

Dated 2 OCTOBER 2013

**Guinness Care and Support Limited (1)**

and

**Westcountry Housing Association Limited (2)**

**Unilateral Undertaking given under Section 106 of the Town  
and Country Planning Act 1990 (as amended)**

in relation to land at Lee Court Nelson Road Westward Ho! Bideford EX39  
1LF

Wollen Michelmore  
30 The Terrace  
Torquay  
TQ1 1BS

---

# This Unilateral Undertaking

dated 2 OCTOBER 2013

## Parties

Is given by:

- (1) **Guinness Care and Support Limited** (Industrial and Provident Society registration number IP30337R whose office for service is Hillfields House Matford Court Sigford Road Exeter EX2 8NL (the **First Owner**); and
- (2) **Westcountry Housing Association Limited** (Industrial and Provident Society No. 19141R) of Hatfield House, Hatfield Road, Torquay, Devon, TQ1 3HF (the **Second Owner**)

In favour of:

- (3) **Torridge District Council** of Riverbank House, Chanters Road, Bideford EX39 2QG (the **Council**)

## Introduction

- (A) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area that includes the Site, by whom the obligations imposed by this Agreement shall be enforceable.
- (B) The Application has been made to the Council for Planning Permission for the Development
- (C) The First Owner is the registered proprietor with Title Absolute under Title Number DN530843 of the Site subject to the entries disclosed on the Charges Register of the said title but otherwise free from encumbrances
- (D) The Second Owner intends to purchase the Site and has exchanged conditional contracts with the First Owner
- (E) The Council in exercise of its powers under the 1990 Act has resolved to grant the Planning Permission for the Development subject to completion of this Undertaking, which the Council considers is necessary for the satisfactory development of the Site; and the terms of which the Council has approved.
- (F) This Undertaking is conditional upon the matters hereinafter referred to.

## Agreed terms

### 1 Definitions and Interpretations

1.1 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

**1990 Act** means the Town and Country Planning Act 1990 (as amended);

**Application** means the application for planning permission for the Development registered by the Council under the 1990 Act registered on the 25 April 2013 and given reference 1/0355/2013 /FUL/M.

**Commencement of Development** the date upon which a material operation within the meaning of Section 56 of the Act is carried out in relation to the Development, and similar expressions such as "Commence the Development" shall be interpreted the same way;

**Development** means the erection on the Site of 16 units of Affordable Housing with ancillary access and parking and further described in Schedule 1;

**Layout Plan** means the plan attached hereto as Appendix 2;

**Mortgagee** means any person who is granted a charge over the Site or any part of it (including over any Social Rented Dwelling) or any receiver or manager or administrative receiver appointed by such mortgagee or chargee;

**Obligations** means the planning obligations contained in Schedules 2 hereto;

**Occupation** means the occupation for the purposes permitted by the Planning Permission but does not include occupation by personnel at the time engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly;

**Owners** means the First Owner and the Second Owner and (where the context so admits) either of them;

**Plan** means the plan attached hereto as Appendix 1;

**Planning Permission** means the planning permission to be granted by the Council pursuant to the Application and the expression Planning Permission shall include all approvals granted thereunder;

**Site** means the land at Lee Court Nelson Road Westward Ho! Bideford EX39 1LF shown edged red on the Plan comprising title DN530843:

and additional expressions are defined in the Schedule in which they appear.

1.2 In this Undertaking, except where the context requires otherwise:-

1.2.1 The singular includes the plural, the masculine includes the feminine, and vice versa;

1.2.2 References to clauses and schedules are to the clauses in and schedules to this Undertaking;

1.2.3 Reference to any party having an interest in land affected by this Undertaking shall include any successor in title of that party to that land or to any part of it;

1.2.4 Reference to any party having a statutory function referred to in this Undertaking shall include any successor to that statutory function;

- 1.2.5 Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it;
- 1.2.6 Where an Obligation applies to more than one person, their liabilities shall be joint and several;
- 1.2.7 Referenced to the Council, the Owner and the Second Owner shall include their respective successors and assigns;

