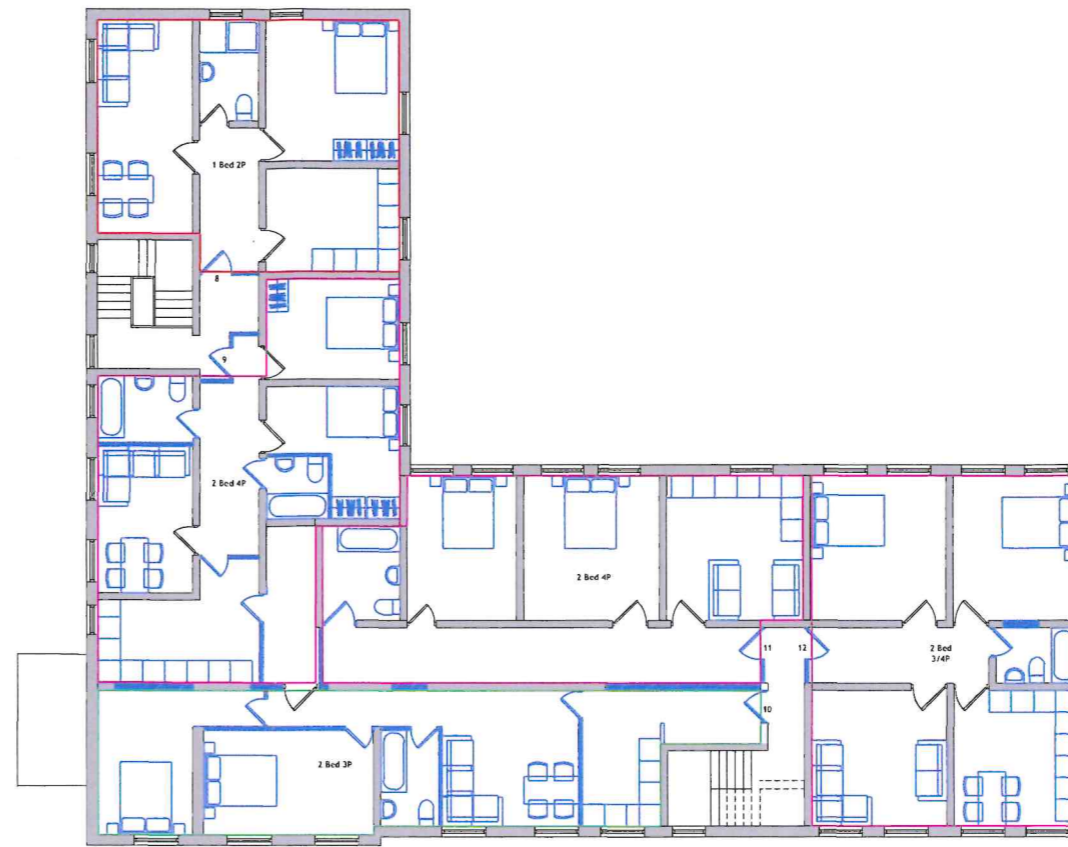
Annex 1
Plan 1

Written dimensions on these drawings shall take precedence over scaled dimensions. Contractors shall verify and be responsible for all dimensions and conditions on the project and UHD Architectural Services must be notified of any variations from the dimensions and conditions shown by these drawings prior to commencement of any work. All contractors are deemed to have made themselves aware of site conditions prior to entering into any contract.

