

DATED

4th September

2015

UNILATERAL UNDERTAKING GIVEN BY DEED

BY

THE LONDON LEGACY DEVELOPMENT CORPORATION
in its capacity as Local Planning Authority

pursuant to section 201 of the Localism Act 2011 and all other powers enabling

relating to amendments to the First Primary School (PDZ5 East Wick) as part of the Legacy Communities Scheme, Queen Elizabeth Olympic Park (application reference 14/00461/NMA)

To be read alongside the unilateral undertaking given by London Legacy Development Corporation (as owner) pursuant to Section 106 of the Town & Country Planning Act relating to the same development and entered into on the date hereof

THIS UNILATERAL UNDERTAKING is given on 4th September 2015

BY:

- (1) the **LONDON LEGACY DEVELOPMENT CORPORATION LIMITED** of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ ("**the LPA**");

IN FAVOUR OF the Owner(s) of the Developer's Land from time to time (including LBH but only upon receipt of the Confirmatory Deed).

RECITALS

Background

- (A) LLDC (acting through a department known as PPDT) is the Local Planning Authority for the area within which the Developer's Land is located pursuant to the London Legacy Development Corporation (Planning Functions) Order 2012 in place of the Host Boroughs.
- (B) The London Legacy Development Corporation ("**LLDC**") is a Mayoral Development Corporation ("**MDC**") established under the Localism Act 2011 and the London Legacy Development Corporation (Establishment) Order 2012 for an area which straddles the boundaries of the four Host Boroughs.
- (C) An MDC's statutory purpose is to secure the regeneration of its area. In support of this statutory purpose, LLDC holds land transferred to it under various statutory transfer schemes and can exercise a range of powers over that land, including management, development and disposal to third parties. This land includes the Developer's Land, details of which are set out in Schedule 1 to this Deed.
- (D) LLDC's Board has delegated the exercise of LLDC's planning functions to PPDT. Although it acts independently, PPDT remains part of the same legal entity as LLDC.
- (E) At the time this Deed is entered into, it is expected that that LLDC will be a time limited organisation and its planning powers will eventually revert to the Host Boroughs or transfer to another successor organisation(s).

Legacy Communities Scheme

- (F) The Olympic Park Legacy Company (the predecessor owner of the Developer's Land) submitted a planning application to the Olympic Delivery Authority (the then local planning authority) on 30 September 2011 for the residential-led legacy redevelopment of the Site.
- (G) On 28 September 2012 the Olympic Delivery Authority, London Legacy Development Corporation (as Owner) and TfL entered into the Original Agreement and the Original Permission for such residential-led legacy redevelopment of the Site was granted.
- (H) Under the terms of the Enforcement Protocol, in the event the Original Agreement is to be varied, PPDT and LLDC (as Owner) will agree the extent of the variations to the Original Agreement albeit that a formal deed of variation cannot be entered into. The Enforcement Protocol also sets out how the terms of the Reciprocal Undertaking and this Undertaking will be managed while LLDC is both landowner and local planning authority.

The Applications

- (I) LLDC submitted the Variation Application to the LPA for determination and on 24 February 2015 the LPA resolved to approve the Variation Application subject to agreeing the terms of this Deed, the Reciprocal Undertaking and the Draft Deed.
- (J) In its role as LPA, LLDC considers it expedient in the interests of the proper planning of its area and for the benefit of the public at large and having regard to all other material considerations that provision should be made for regulating the Revised Development in the manner set out in the Draft Deed.
- (K) In its role as LPA, LLDC is satisfied that the planning obligations contained in the Draft Deed meet the three tests set out in Regulation 122 (2) (a) – (c) of the Community Infrastructure Levy Regulations 2010 (as amended).
- (L) LLDC recognises that as a matter of law, as both landowner and local planning authority LLDC it is unable to secure the obligations set out in the Draft Deed by way of a bilateral agreement concluded with itself.
- (M) To overcome this obstacle, LLDC as landowner has entered into the Reciprocal Undertaking binding itself and its interests in the Developer's Land with the terms and obligations set out in the Original Agreement as though it had been varied by the Draft Deed.
- (N) In return for the promises given in the Reciprocal Undertaking, PPDT as LPA unilaterally undertakes herein to observe the terms and perform the local planning authority's obligations as set out in the Original Agreement as though it had been amended by the Draft Deed attached hereto at Annex 1. If LLDC's planning powers pass to a successor organisation, it is intended that this Deed will be transferred to that successor under a statutory or mayoral scheme of transfer.
- (O) If, while LLDC remains the local planning authority for the Developer's Land, a third party acquires an interest in the Developer's Land, the LPA intends that this Deed will be enforceable by such third party against it under the Contracts (Rights of Third Parties) Act 1999.
- (P) This Deed is to be read alongside the Reciprocal Undertaking.
- (Q) In accordance with the terms of the Reciprocal Undertaking, LBH will enter into the Confirmatory Deed and (if requested by the LPA) the Draft Deed prior to the First Primary School being Occupied.

OPERATIVE PROVISIONS:-

1. INTERPRETATION

- 1.1 Save where provided otherwise, words and expressions used in this Deed have the meaning assigned to them in the Original Agreement.
- 1.2 For the purposes of this Deed, the following words and expressions have the meanings assigned:

1990 Act means the Town & Country Planning Act 1990 (as amended).

Confirmatory Deed means a deed entered into pursuant to Section 106 of the 1990 Act by LBH and any other person deriving title from or under LBH for the benefit of the LPA confirming that its interest(s) in the Developer's Land is bound by the terms of the Reciprocal Undertaking and that it will carry out and Occupy the Development on that part of the Site in which it has an interest in accordance with the Variation Approval or any subsequent changes to the Variation Approval as are approved in writing by the LPA from time to time.