2

2.1 The obligations in this Undertaking are conditional upon:

- i the Council granting the Planning Permission; and
- ii the Commencement of Development

and shall only come into effect when both such conditions are satisfied

- 2.2 If the Planning Permission granted pursuant to the Application should expire before the Development is Commenced or shall at any time be revoked this Undertaking shall forthwith determine and cease to have effect;
- 2.3 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted (whether or not on appeal) after the date of this Undertaking;
- 2.4 This Undertaking is a Local Land Charge and shall be registered as such;
- 2.5 The Owners may at any time after the obligations of the Owners under this Undertaking have been fulfilled seek written confirmation from the Council thereof such confirmation not to be unreasonably withheld or delayed.
- 2.6 Nothing in this Undertaking is or amounts to or shall be construed as a planning permission or approval;
- 2.7 The County Court in whose district the Site is situated shall have full jurisdiction to hear and determine proceedings arising from or relating to this Undertaking or for the enforcement of its terms or any of them;
- 2.8 This Undertaking is made pursuant to Section 106 of the 1990 Act and is a planning obligation made with the intent to bind the Owners' interests in the Site;
- 2.9 None of the provisions of this Undertaking are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to or addressee of this Undertaking, but for the avoidance of doubt the exclusion of the application of that Act shall not prevent all or any of the future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed;

2.10 The Owners and their successors in title to the Site shall only retain any liability under this Undertaking whilst it or they shall retain any interest in the Site, save for any pre-existing breach of this Undertaking;

2.11 The Owners hereby undertakes to observe and perform the Obligations, which are intended to bind the Site (and every part of it) as planning obligations under section 106 of the 1990 Act.

### 3 **General**

Upon the completion of this Undertaking the Owners shall pay the reasonable legal fees of the Council in respect of the preparation of this Undertaking, not to exceed £900.

### 4 **Mortgagee's Interest**

4.1 For the avoidance of doubt, subject to the requirements of clauses 4.3 and 4.4, any Mortgagee will be bound by the terms of this Undertaking upon exercising any power to take possession lease or sell or otherwise deal with any Social Rented Dwellings on the Site PROVIDED THAT this Undertaking shall not be enforceable against any Mortgagee until it takes possession and thereafter the Mortgagee shall only be liable for any breach of the obligations arising during the period of time that it is in possession.

4.2 Once the requirements of clauses 4.3 and 4.4 have been complied with, the terms of this Undertaking will no longer apply to any Social Rented Dwelling and the Mortgagee will be free to sell any Social Rented Dwelling to the intent that this Undertaking will not thereafter be binding on any person deriving title from the Mortgagee.

4.3 In the event that the Mortgagee wishes to dispose of any Social Rented Dwelling (whether pursuant to a power of sale or otherwise), it will first offer to sell the Social Rented Dwelling to an RP nominated by the Council within 14 days of receipt of a request to do so

4.4 If:

4.4.1 the Council fails to make a nomination under clause 4.3 within 14 days of receipt of a request so to do; or

4.4.2 the nominated RP does not complete the purchase of the Social Rented Dwelling(s) or the Site within 56 days of being nominated; or

4.4.3 the nominated RP chooses not to proceed with its purchase and advises the Council of this;

then the Mortgagee will be free to dispose of the Social Rented Dwelling(s) or the Site to any person and the obligations and restrictions contained in this Undertaking will cease to apply to the Social Rented Dwelling(s) or the Site to the intent that this Undertaking will not thereafter be binding on any person deriving title from the Mortgagee;

4.5 PROVIDED ALWAYS that the rights and obligations under paragraphs 4.3 and 4.4 shall not require the Mortgagee to act contrary to its duties or rights under its charge or mortgage and that the Mortgagee shall not be required to sell the Social Rented Dwelling(s) for an amount less than that amount required to redeem its borrowing against such Social Rented Dwelling including interest costs and charges.

