

DATE: 5th APRIL

2023

(1) GRAVESHAM BOROUGH COUNCIL (HOUSING DEPARTMENT)

In favour of

(2) GRAVESHAM BOROUGH COUNCIL

Town and Country Planning Act 1990

Section 106 Unilateral Undertaking

Relating to

Land at St Columbas Close, Gravesend, Kent

Medway Council and Gravesham Borough Council

Gun Wharf

Dock Road

Chatham

Kent

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THIS DEED is made the 5th day of APRIL 2023

GIVEN BY:

PARTIES

- (1) GRAVESHAM BOROUGH COUNCIL whose address is Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU ("the Owner")

TO:

- (2) GRAVESHAM BOROUGH COUNCIL whose address is the Planning Department, Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU ("the Council")

Agreed terms

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following terms have the following meanings unless inconsistent with the context

"BCIS Index" means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors or successor organisation or in the event that such index shall no longer be published or that the basis thereof shall be materially altered then the index shall be such index as the Council shall reasonably specify.

"Commencement of the Development" means commencement of the Development on the Site by the carrying out of a material operation within the meaning of Section 56(4) of the Planning Act but for the purpose of this definition the carrying out of any works of demolition, works of site clearance, ground investigation and site survey works, construction of boundary fencing of hoards, construction temporary accesses and/or highway works, archaeological investigations, site decontamination or remediation works, landscaping works, laying of sewers and other services, creation of site compounds and noise attenuation works shall not be deemed to be the carrying out of a material operation.

“Council’s Costs” means a contribution to the Council’s proper and reasonable legal and administrative costs in the negotiation, execution, completion and registration of this Deed.

“Development” means the following works of demolition of nos. 1-12 St Patricks Gardens, Nos 36-41 St Patricks Gardens and nos. 28-42 even nos. only, St Columbas Close and the caretakers facility. Erection of 2no 2 storey buildings, 1no 3 storeys building and 1no. part 3 and part 4 storey building: to provide 46 residential dwellings (Class C3) residential use, with associated vehicle and pedestrian access, amenity space with hard and soft landscaping, car and cycle parking, refuse and recycling storage provision and other associated works at the Site by the Owner in accordance with the Planning Application.

“Dwelling” means a building or part of a building designed for residential occupation by a single household constructed pursuant to the Permission.

“Financial Contributions” means the financial contributions set out in the First Schedule

“Indexation” means the increase of any sum in accordance with the formula set out in clause 9.

“Inflation Index” means the “all items” index figure of the Index of Retail prices published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published or its name or methodology be materially altered.

“Monitoring Officer” means a suitably qualified officer experienced in projects similar to the Development appointed by the Council in connection with this Deed.

“Monitoring Officer costs” means the Monitoring Officer’s costs of £500 (five hundred pounds).

“Notice” means a notice in the form which is attached to this Deed at Annexe 1.

“Occupation” means physical occupation for the intended beneficial purpose but does not include occupation for the purposes of construction fitting-out decoration landscaping marketing sales security or management of any part of the Development and for the avoidance of doubt in the case of a sale of a freehold or a long leasehold interest to a third party Occupation commences on the date of legal completion of the sale rather than exchange of contracts and “Occupy” “Occupier” “Occupiers” and “Occupied shall be construed accordingly.

“Permission” means the planning permission granted by the Council pursuant to the Planning Application.

“Plan” means the plan annexed to this Deed.

“Planning Act” means the Town and Country Planning Act 1990 as amended.

“Planning Application” means the application for planning permission to carry out the Development on the Site and given reference 20221179

“Secretary of State” means the Secretary of State for Levelling Up, Housing and Communities or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Levelling Up, Housing and Communities by the Planning Act.

“Section 73 Consents” means a planning permission granted pursuant to an application made under section 73 of the Planning Act to vary the Planning Permission.

“Schedule” means any one or all of the Schedules annexed to this Deed

“Site” means the land situate at St Columbas Close and St Patricks Gardens Gravesend Kent and registered under titles no K946815 and K947567 and more particularly delineated edged red on the attached Plan.

“Statutory Undertaker” has the meaning given such term in the Planning Act and for the avoidance of doubt, shall include any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator.