Developer's Land means the land shown edged red on Plan 1 (and the details of the interests LLDC owns in the Developer's Land are set out in Schedule 1 of the Reciprocal Undertaking) together with the Gainsborough Playing Fields (the subject of a transfer from the Owner to LBH dated 17 April 2014).

Draft Deed means the draft agreement attached to this Deed at Annex 1.

Enforcement Protocol means the protocol for enforcing the terms of this Deed contained at Annex 2 as varied from time to time.

First Primary School means as defined in the Original Agreement.

Host Boroughs means the London Boroughs of Hackney, Newham, Tower Hamlets and Waltham Forest and their respective successors in function.

LBH means the London Borough of Hackney of Hackney Town Hall, Mare Street, London E8 1EA as freehold owner of that part of the Site shown edged red on Plan 3 together with any other interests in the Site it may have acquired as at the date the Confirmatory Deed is entered into and includes its successors in title.

LPA means at the date of this Deed, the London Legacy Development Corporation (acting through PPDT) in its function as local planning authority for the area within which the Developer's Land is located, and includes any successors in that function.

Original Agreement means the agreement entered into by the Olympic Delivery Authority (as local planning authority), London Legacy Development Corporation (as owner of the Developer's Land) and TfL dated 28 September 2012 for the Original Permission as deemed to be varied by the unilateral undertakings as set out in Annex 4.

Original Permission means the legacy development known as the Legacy Communities Scheme (reference 11/90621/OUTODA).

Owner means anyone with an interest in the Developer's Land and includes LBH in respect of that part of the Site edged red on Plan 3.

PPDT means the department within legal entity known as the London Legacy Development Corporation to which LLDC's planning functions have been delegated.

Plan 1 means the plan marked Plan 1 identifying the Developer's Land and attached to this Deed at Annex 3.

Plan 2 means the plan marked Plan 2 identifying the Site and attached to this Deed at Annex 3.

Plan 3 means the plan marked Plan 3 identifying LBH's interest in the Site as at the date of this Deed edged red and attached to this Deed at Annex 3.

Reciprocal Undertaking means a completed unilateral undertaking of even date with this Deed given by LLDC as landowner in which LLDC undertakes for the benefit of the LPA from time to time to abide by the terms and to comply with the obligations given on the part of LLDC and the Developer contained in the Original Agreement as though it had been varied by the Draft Deed.

Revised Development means the development to be carried out pursuant to the Variation Approval.

S73 Permission means the permission granted pursuant to section 73 of the 1990 Act to amend the Original Permission granted by the LLDC as LPA and given reference 14/00036/VAR

Site means the land benefitted by the Original Permission and the S73 Permission and as shown edged red on Plan 2.

Variation Application means an application made pursuant to Section 96A of the 1990 Act to amend the Revised Development Specification and Parameter Plans as approved pursuant to the Original Permission and the S73 Permission to accommodate changes to the footprint, frontage heights and levels associated with the First Primary School (reference 14/00461/NMA).

Variation Approval means the approval issued pursuant to the Variation Application.

2. **OPERATION OF THIS UNILATERAL UNDERTAKING**

- 2.1 This unilateral undertaking is given by Deed entered into pursuant to section 201 of the Localism Act 2011 section 156, Schedule 10 and Schedule 11 of the Greater London Authority Act 1999.
- 2.2 The LPA intends that this undertaking shall be binding on both the LPA and their successors in function and shall be enforceable by the Owner and their successors in title
- 2.3 While LLDC is both the Owner and the LPA, the LPA will comply with the terms of the Enforcement Protocol in respect of the obligations contained in this Deed and in the Draft Deed.

3. **LPA'S COVENANTS IN FAVOUR OF THE OWNER**

- 3.1 Subject to LLDC entering into a Reciprocal Undertaking the LPA undertakes for the benefit of any Owner of the Developer's Land that they will observe and perform the terms obligations, covenants, undertakings, restrictions and agreements imposed on the local planning authority by the Original Agreement as though it had been amended by the Draft Deed and shall not enforce those obligations of the Original Agreement that are expressly deleted by clause 7 of the Draft Deed other than in accordance with the replacement obligations set out in the aforementioned clause 7.
- 3.2 Subject to LBH and any other person deriving title from or under LBH entering into the Confirmatory Deed, the LPA undertakes for the benefit of LBH that they will observe and perform the terms obligations, covenants, undertakings, restrictions and agreements imposed on the local planning authority by the Original Agreement as though it had been amended by the Draft Deed and shall not enforce those obligations of the Original Agreement that are expressly deleted by clause 7 of the Draft Deed other than in accordance with the replacement obligations set out in the aforementioned clause 7.
- 3.3 In the event PPDT's planning powers are transferred to a successor authority and where the Draft Deed has not already been entered into and completed by the Owner and the LPA, the LPA undertakes for the benefit of the Owner that within 28 days of the planning powers being transferred it shall enter into the Draft Deed with the Owner PROVIDED THAT where any obligations in the Draft Deed have been superseded and/or further amended by any subsequent variation to the Original Agreement the Draft Deed shall be amended accordingly.