## Schedule 1

### Affordable Housing

- 1 The Owners hereby undertake not to Commence the Development until the Second Owner has acquired a freehold interest in the Site.
- 2 Unless otherwise agreed in writing by the Proper Officer and the Owner, the Affordable Housing shall be provided in accordance with the following table; and the plot numbers referred to are those shown on the Layout Plan.

Plot Number	Tenure
1	Social Rented Dwelling
2	Social Rented Dwelling
3	Social Rented Dwelling
4	Social Rented Dwelling
5	Social Rented Dwelling
6	Social Rented Dwelling
7	Social Rented Dwelling
8	Social Rented Dwelling
9	Social Rented Dwelling
10	Social Rented Dwelling
11	Social Rented Dwelling
12	Social Rented Dwelling
13	Social Rented Dwelling
14	Social Rented Dwelling
15	Social Rented Dwelling
16	Social Rented Dwelling

The Social Rented Dwellings shall be provided and managed in accordance with Schedule 2 to this Undertaking;

## Schedule 2

### Social Rented Dwellings

#### Part A – Definitions

In this Schedule unless the context otherwise requires the following expressions shall have the following meanings:-

**Affordable Housing** means housing which is available to people who have a Housing Need and which falls within the definition of 'social housing' in section 68 of the Housing and Regeneration Act 2008

**District of North Cornwall** means the former administrative boundary of the adjoining district council formerly known as North Cornwall District Council

**District of Torridge** means the administrative district of Torridge District Council

**Exempt Person** means any person who in relation to a Social Rented Dwelling has:

- (a) exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Social Rented Dwelling;
- (b) exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right).

**Housing Need** where a person does not have available to him or her and cannot afford (personally or jointly with other members of his or her household) to acquire or rent a home suitable for his or her needs and the needs of their household at normal market values prevailing in the district.

#### **Local Requirement**

- (c) a minimum continuous residence by a prospective occupier of five years in the Parish immediately prior to the Offer Date; or
- (d) residence by a prospective occupier in the Parish for five years within the ten years preceding the Offer Date; or
- (e) where one or both parents or guardians of a prospective occupier have resided in the Parish for a minimum period of ten years prior to the Offer Date; or
- (f) where a prospective owner or occupier has had continuous employment in the Parish for the past five years prior to the Offer Date; or
- (g) a key worker under a scheme approved by the Council.

**Offer Date** the date a Social Rented Dwelling is offered to a prospective occupier

**Parish** the Parish of Northam

**Proper Officer** means the Council's Head of Strategic Planning and Development Services or in his/her absence such person who is properly designated to undertake his/her duties.

**Regulator** means the Homes and Communities Agency (HCA) acting through the Regulation Committee established by it pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions.

**RP** means a registered provider of social housing under section 80 the Housing and Regeneration Act 2008.

**Social Rent** means a rent which does not exceed the Regulator's target rents for the area in which the Affordable Housing is located, as specified by the Regulator or other body approved by the Council who set rent levels for Affordable Housing.

**Social Rented Dwelling** means any of the 16 dwellings on the Site to be used as Affordable Housing and let at a Social Rent in accordance with the terms set out in Part B of Schedule 2 of this Undertaking.

### **Part B - The Planning Obligation**

- 1 The Owners undertakes: -
  - 1.1 not to provide nor allow the Occupation of any Social Rented Dwelling other than for rent by a tenant of the Owners; and
  - 1.2 not to charge or levy a rent in respect of the Social Rented Dwelling which exceeds a Social Rent; and
  - 1.3 not do anything in relation to the provision of an Social Rented Dwelling which conflicts with the Council's requirement that such dwelling shall always be available as Affordable Housing

PROVIDED THAT this paragraph 1 shall not apply to an Exempt Person or any Mortgagee or Chargee of an Exempt Person or any person deriving title from an Exempt Person or any successor in title thereto and their respective Mortgagees and Chargees.