“Trigger Date” means each date upon which an event occurs that triggers the payment of any Financial Contribution by the Owner and/or the coming into effect of any other obligation under this Deed.

- 1.2 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council to the body or bodies (as appropriate) having statutory responsibility for the relevant function in replacement for the Council
- 1.3 In the absence of any contrary provision any reference to a statute shall include any statutory extension modification or re-enactment of it and any statutory instrument, direction, order, regulation or byelaw made or issued under the statute or deriving validity from it.
- 1.4 Words importing the masculine gender shall include the feminine gender and the neuter and vice versa.
- 1.5 Words importing persons include companies, partnerships and corporations and vice versa.
- 1.6 Unless the context otherwise requires words importing the singular shall include the plural and vice versa.
- 1.7 Headings are for ease of reference only and shall not be construed as part of this Deed.
- 1.8 Reference to any recital, clause, Schedule or paragraph or any part thereof shall unless the context otherwise requires be reference to any recital, clause, Schedule or paragraph or any part thereof in this Deed.
- 1.9 Wherever there is more than one person named as a party or where more than one party undertakes an obligation all their obligations shall be enforceable against all of them jointly and or against each individually.
- 1.10 Any covenant by a party to this Deed not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by any other person.

2. Recital

- 2.1. The Council is the local planning authority for the purpose of the Planning Act for the area in which the Site is situated and entitled to enforce the obligations of this Deed for which it (the Council in its capacity as local planning authority) is a beneficiary.
- 2.2. The Owner is the freehold owner of the Site as registered with title absolute at the Land Registry under title numbers K946815 and K947567 shown edged red on the Plan and is acting in its housing capacity as the applicant in this matter.
- 2.3. The Planning Application has been submitted by the housing department of the Owner to the planning department of the Council in relation to the Development.
- 2.4. The Council resolved on the 1 February 2023 to grant planning permission for the Development subject to the completion of this Deed without which the Planning Application would have been refused.

3. Statutory provisions

- 3.1. This Deed is made pursuant to section 106 of the Planning Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and to all other enabling powers to the intent that this Deed shall bind the Owner and their heirs and successors assigns and persons claiming through or under them, except as expressly provided for by this Deed.
- 3.2. The covenants restrictions and obligations imposed on the Owner contained in this Deed are all planning obligations for the purposes of section 106 of the Planning Act and are enforceable by the Council as local planning authority against the Owner.
- 3.3. The Council's Costs are payable pursuant to section 106(1)(d) of the Planning Act.
- 3.4. The need for the planning obligations contained in this Deed are agreed both for the benefit of the Development and in the interest of proper planning of the

area, and that they directly relate to the Development and fairly and reasonably relate in scale and kind to the Development and thus satisfy the requirements of section 106 of the Planning Act and Regulation 122 of the Community and Infrastructure Regulations 2010 as amended.

- 3.5. Nothing in this Deed shall be construed as prohibiting limiting or affecting any right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted by the Council as Local Planning Authority or the Secretary of State after the date of this Deed and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Commencement of Development under the terms of this Deed.

4. Enforceability of Obligations

The provisions contained in the Schedules to this Deed shall not bind nor be enforceable against any Statutory Undertaker which acquires an interest in the Site for the sole purpose of undertaking its statutory functions.

5. The Owner's Covenants

- 5.1. The Owner covenants to observe the restrictions and perform their obligations set out in the Schedules to this Deed, and the housing department of the Owner shall be liable for all of the Owner's obligations contained in this Deed.
- 5.2. The Owner covenants to serve a Notice on the planning department of the Council in relation to and in accordance with each of the following provisions;
- 5.2.1. at least 28 days before the Commencement Date to serve notice of the proposed occurrence of the same;
- 5.2.2. within 14 days of the Commencement of Development to serve notice of the actual Commencement Date of the Commencement of Development;
- 5.2.3. within 14 days of the occurrence of a Trigger Date to serve notice of the date of the relevant Trigger Date and details of the relevant event; and

5.2.4. to retain such records and information and within 14 days of receipt of a written request by the Council to provide the Council with such records and information as the Council may reasonably request to enable the Council to satisfy itself (acting reasonably) that the Owner is complying with all of its obligations under this Deed and the conditions attached to the Permission.