4. **LEGAL BASIS**

- 4.1 This Deed is made under section 201 of the Localism Act 2011, section 156, Schedule 10 and Schedule 11 of the Greater London Authority Act 1999.

5. **RIGHTS OF THIRD PARTIES**

5.1 Save in respect of the Owner, no term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

6. **CONFLICT**

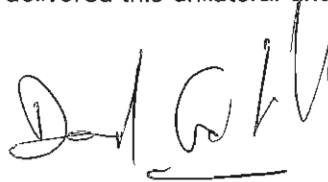
6.1 In the event of any conflict between the terms of this Deed and of the completed Draft Deed the latter will take precedence.

7. **LOCAL LAND CHARGE**

7.1 This Deed is a local land charge and is intended to be registered as such by the London Borough of Newham, the London Borough of Hackney and the London Borough of Tower Hamlets.

IN WITNESS whereof the LPA has executed and delivered this unilateral undertaking as a Deed the day and year first above written

**THE COMMON SEAL of THE LONDON
LEGACY DEVELOPMENT CORPORATION**
was hereunto affixed in the presence of:

) 
)
)

Authorised signatory



Annex 1 – Draft Deed

DATED

201[5]

- (1) [LONDON LEGACY DEVELOPMENT CORPORATION] OR [LOCAL PLANNING AUTHORITY]
- (2) [LONDON LEGACY DEVELOPMENT CORPORATION] OR [OWNER]
- (3) [LONDON BOROUGH OF HACKNEY]

SUPPLEMENTAL DEED AND DEED OF VARIATION TO
THE PLANNING OBLIGATION DATED 28 SEPTEMBER
2012 FOR THE LEGACY COMMUNITIES SCHEME,
QUEEN ELIZABETH OLYMPIC PARK
relating to application 14/00461/NMA submitted for
amendments to the First Primary School (PDZ5 East Wick)

made pursuant to section 106A of the Town and Country Planning
Act 1990 and all other powers enabling

CONTENTS		
Clause		Page
1	INTERPRETATION	4
2	EFFECT OF THIS DEED	4
3	CONDITIONALITY	5
4	EXCLUSION OF CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	5
5	JURISDICTION AND LEGAL EFFECT	5
6	EXECUTION	5
7	VARIATION OF THE ORIGINAL AGREEMENT	5

BETWEEN:

- (1) [LONDON LEGACY DEVELOPMENT CORPORATION LIMITED of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ] OR [LOCAL PLANNING AUTHORITY]¹ (the "LPA"); and
- (2) [LONDON LEGACY DEVELOPMENT CORPORATION LIMITED of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ] OR [DEVELOPER]² (the "Developer");]
- (3) [LONDON BOROUGH OF HACKNEY of Hackney Town Hall, Mare Street, London E8 1EA ("LBH").]

RECITALS

Parties

- (A) The LPA is the local planning authority for the Site for the purposes of Part 3 of the 1990 Act and is the local planning authority by whom the obligations contained in the Original Agreement are enforceable.
- (B) [The Developer is the ([freehold/leasehold] owner of [] details of which are set out in Schedule 1 to this Deed).]
- (C) [LBH is the freehold owner of part of the Site shown edged [] on the plan and registered at the Land Registry under title number [].]

Background

- (D) The Olympic Park Legacy Company (OPLC) submitted the planning application to the Olympic Delivery Authority (as local planning authority) on 30 September 2011 for the legacy redevelopment of the Queen Elizabeth Olympic Park (defined in the Original Agreement as the "Development").
- (E) On 1 April 2012, the Secretary of State for Communities and Local Government created the London Legacy Development Corporation (LLDC) pursuant to the London Legacy Development Corporation (Establishment) Order 2012 as the successor organisation to the OPLC. LLDC took on responsibility for promoting the application submitted by the OPLC for the Development.
- (F) On 26 June 2012 the Olympic Delivery Authority (as local planning authority) resolved to grant the outline planning permission reference 11/90621/OUT/ODA for the Development subject to the completion of an agreement pursuant to Section 106 of the 1990 Act.
- (G) On 28 September 2012 the Olympic Delivery Authority (ODA), LLDC (as developer) and Transport for London entered into an agreement pursuant to Section 106 of the 1990 Act in respect of the Planning Permission (the "Original Agreement") and the Planning Permission was granted.

¹ Insert details of successor LPA in the event the transfer of LLDC PPDT's planning powers to another entity triggers the entering into of this deed.

² Insert details of successor in title as appropriate

- (H) On 1 October 2012 the Olympic Delivery Authority's planning functions and powers were transferred to the London Legacy Development Corporation and the London Legacy Development Corporation became the local planning authority for the Site for the purposes of Part 3 of the 1990 Act ("**PPDT**") with the effect that the local planning authority and the developer became the same legal entity. Because LLDC could not contract with itself, LLDC could not vary the Original Agreement if changes were required to be made to it while LLDC was both landowner and local planning authority.
- (I) The Original Agreement is drafted so that it attaches not only to development carried out under the planning permission as it was granted on 28 September 2012 ("the **Original Planning Permission**"), but also to development carried out pursuant to any variations to the Original Planning Permission, or planning permission for any development on the Developer's Land which is related to or carried out in substitution for development authorised under the Original Planning Permission.