- 2 No person shall Occupy an Social Rented Dwelling unless that person: -
  - 2.1 was a person in Housing Need and had a Local Requirement at the time of his or her first Occupation of an Social Rented Dwelling; or
  - 2.2 is a member of a household of and living with a person who had a Local Requirement at the time of his or her first Occupation of the Social Rented Dwelling; and (in either case)
  - 2.3 occupies that Social Rented Dwelling as his or her sole or main residence



but nothing in this clause shall require any person who satisfied the requirement in paragraph 2.2 above when they first Occupied the Social Rented Dwelling to vacate the Social Rented Dwelling if they cease to qualify under paragraph 2.2 by virtue of death, hospitalisation or breakdown of a relationship with a person who qualified under paragraph 2.1.

3

3.1 If no prospective occupier meeting the Local Requirement from the Parish wishes to Occupy the Social Rented Dwelling within a period of 1 month from the date that the Social Rented Dwelling becomes available for Occupation, Occupation is permitted by a person in Housing Need with a Local Requirement applied to the following Parishes: Bideford and Abbotsham

3.2 If after a period of 2 months from the date the Social Rented Dwelling becomes available for Occupation, no prospective occupier in Housing Need meeting the Local Requirement wishes to Occupy the Social Rented Dwelling from Bideford or Abbotsham, then an occupier in Housing Need who meets a Local Requirement applied to any parish within the District of Torridge shall be permitted

3.3 Should there still be no suitable prospective occupier after a further period of 4 months from the date the Social Rented Dwelling becomes available for Occupation, an occupier from any parish within the County of Devon or within the former District of North Cornwall may Occupy the relevant Social Rented Dwelling

PROVIDED THAT during the said periods the Social Rented Dwelling shall have been continually marketed within the Parish or District, as appropriate, at a rent not exceeding the Social Rent.

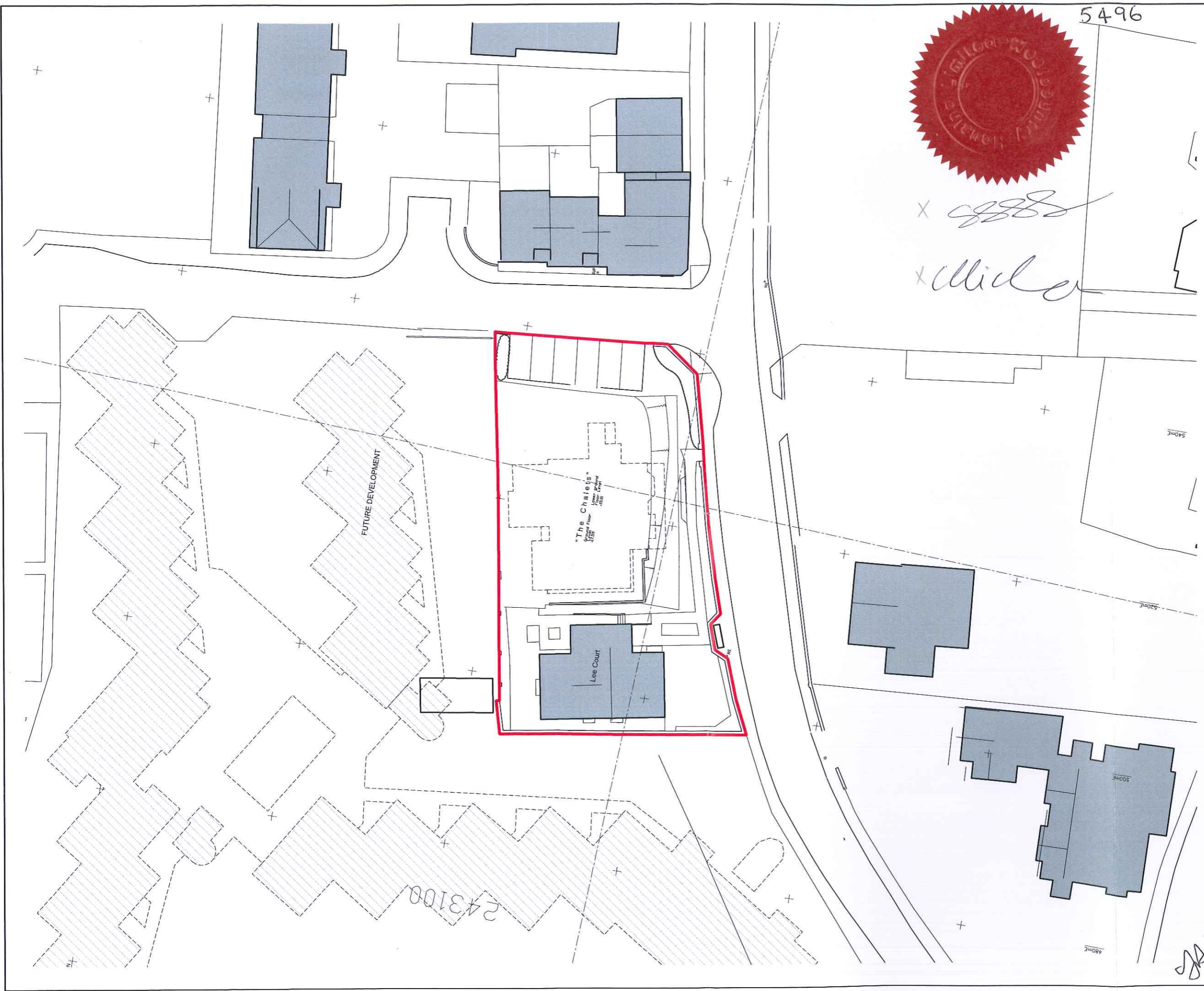
4 The Owner shall not allow the Occupation of the Social Rented Dwelling by any person unless that person complies with the requirements of paragraph 2 to this Schedule as applicable.