5.3. The Owner further covenants with the Council as follows:

5.3.1. to pay the Council's Costs on completion of this Deed;

5.3.2. to pay the Monitoring Officer Costs to the Council within 28 days on completion of this Deed.

6. DECLARATIONS AND AGREEMENTS

6.1. Effective Date

The covenants contained in this Deed shall take effect on the date of this Deed or as otherwise stated in the Schedules.

6.2. Liability for Breach

No person shall be liable for a breach of a covenant contained in this Deed after that person has parted with all their interest in the Site or in the part of the Site in respect of which such breach occurs but without prejudice to any subsisting breach of covenant prior to parting with such interest.

6.3. Revocation Modification or Expiry of the Permission

Subject to Clause 11 this Deed shall determine and cease to have any further effect if the Permission is revoked or modified by the Council as Local Planning Authority pursuant to the Planning Act or by any Court without the written consent of the Owner or if the Permission expires before the Commencement of Development.

6.4. Notices

6.4.1. Any Notice required under clause 5.2 shall be in the form attached to this Deed at Annexe 1 and shall be deemed to be served if sent electronically to the address provided on the Notice or if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the Council provided in the Notice

6.4.2. Any other notice consent or approval to be given under this Deed shall be in writing and shall be deemed to be served if delivered personally or sent by pre paid first class recorded delivery or registered post to the address of the relevant party as described at "Parties" or such other address as shall have been notified in writing to the party giving the notice consent or approval provided that in the case of notice or other written communication to the Council the notices must be served, on the Director (Planning and Development) and addressed to the Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU and quoting reference 20221179

6.5. Approvals

Where any approval consent direction action or authority is required to be given by any of the parties hereto such approval consent direction action or authority shall not be unreasonably delayed or withheld and shall only be effective if given for the purposes of this Deed.

6.6. Severance

If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected or impaired.

6.7. Waiver by the Council

No waiver (whether express or implied) by the Council of any breach or default by another party in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or

conditions which they are entitled to enforce or from acting upon any subsequent breach or default in respect thereto by that party.

6.8. Registration as a Local Land Charge

6.8.1. This Deed is a Local Land Charge and shall be registered as such by the Council.

7. Overdue Payment

7.1. Payments required to be made under the terms of this Deed shall for the purposes of this clause be deemed to fall due and to be payable on the date specified for payment in the relevant clause or if no date is specified in the relevant clause then such payment shall fall due 21 days after the occurrence of the relevant Trigger Date (in either case the "**Due Date**").

7.2. In the event of any delay in making the payment required under this Deed interest shall be payable on the amount payable at the rate of four percent above the National Westminster Bank plc base lending rate from time to time in force from the date that the relevant payment falls due to the date of actual payment.

8. Indexation and VAT

8.1. Any sums forming part of the Financial Contributions which become payable under this Deed on a date more than twelve months after the date of this Deed by the Owner to the Council other than the Council's Costs and the Monitoring Officers Costs shall be subject to Indexation.

8.2. Where a sum is subject to Indexation the actual sum due to the Council ("the Indexed Sum") shall be calculated in accordance with the formula except where the Inflation Index at the Due Date is less than the Inflation Index at the Base Date when the sum in question shall not be subject to Indexation

$$\text{Indexed Sum} = \text{Initial sum} \times \text{Inflation Index at Due Date}$$

Inflation Index at Base Date

Where:

- (a) "the Initial Sum" is the original sum specified in this Deed; and
- (b) "the Base Date" is the date twelve months after the date of this Deed

PROVIDED THAT where payment is not made on the Due Date the provisions of clause 7.2. will have effect in relation to the Indexed Sum.

- 8.3. All sums due under this Deed are exclusive of VAT and the Owner shall pay to the Council in addition to any such sums any VAT properly payable in respect thereof.

9. No Fettering of Discretion

Except in so far as is legally or equitably permitted nothing in this Deed shall fetter prejudice or affect the exercise of any statutory or regulatory power duty or discretion of the Council

10. Variation

No variation or modification of this Deed shall be valid unless made by Deed and executed by the parties or their respective successors.