Variation Application

- (J) On [] LLDC and Hackney Schools for the Future Limited as joint developer submitted to PPDT an application made pursuant to Section 96A of the 1990 Act to amend the Revised Development Specification and Parameter Plans as approved pursuant to the Original Planning Permission and the S73 Permission to accommodate changes to the footprint, frontage heights and levels associated with the First Primary School (reference 14/00461/NMA) (the "**Variation Application**").
- (K) In order to deliver the First Primary School as envisaged by the Variation Approval, the Original Agreement needs to be amended in accordance with the provisions set out in Clause 7 of this Deed.
- (L) On 24 February 2015 the planning committee of PPDT resolved to approve the Variation Application subject to agreeing the terms of this Deed (the "**Variation Approval**") and the completion of a unilateral undertaking securing the terms of this Deed.

The Unilateral Undertakings

- (M) On the date that the Variation Approval was issued, LLDC was both the planning authority and landowner of Developer's Land (excluding an interest in part of PDZ 6 which had already been granted to Chobham Manor LLP). As explained above for this reason LLDC could not complete this Deed.
- (N) To ensure that the provisions set out in Clause 7 of this Deed would nonetheless be legally binding, LLDC as landowner gave a unilateral undertaking on [] to observe and perform the terms of the Original Agreement in relation to the Developer's Land as though it had been varied by this Deed ("**UU1**"). UU1 was given under section 106 of the 1990 Act and is binding on both LLDC's interests in the Developer's Land and on any the interests in that land of successors in title.
- (O) In return for UU1, LLDC as local planning authority gave a reciprocal undertaking on [] in which (conditional on the performance of the Original Agreement as deemed to be varied by this Deed) LLDC as Local Planning Authority was bound to only enforce the Original Agreement as though it had been effectively varied by this Deed ("**UU2**"). UU2 was given for the benefit of any owner of the Developer's Land from time to time.

- (P) If LLDC's planning function is transferred to a successor organisation, it is expected that UU2 will be transferred to and binding on the successor local planning authority under a formal scheme of transfer.
- (Q) UU1 and UU2 by themselves do not vary the Original Agreement. Instead, they are binding promises on the part of the owners of the Developer's Land and on the part of the local planning authority to treat the Original Agreement as though it had been varied in accordance with the terms of this Deed.

Deed of Variation

- (R) This Deed is drafted as a simple deed of variation to the Original Agreement to be made under section 106A of the 1990 Act. The variations are effected by Clause 7 of this Deed.
- (S) This Deed is not itself made under section 106. The reason for this is to simplify the process of any future variations to the Original Agreement. Should these become necessary, the intention is that they will be effected by varying just the Original Agreement (as already amended) and UU1 & UU2 without also having vary this Deed.
- (T) Notwithstanding the fact that this Deed is not itself made under section 106 of the 1990 Act, once completed the variations this Deed makes to the Original Agreement will be enforceable against the parties to this deed and their successors in title because of the binding nature of the Original Agreement described in Recital I above and because of the effect of UU1 described below.
- (U) The variations envisaged in clause 7 of this Deed relate to obligations that only apply to DP5.1 and Canal Park.

Role of this Deed

- (V) UU1 requires at clause 4.3 certain persons acquiring title to all or any part of the Developer's Land to enter into this Deed. Furthermore UU1 at clause 4.6 requires LBH and any other person deriving title from or under LBH to any part of the Developer's Land to enter into this Deed (if requested by the LPA). The purpose of this Deed (once completed) is to create certainty particularly as to how the local planning authority will manage the amended development.
- (W) Because this Deed seeks (amongst other variations) to vary site-wide obligations, section 106A of the 1990 Act requires any party against whom such obligations are enforceable (such as the owners of the First Primary School and FPS Playing Fields) to be a party to this Deed.
- (X) The LPA recognises that some interests affected by the amendments to be secured by this Deed may not be willing or able to be a party to this Deed. In these circumstances, the LPA considers that this Deed (incorporating appropriate amendments) need only be completed by the LPA (from time to time) and the third party required to enter into this Deed by Clauses 4.3, 4.4 and 4.6 of UU1. As regards the amended site-wide obligations secured under UU1, other parties can rely on and enforce the LPA's promises given for their benefit in UU2.
- (Y) For the avoidance of doubt, the LPA acknowledges that when completed, this Deed may include such further amendments to the Original Agreement (including amendments to these recitals and any of the terms of Clause 7 of this Deed) and such other terms as are appropriate and/or necessary to accommodate any further changes to the Original Planning Permission which the LPA (from time to time) approves.

OPERATIVE PROVISIONS:

1. INTERPRETATION

1.1 In this Deed (which shall include the Recitals, Schedules and Appendices hereto) the following words and expressions have the following meanings:

"Original Agreement" means the agreement dated 28 September 2012 and made in respect of the Planning Permission between (1) the Olympic Delivery Authority, (2) the London Legacy Development Corporation (as developer) and (3) Transport for London pursuant to Section 106 of the 1990 Act as the same may be varied from time to time prior to the date of this Deed

S73 Permission means the permission granted pursuant to section 73 of the 1990 Act to amend the Original Planning Permission granted by the LLDC as LPA and given reference 14/00036/VAR

1.2 All words and phrases defined in the Original Agreement shall have the same meaning in this Deed save where the context otherwise dictates.

1.3 In this Deed:

1.3.1 unless otherwise indicated references to the singular include the plural and references to the plural include the singular and words importing any gender include every gender;

1.3.2 unless otherwise indicated words importing persons include firms, companies, other corporate bodies or legal entities and vice versa;

1.4 The Interpretation Act 1978 shall apply to this Deed.

1.5 The "Deed" includes the Schedules and Recitals to this Deed.

1.6 If any provision of this Deed is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of the Deed is (if and to the extent that it may properly and lawfully be construed as such) to be unaffected.