5 The Social Rented Dwellings shall be occupied in accordance with nominations made in accordance with Choice Based Lettings for the duration of the existence of Choice Based Lettings, in accordance with Communities and Local Government Guidance; Allocation of Accommodation: Choice Based Lettings, August 2008, and all subsequent guidance, and any subsequent replacement scheme that may be introduced and agreed to by the Council and the Owner. In the event that Choice Based Lettings and all subsequent replacement schemes cease to operate the Council shall have 100% nomination rights.

6 For the avoidance of doubt the provisions and restrictions contained or referred to in this Schedule 2 shall not apply to any Mortgagee or its successors in title provided that the provisions of Clause 4 have been complied with and Clause 4 will prevail.

**Appendix 1**

**The Plan**



drawing title <b>SITE PLAN</b>		drawn by MS		drawing number P1255-SP-01	
AS EXISTING		scale 1 : 200 @A1		checked by PE	
		date 15 : 04 : 13		drawing number P1255-02A	

**pearn & procter**  
chartered architects

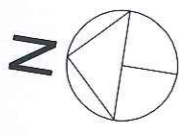
Old Court, Eboracough, Plymouth PL6 7BE, Tel: 01752 704849 Fax: 01752 768827  
e-mail: [plmoad@pearnandprocter.co.uk](mailto:plmoad@pearnandprocter.co.uk) website: [www.pearndprocter.co.uk](http://www.pearndprocter.co.uk)

project title  
**16 AFFORDABLE FLATS,  
LEE COURT, NELSON ROAD,  
WESTWARD HO!**

FOR WESTWARD HOUSING

revisions	date	by	description
ref.	15.04.13	MS	As issued for planning.
A			

drawing status  
**PLANNING**



Reproduced from / based upon the  
ordnance survey map with  
the sanction of the controller of  
HM Stationery Office  
Crown Copyright reserved