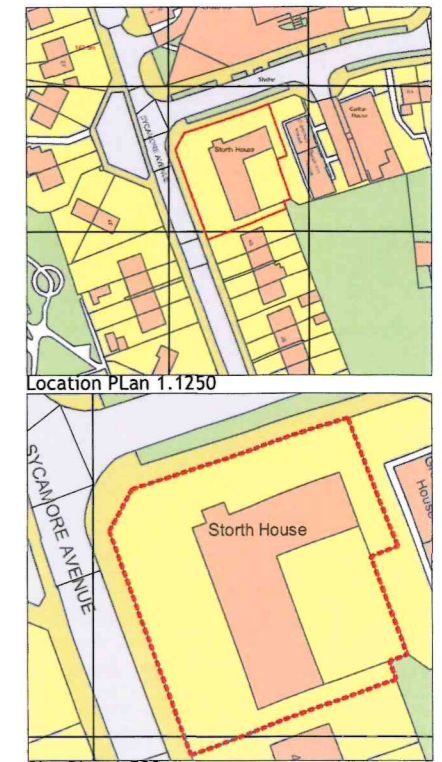
A1	1:50	1m	2	3	4	5
A3	1:100					



Ground Floor Layout 1.100

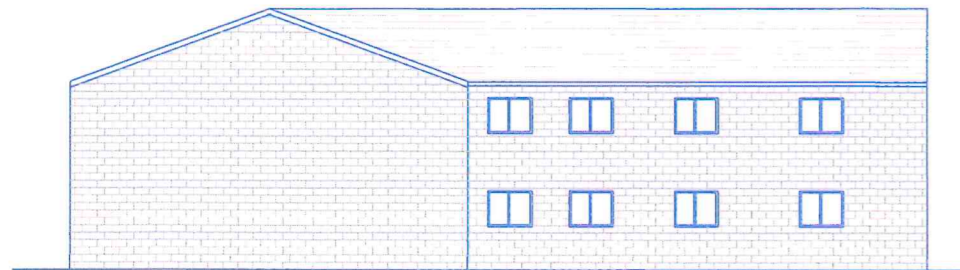


First Floor Layout 1.100

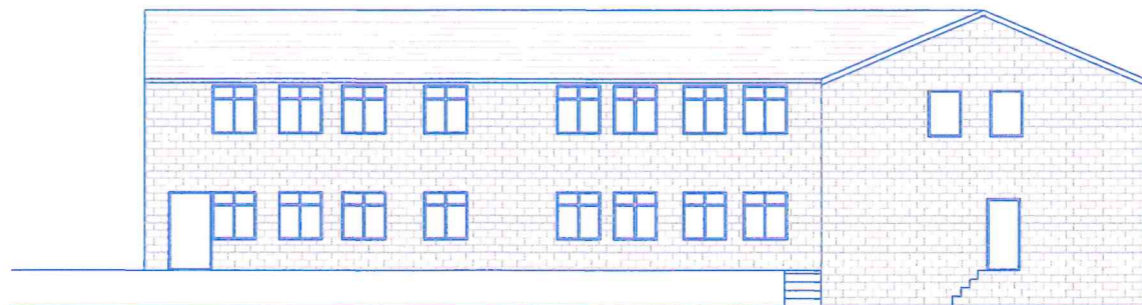


Location Plan 1.1250

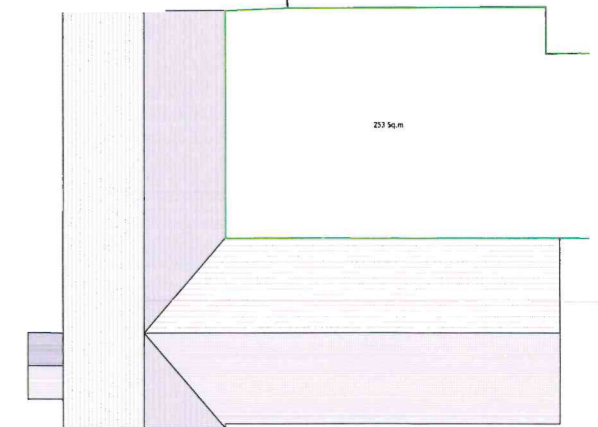
Site Plan 1.500



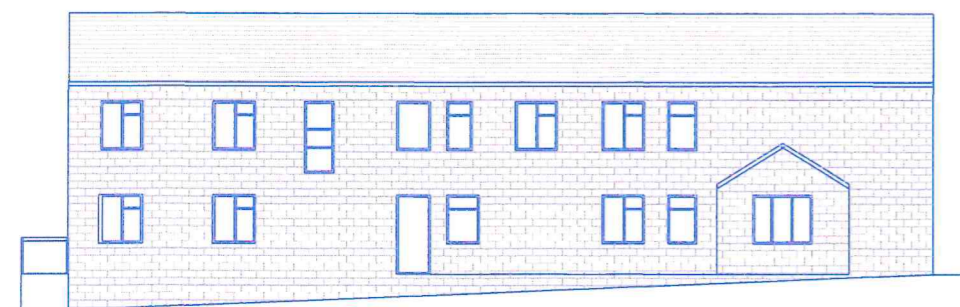
Side Elevation 1.100



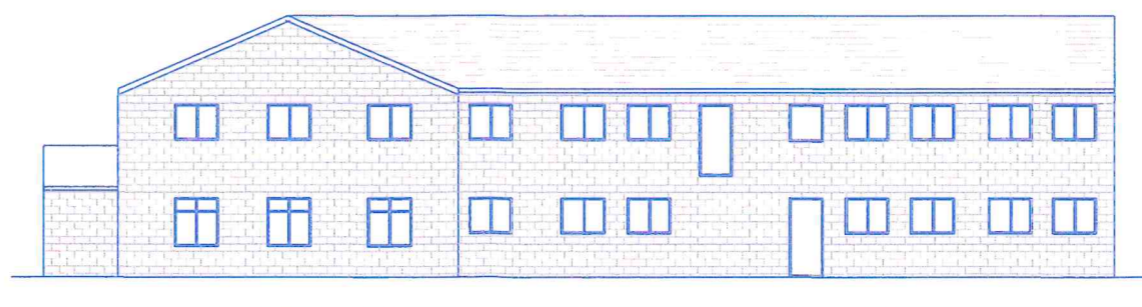
Rear Elevation 1.100



Roof Layout 1.200




Front Elevation 1.100



Side Elevation 1.100

Unit 2 Ground Floor and 9 on the First Floor to be affordable in accordance with Policy LP11

REV	DESCRIPTION	DATE	DRAWN
 07704906935 Uhd@UHDdesign.co.uk UHDesign Architectural Services			

CLIENT	Mr Nasaar		
ADDRESS	25 Greenway, Longwood HD3 4RZ		
PROJECT	Change of use C2 to C3		
DRAWING	Proposed Layout and Elevations		
DRAWN	UH	DATE	Aug 22
		SCALE	1.100@A1
DWG No.	2206/02C		
STATUS	PLANNING		