2. EFFECT OF THIS DEED

2.1 This Deed is made pursuant to:

2.1.1 section 106A of the 1990 Act; and

2.1.2 [sections 201, 205 and 206 of the 2011 Act, section 156, Schedule 10 and Schedule 11 of the Greater London Authority Act 1999 and all other powers so enabling.]³

2.2 Save as set out in Clause 7 below nothing in this Deed shall be construed as amending in any way the provisions of the Original Agreement and all provisions of the Original Agreement shall continue in full force and effect and nothing in this Deed shall otherwise release or absolve any party from its obligations under the Original Agreement.

³ Amend with relevant local authority powers if LLDC is not a party to this Deed as the LPA

3. **CONDITIONALITY**

Save where expressly provided for in this Deed this Deed is conditional upon and shall not take effect until the Variation Approval has been granted and the Development has Commenced in accordance with the Variation Approval.

4. **EXCLUSION OF CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Parties to this Deed do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

5. **JURISDICTION AND LEGAL EFFECT**

5.1 This Deed shall be governed by and interpreted in accordance with the law of England.

5.2 The provisions of this Deed (other than this Clause 5.2 which shall be effective in any event) shall be of no effect until this Deed has been dated.

6. **EXECUTION**

The Parties have executed this Deed as a deed and it is delivered on the date set out at the front of this Deed.

7. **VARIATION OF THE ORIGINAL AGREEMENT**

7.1 The Original Agreement is varied as follows:

7.1.1 The definitions of "FPS Playing Fields", "FPS Second Phase" and "FPS Specification" in Schedule 8 are deleted and replaced with the following:

"FPS Playing Fields" means the playing fields to be located on DP5.10 and the Canal Park and to be provided in accordance with the FPS Playing Fields Specification which is anticipated to be delivered in two phases (FPS Phase 1 and FPS Phase 2);

"FPS Second Phase" means at least 3,500m² of the total site area for the FPS Playing Fields to be provided within DP5.10 and in the Canal Park;

"FPS Specification" the detailed specification for the First Primary School to be submitted to and approved by the LPA in accordance with paragraph 1, which specification shall include as a minimum:

- (a) a GEA of at least 3,148m²;
- (b) principles to ensure the safety of the temporary (if any) and permanent routes (walking and cycling) to and from the First Primary School including crossing points, external lighting and surfacing materials of such routes; and
- (c) compliance with the requirements of the relevant DfE Guidance;

7.1.2 Paragraph 1.1. of Schedule 8 should be deleted and replaced with the following:

"1.1 The Developer shall:

- 1.1.1 by no later than the Occupation of 400 (four hundred) Residential Units which are permitted to be constructed across the Development and prior to the submission of the FPS Specification, secure an Education Provider for the First Primary School, and the LPA hereby acknowledge that an Education Provider for the First Primary School has already been secured; and
- 1.1.2 within one month of approval by the LPA of the first Reserved Matters application for the First Primary School submit to the LPA for Approval the heads of terms of the School Lease in respect of the First Primary School PROVIDED THAT the LPA shall not be entitled to refuse to Approve the heads of terms of the School Lease where such heads of terms are reasonably commercially acceptable to Education Providers".
- 7.1.3 Paragraph 1.2 of Schedule 8 shall be deleted and replaced with the following:

"1.2 The Developer shall submit to the LPA for approval the FPS Specification at the same time as the first Reserved Matters application is submitted for the First Primary School, such submission to be accompanied by evidence of the approval of the Education Provider for the First Primary School to the FPS Specification".
- 7.1.4 Paragraph 1.5 of Schedule 8 is deleted and replaced with the following:

"1.5 All Reserved Matters applications for the First Primary School shall be accompanied by evidence of the approval of the Education Provider for the First Primary School to such Reserved Matters applications".
- 7.1.5 Paragraph 5.1.1 of Schedule 8 is deleted and replaced with the following:

"5.1.1 The Developer shall submit the FPS Playing Fields Specification to the LPA for approval at the same time as the first Reserved Matters application for the First Primary School is submitted".
- 7.1.6 Paragraph 5.1.2 of Schedule 8 is deleted and replaced with the following:

"5.1.2 [Not used]".
- 7.1.7 Paragraph 8.4 of Schedule 8 is deleted and replaced with the following::

8.4 "The Developer covenants to submit to the Education Working Group reports on the key stages of the selection of the Education Provider (save in respect of the First Primary School for which an Education Provider has already been selected), the procurement of the Schools and the construction of the Schools and take into account any written comments from the Education Working Group on such reports and where the Developer does not accept any such comments, the Developer shall provide a written reasoned explanation and justification to the Education Working Group of why the Developer does not accept such comments."

8. **LBH'S LIABILITY**

- 8.1 [The parties acknowledge that LBH's liability in respect of the Gainsborough Playing Fields (the subject of a transfer from LLDC to LBH dated 17 April 2014 with title number []) is limited to the obligations given by the Developer in respect of the FPS Playing Fields contained in paragraphs 5 and 8.3 of Schedule 8 of the Original Agreement (as varied pursuant to clause 7 above).]