*SA Horner*  
*AL Way*



## Appendix 2

### Layout Plan

14.3

14.74

Bath Hotel Road

15.23

15.85

LINE OF SOUTH WEST WATER SEWER

16.76

16.89

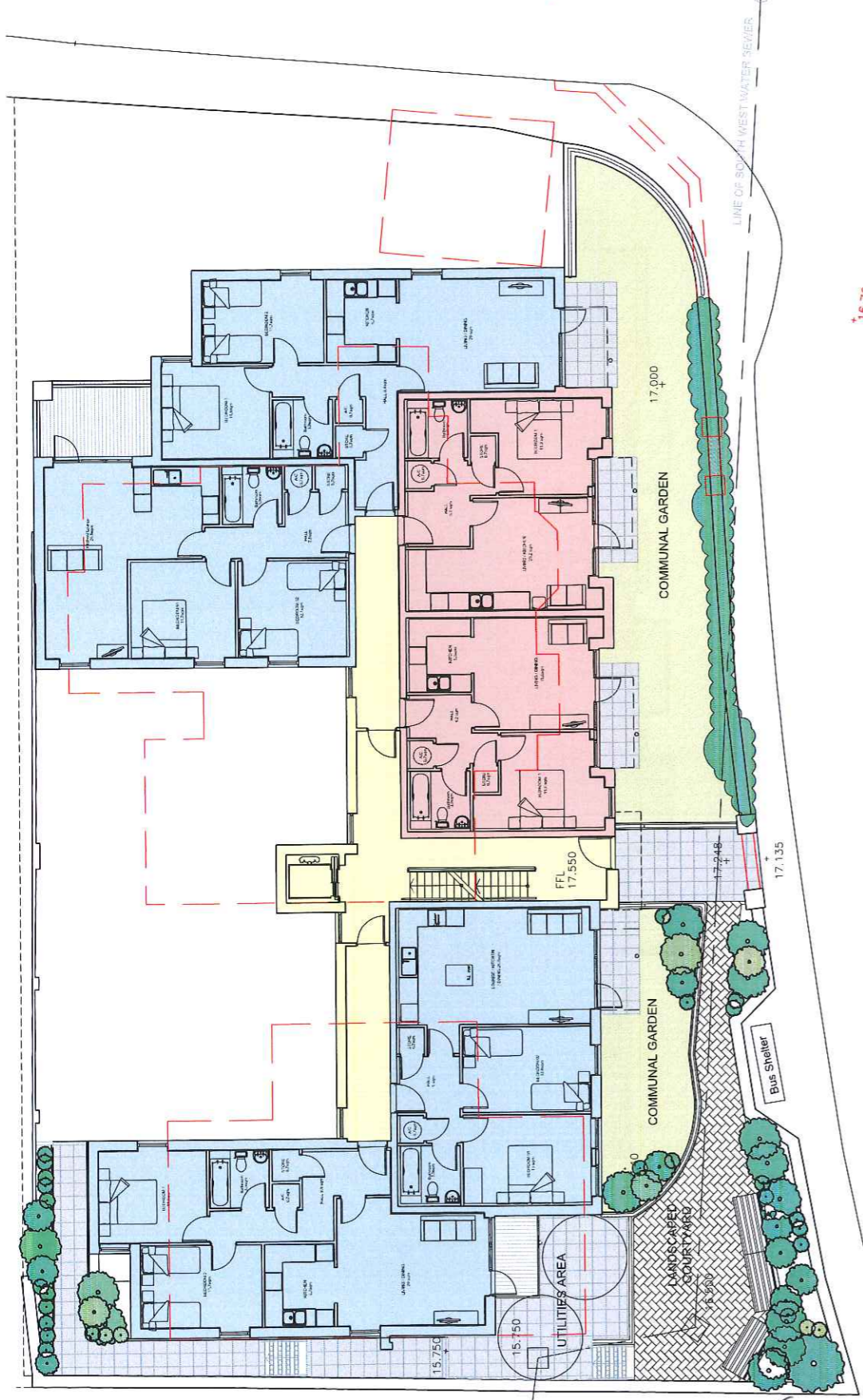
Nelson Road