11. Section 73 Consents

In the event any Section 73 Consent is granted after the date of this Deed:

- 11.1. the obligations in this Deed shall relate to and bind such Section 73 Consent; and
- 11.2. the definitions of Planning Application, Permission and Development shall be construed to include reference to the planning application for the Section 73 Consent, the Section 73 Consent itself and the development permitted by the Section 73 Consent respectively.

provided that:

- 11.3. nothing in this clause 11 shall fetter the discretion of the Council in determining the planning application for the Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;
- 11.4. to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and
- 11.5. the parties acknowledge that the Council has the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it desirable to do so.

12. Contracts (Rights of Third Parties) Act 1999

This Deed is not intended to confer any rights or benefit on a third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and a person who is not a party to this Deed shall not have any rights to enforce any term against a party who is not referred to in this Deed.

13. Planning Permission

Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.

14. Change in ownership

- 14.1. The Owner shall give to the Council within seven days of disposing of any part of the Site written notice of such disposal such notice to contain the name and address of the person to whom the Site or any part has been transferred.

15. No Encumbrance

The Owner shall not 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 Deed are rendered impossible to carry out save where planning permission is granted after the date of this Deed for an alternative development of the Site.

17. Jurisdiction

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

18. Receipt

The Council acknowledges receipt of the Council's Costs

IN WITNESS whereof this Deed has been duly executed as a Deed by the Parties
the day and year first before written

THE COMMON SEAL OF

GRAVESHAM BOROUGH

COUNCIL was hereunto

Affixed on the authority of:



Authorised Sealing Officer



17,505

FIRST SCHEDULE

Covenants

Financial Contributions

The Owner covenants with the Council to pay the Financial Contributions to the Council as follows

- 1.1. the sum calculated to the formula of £275.88 (two hundred and seventy five pounds eighty eight pence) per Dwelling the total of which is £5517.60 (five thousand five hundred and seventeen pounds sixty pence) and which shall be used towards a scheme to mitigate the recreational impacts of the development of the Thames Estuary Scheme and Marshes Special Protection Area and the Thames Estuary and Marshes Ramsar Site situated within 6km of the Development such contribution to be paid prior to Commencement of Development.
- 1.2. the sum of £58,301.00 (fifty eight thousand three hundred and one pounds) and which shall be used for leisure enhancements at nearby general play and multi-use games area enhancements within a one mile radius of the Site. Such contribution to be paid prior to Commencement of Development.
- 1.3. The sum of £17,280.00 (seventeen thousand two hundred and eighty pounds) and which shall be used towards the refurbishment, reconfiguration and/or extension of the Rochester Road Surgery 115 Rochester Road, Gravesend Kent DA12 2HU and/or Oakfield Health Centre, Windsor Road, Gravesend Kent DA12 5BW and/or Pelham Medical Centre, 17 Pelham Road, Gravesend Kent DA11 OHN and/or The Shrubbery Surgery, 65a Perry Street, Northfleet Gravesend Kent DA11 8RD such contribution to be paid prior to Commencement of the Development
- 1.4 the sum calculated to the formula of £65.50 (sixty five pounds fifty pence) per Dwelling the total of which is £1,375.50 (One thousand three hundred and seventy five pounds and fifty pence (subject to Indexation in accordance with clause 8.3) towards the cost of providing additional resources for youth services

at Northfleet Youth Centre, Hall Road, Northfleet Gravesend Kent DA11 8AJ such contribution to be paid prior to Commencement of the Development.