SCHEDULE 1

Interests in the Site

SIGNED as a Deed by)
[Local Planning Authority])
in the presence of:)

Authorised Signatory

[SIGNED as a Deed by)
[Developer])
in the presence of:)

Authorised Signatory]

[SIGNED as a Deed by)
London Borough of Hackney)
in the presence of:)

Authorised Signatory]

Annex 2 – Enforcement Protocol

LONDON LEGACY DEVELOPMENT CORPORATION

S106 ENFORCEMENT PROTOCOL

1. INTRODUCTION

- In March 2012 the London Legacy Development Corporation (LLDC) was established as a Mayoral Development Corporation with responsibility for regenerating an area of east London focused on the Queen Elizabeth Olympic Park. Subsequently, various transfer schemes transferred land including the Olympic Park to LLDC.
- On 1 October 2012, LLDC also became the local planning authority for the land within its area. LLDC's planning powers were delegated by a resolution of LLDC's board to the Planning Policies and Decisions Team (PPDT),¹ a directorate within LLDC which reports to LLDC's Board.
- From a planning perspective, LLDC combines in a single legal entity two distinct roles; firstly as landowner/developer whose land is already bound by several agreements made under S106 of the Town and Country Planning Act 1990 (a S106 Agreement), secondly as the planning authority responsible for enforcing compliance with those agreements.
- As a matter of common law, a single entity can neither contract with itself, nor can it enforce contracts against itself.
- The effect of this is twofold:
 - obligations in existing S106 Agreements cannot be enforced at law by PPDT against LLDC or by LLDC against PPDT. NB: this does not affect PPDT's ability to enforce the same obligations against any third party who acquires title to the bound land from LLDC nor does it affect such third party's ability to enforce the obligations against PPDT. Nor does it affect the ability of any successor organisation of PPDT's planning function to enforce those obligations against both LLDC as landowner/developer as well as against such a third party.
 - if any changes are needed to any existing S106 agreements binding LLDC land, then a legally binding deed of variation to which LLDC is a party cannot be entered into.

¹ In this note "LLDC" refers to LLDC in its role as landowner or developer and "PPDT" refers to LLDC in its role as local planning authority.

- This protocol has been prepared in respect of any planning obligations whether secured by a bilateral or unilateral deed made under s. 106 of the Town and Country Planning Act 1990 to which LLDC is a party as landowner² and which relates to development of land within the area for which PPDT is the local planning authority (a Principal Agreement). It sets out the steps that LLDC and PPDT are committed to taking to manage compliance with such Principal Agreements as well as setting out the approach that LLDC and PPDT are willing to adopt to deal with any variations to such deeds.
- In applying this protocol both LLDC and PPDT commit to act reasonably.

2. OPERATION OF S106

- Notwithstanding the deeds made under s. 106 by LLDC as landowner cannot now be enforced by PPDT, LLDC and PPDT commit to comply with their terms as if they could be enforced.
- Annual update reports to be submitted by LLDC within 20 working days of the end of each financial year on what S106 obligations have been triggered, whether such obligations have been discharged, whether there have been any "ghost" deeds of variation to the Principal Agreement (see paragraph 3 below), whether there have been any S106 agreements entered into where third parties have taken an interest in the site to which the Principal Agreement relates (see paragraph 3 below), whether there have been any disputes and the outcome of such disputes. Report to be approved by PPDT as a true reflection of the status of the relevant Principal Agreement in the past year and reported to the PPDT Planning Committee for noting. The Annual update reports to be made public so there is transparency.
- In the event of dispute regarding the interpretation of the terms of a Principal Agreement:
 - initially to be dealt with between the director of PPDT and LLDC's director of Real Estate. A note will be made of the outcome of the meeting and placed on the relevant planning file.
 - if the dispute is not resolved internally, it will be referred to a jointly instructed and external, independent legal expert appointed in accordance with the provisions attached at Annex 1 to this Protocol whose decision is binding.

² This includes deeds made under s. 106 relating to land which has been transferred to LLDC

- In the event of non-compliance with a term of the relevant deed made under s. 106:
 - PPDT to serve a written notice on LLDC identifying any breach and the steps required to remedy it. LLDC to respond within 10 working days either setting out a reasonable timetable and confirming the steps it intends to take to remedy the breach, or (if relevant) disputing the breach. Unless the procedure described below is triggered, LLDC will carry out the steps in accordance with the proposed timetable.
 - If there is a factual dispute as to whether there has been a breach or as to the appropriate steps to be taken to remedy any breach, this will initially be dealt with between the director of PPDT and LLDC's director of Real Estate. A note will be made of the outcome of the meeting and placed on the relevant planning file. Follow-up meetings will be arranged as necessary.
 - If the above steps do not lead to a mutually acceptable solution, each party will prepare and submit a report on the matter, including a recommended solution, to their respective committees. In the case of LLDC, the relevant committee is the LLDC Investment Committee and in the case of PPDT, the Planning Committee. Both committees shall consider the matter and the recommended solution.
 - If either committee rejects the recommendation made to it, the rejecting committee shall instruct its officers on what further steps to take to try to resolve the dispute.
 - If both committees endorse the recommendations set out in the respective reports (and assuming that the recommendations of the two reports conflict), the matter shall be referred to the Board for consideration. The Board's decision will be binding on both parties.

3. VARIATIONS TO S106 AGREEMENTS / UNILATERAL UNDERTAKINGS

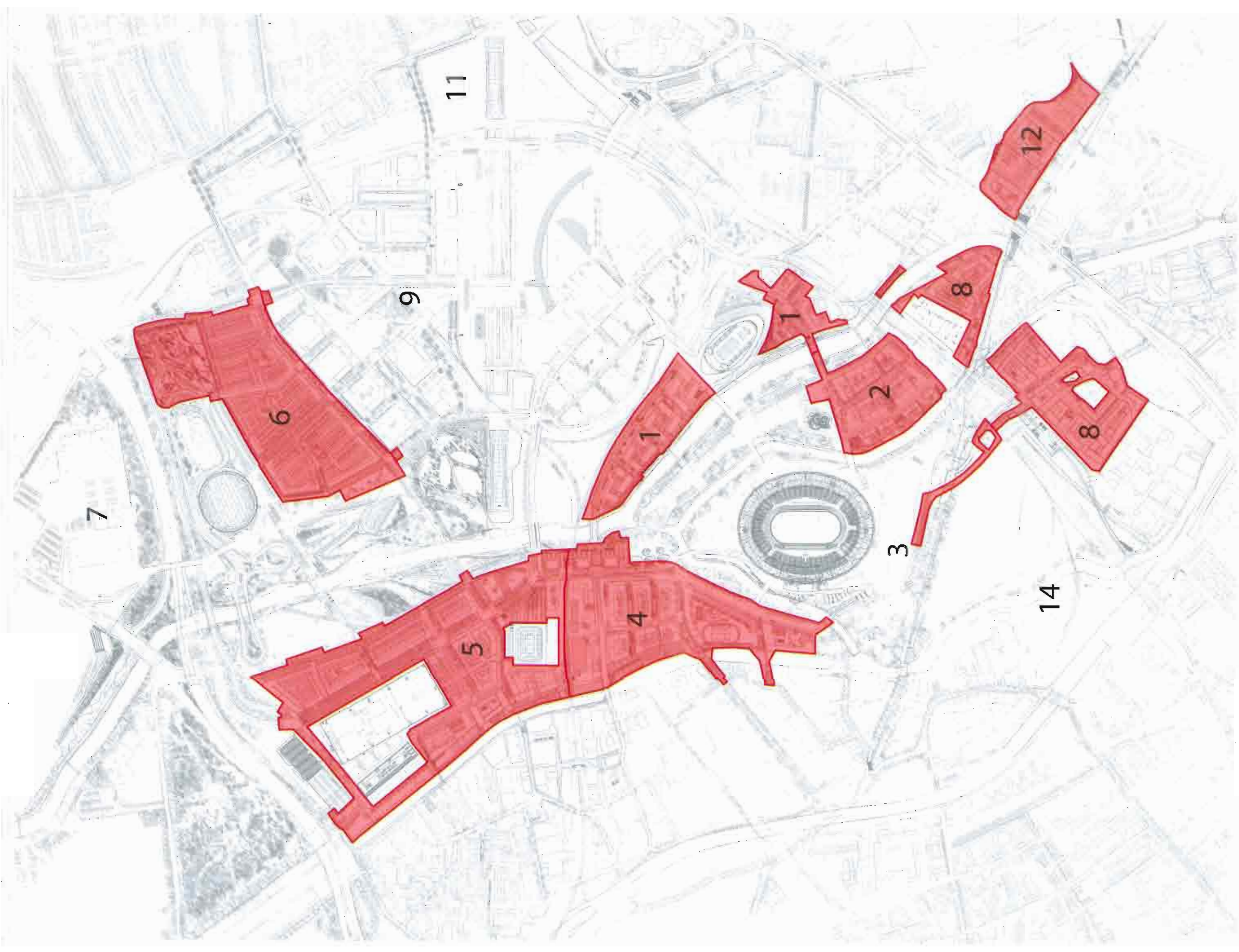
- In the event that variations to an existing section 106 agreement or unilateral undertaking to which LLDC is a party as landowner (a Principal Agreement) are required, LLDC and PPDT will negotiate a draft deed of variation to reflect the changes notwithstanding it cannot be lawfully entered into as a bilateral agreement (a "Ghost Agreement"). A copy of the Ghost Agreement will be placed on PPDT's public planning file.

- Where appropriate, LLDC will bind itself (and its successors in title) by unilateral S106 undertaking to abide by the terms of the Ghost Agreement. In return for such an undertaking, PPDT will confirm by a reciprocal undertaking that it will only enforce the relevant Principal Agreement in a manner that is consistent with the Ghost Agreement. This reciprocal undertaking is intended to be binding on PPDT's successors in function.
- LLDC to ensure that any transfer to a third party of LLDC land against whom the Ghost Agreement could be enforced will be subject to a condition requiring completion of the Ghost Agreement by the transferee following completion of the land transfer.



Annex 1: Dispute Resolution Procedure

- 1) LLDC or PPDT may by serving notice on all the other (the "Notice") refer a dispute to an Expert for determination.
- 2) The Notice must specify:
 - a) the nature, basis and brief description of the dispute;
 - b) the Clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and
 - c) the proposed Expert.
- 3) In the event that the parties are unable to agree who to appoint as the Expert within 10 (ten) Working Days after the date of the Notice then either party may request the President of the Law Society (except where paragraph 7 provides otherwise) to nominate the Expert at their joint expense.
- 4) The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and the Expert's cost shall be awarded at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the dispute in equal shares.
- 5) The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 (twenty) Working Days from the date of his appointment to act (or such longer period as is agreed in writing between the parties).
- 6) The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 (ten) Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 5 (five) Working Days in respect of any such submission and material.