- 1.5 the sum calculated to the formula of £16.42 (sixteen pounds forty two pence) per Dwelling the total of which is £344.82 ((three hundred and forty four pounds and eighty two pence) subject to Indexation in accordance with clause 8.3) towards the cost of providing community learning at the Gravesend Adult Education Centre, Victoria Centre, Darnley Road, Gravesend, Kent DA11 0RX, such contribution to be paid prior to Commencement of the Development.
- 1.6 the sum calculated according to the formula of £146.88 (one hundred and forty six pounds and eighty eight pence) per Dwelling the total of which is £3084.48 ((three thousand and eighty four pounds and forty eight pence) subject to Indexation in accordance with clause 8.3) towards the cost of social services at the Age UK Fleming Resource Centre, Clarence Row .Gravesend Kent DA12 1HJ such contribution to be paid prior to Commencement of the Development.
- 1.7 the sum of £37,863.00 (thirty seven thousand eight hundred and sixty three pounds) (subject to Indexation in accordance with clause 8.3) towards the cost of the expansion of Thamesview Secondary School, Thong Lane, Gravesend Kent DA2 4LF such contribution to be paid prior to Commencement of the Development.
- 1.8 the sum calculated according to the formula of £129.20 (One hundred and twenty nine pounds and twenty pence) per Dwelling the total of which is £2,713.20 (two thousand seven hundred and thirteen pounds and twenty pence) (subject to Indexation in accordance with clause 8.3) towards the cost of the expansion of the Ebbsfleet Waste Treatment Works, Station Road, Southfleet, Gravesend Kent DA13 9PA Kent such contribution to be paid prior to Commencement of the Development.
- 1.9 the sum of £38,386.50 (thirty eight thousand three hundred and eighty six pounds and fifty pence) (subject to Indexation in accordance with clause 8.3) towards the cost of expansion of education facilities within the Gravesham Borough Council area in respect of primary school places and towards the Thamesview School, Thong Lane, Gravesend, DA12 4LF expansion in relation

to secondary school places. Such contribution to be paid prior to Commencement of the Development

1.10 the sum calculated according to the formula of £55.45 (fifty five pounds and forty five pence) per Dwelling the total of which is £1,164,45 (one thousand one hundred and sixty four pounds and forty five pounds) towards the cost of additional service, resources and renewing book stock and enhancing the provision of digital services at Kings Farm Library, 100 Sun Lane, Gravesend Kent DA12 5HR and Riverview Park Library, The Alma, Leander Drive, Gravesend Kent DA12 4NG Gravesend, Kent such contribution to be paid on Commencement of the Development

1.11 The Owner covenants not to cause or allow Commencement of the Development until the Council has received in full the Financial Contributions payable under this Schedule

ANNEX 1

NOTICE

To : Gravesham Borough Council, Planning & Regeneration Services, Civic Centre,
Windmill Street, Gravesend, Kent, DA12 1AU

Planning application number : 2022/1179 *[to be completed in full]*

Section 106 dated: *[to be completed in full]*

Development Site Address : *[to be completed in full]*

In accordance with the terms of the above section 106 Agreement, **I GIVE YOU**

NOTICE that the following event has been reached *(please complete as appropriate)*

EITHER:

PRIOR TO COMMENCEMENT OF WORKS ON THE DEVELOPMENT ON SITE (1)

Work is expected to commence on the Development Site on *[insert date]*

(1) this notification should be sent at least 28 days prior to commencement of works on the Development Site as required under Clause 5.1.2 of the Section 106 Agreement

OR

WORKS HAVE COMMENCED ON SITE (2)

Work commenced on the Development Site on *[insert date]*

(2) this notification should be sent within 14 days after commencement of works on the Development Site as required under Clause 5.1.2 of the Section 106 Agreement

OR

A TRIGGER DATE(S) HAS OCCURRED (3)

Obligation type:

(insert each obligation)

e.g. Library Contribution/SAMM Contribution

Trigger Date: (insert the date that each obligation was due to be paid or was due to come into effect)

e.g.

(3) this notification should be sent within 14 days after trigger date occurred as required under Clause 5.1.2 of the Section 106 Agreement

From:

Company:

Address *(required for invoicing)*:

Email address:

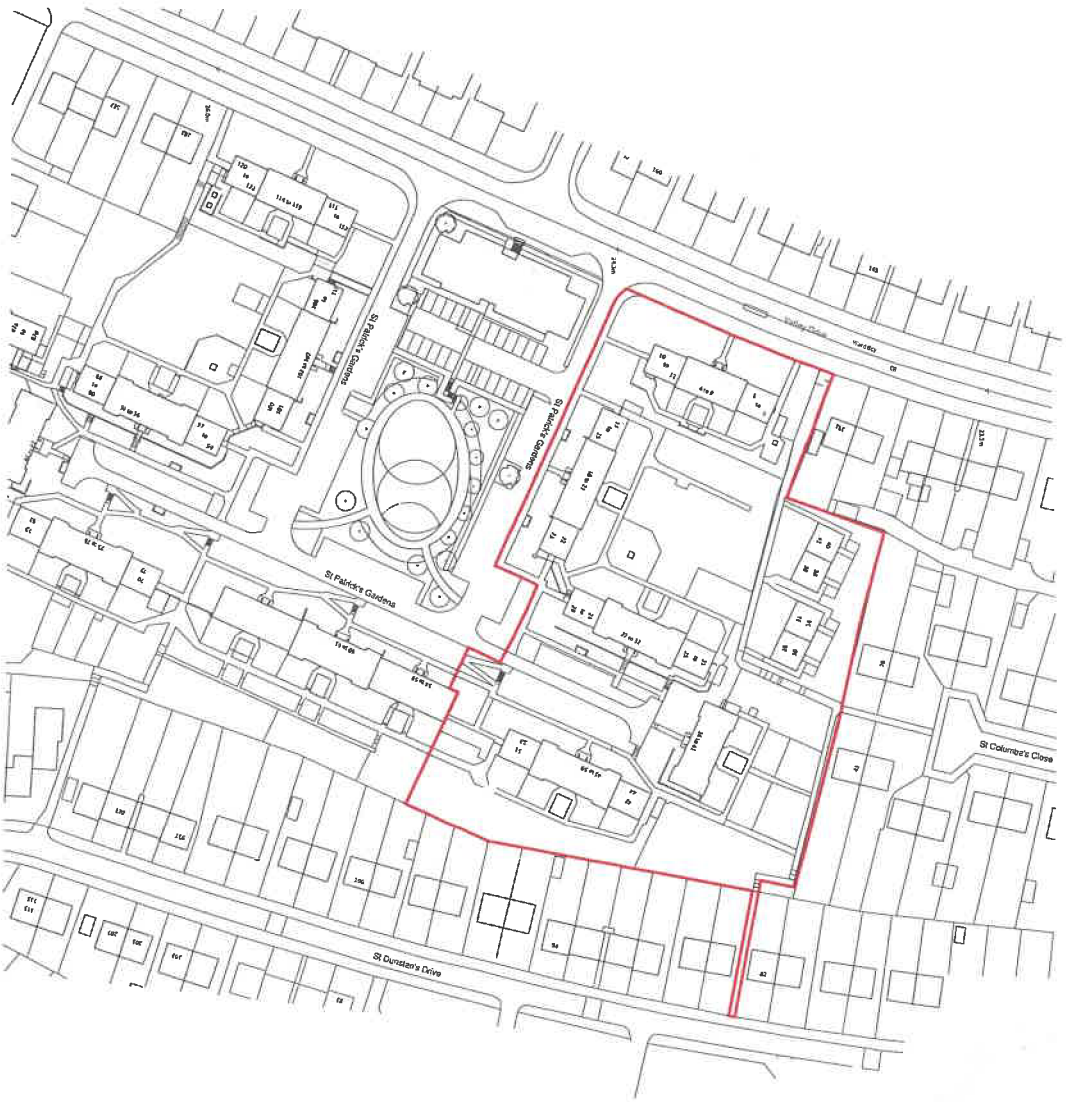
Please send this notification to :

By email: planning.admin@gravesham.gov.uk (preferred option)

By post:

The Planning Service, Gravesham Borough Council,

Civic Centre, Windmill Street,



Key:
Site Boundary

Notes:
Do not scale. All dimensions are in millimetres unless otherwise stated.
This drawing should be read in conjunction with all relevant project information and contract documentation. All dimensions to be checked prior to fabrication and/or commencement of works. All works to comply with all relevant legal standards, building regulations and warranty provided requirements. Report any discrepancies. If in doubt ask.

Rev	Status	Date	Description	Drn	Chkd
C01	A2	24.10.22	Planning Issue	ES	AA
C02	A2	19.02.23	Site Boundary Amended following Client Comments	CD	AA

Client Name:		Gravesham Borough Council	
Project Name:		St Columba's Close	
Drawing Name:		Site Location Plan	
Drawing Number:		SCC-8FTV/04-00-DR-A-0201	
Project No:	169	Drawn By:	HLB
Scale:	1:1250 @ A3	Rev:	C02
Stat:	A2		

PLANNING ISSUE

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