Annex 3 – Plans 1, 2 and 3



KEY

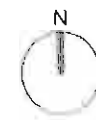
-  LCS Planning Application Boundary
-  Planning Delivery Zones Within the LCS red line Boundary

Date

N

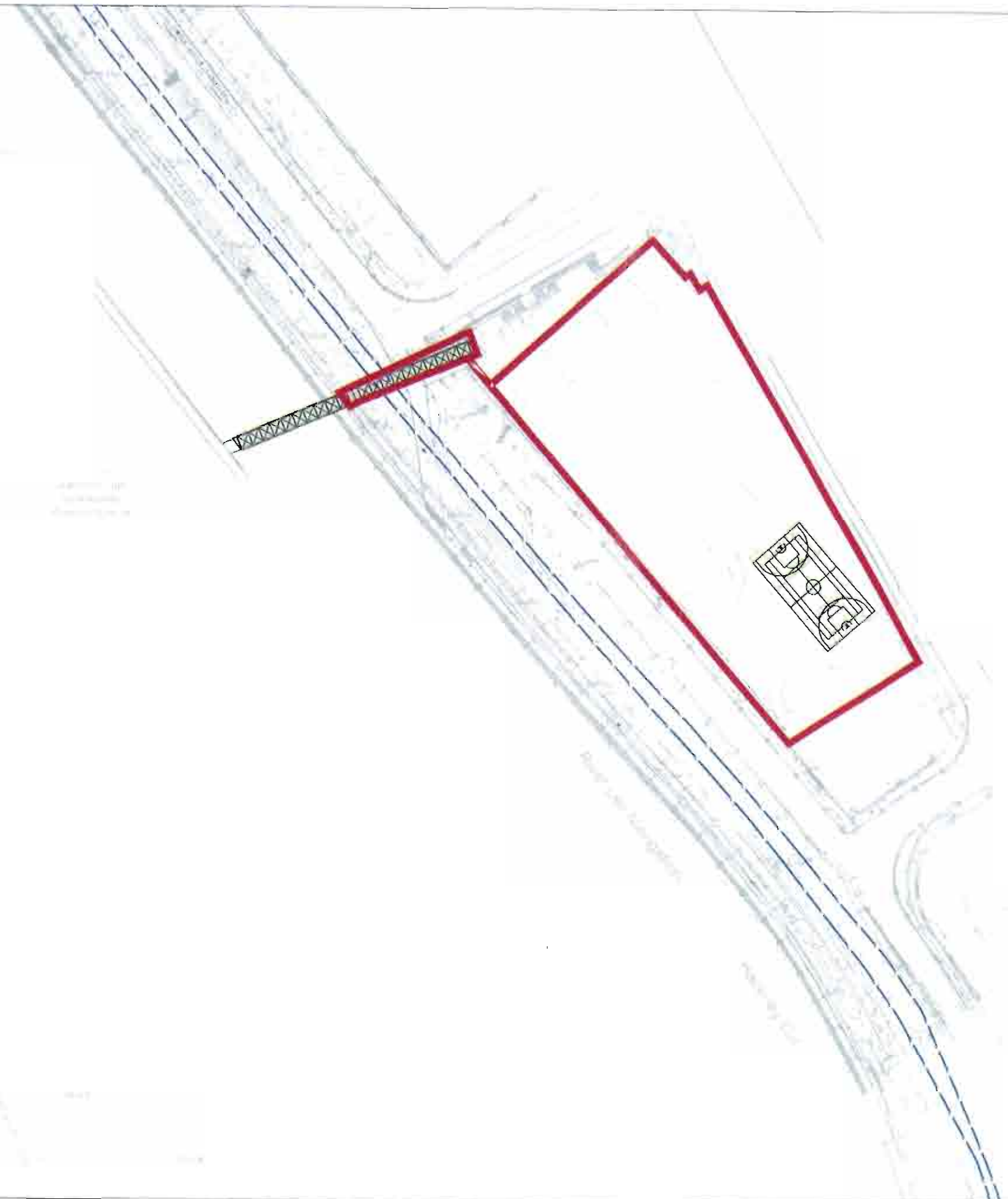
PLAN 2

Security Classification
 1. This document is classified 'Secret' in accordance with the provisions of the Security Classification Policy.
 2. This document is classified 'Secret' in accordance with the provisions of the Security Classification Policy.
 3. This document is classified 'Secret' in accordance with the provisions of the Security Classification Policy.



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TIME	10:44:44	18	18	18/03/2014
Prepared by Atkins On behalf of the LLDC				
LAND TRANSFER PLAN GAINSBOROUGH PLAYING FIELDS SHEET 1 OF 4				
QUEEN ELIZABETH OLYMPIC PARK				
Drawn	JJ	Checked	DH	Approved
File	18/03/2014	Scale	1:500	RNS
Proposed by	FOR INFORMATION			52
Project No.	181118	Sheet	18	File
LC810-LCI-APK-Z-DGA-0101				P02

Annex 4 - Existing Variations to the Original Agreement

Planning permission / approval / reserved matters reference number	Date of unilateral undertakings	Summary of Variations to the Original Agreement	Date of Bilateral Deed of Variation
14/0035/AOD and 14/00036/VAR	11 August 2014	Variations to clause 2.3, 2.9A, 2.12, 4.1.6, and 22, the triggers for the bus contributions, the family housing and affordable housing targets for PDZs 4 and 5 and site wide, a new confidential appendix and consequential variations to Schedule 14	At the date hereof not yet entered into