17.04

17.22

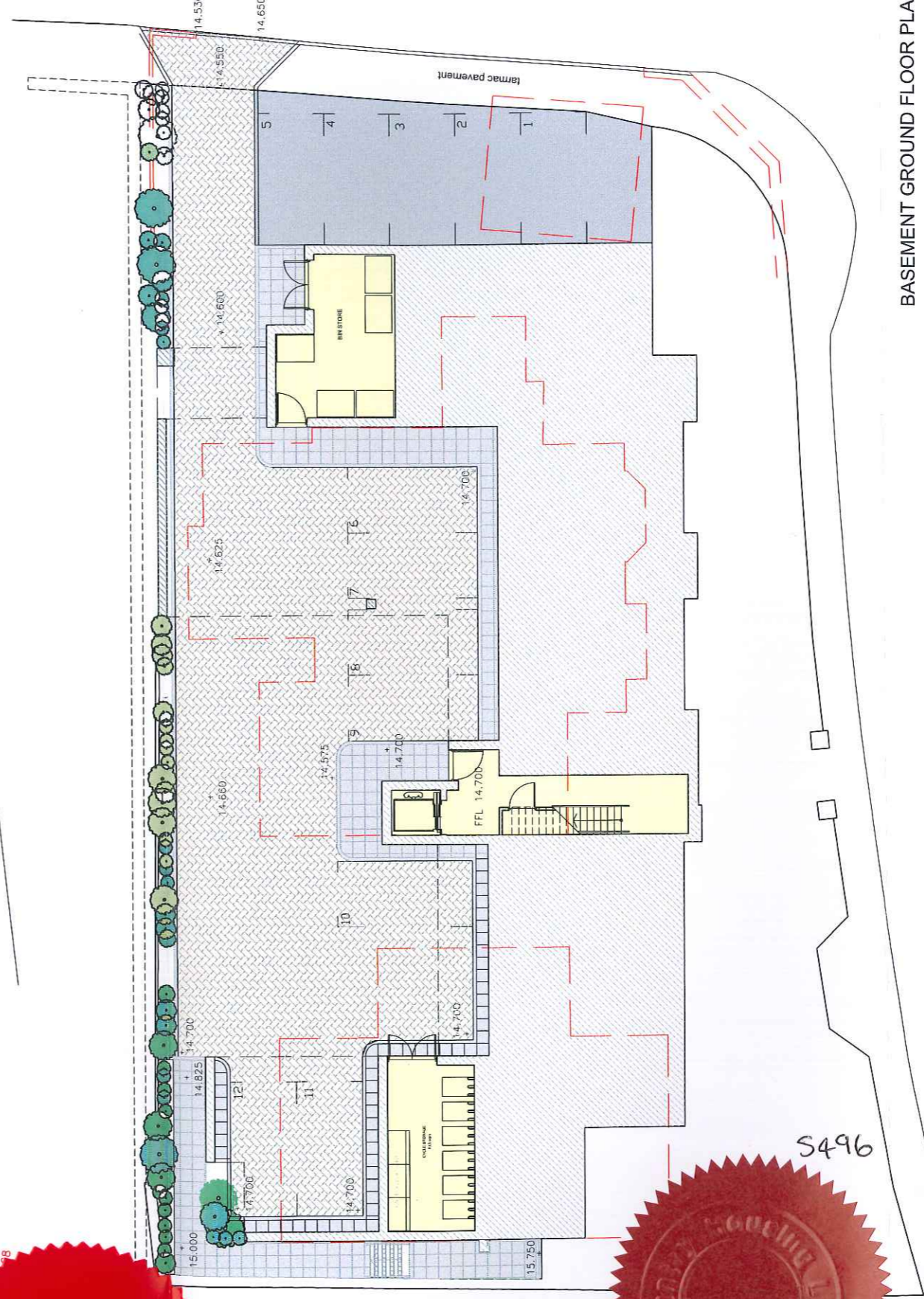
17.46

GROUND FLOOR PLAN



*Plan  
S.A. Hansen*

*x 8000  
x 11000*



BASEMENT GROUND FLOOR PLAN

- EXTERNAL SURFACES:**
- GRASS LOCATED IN COMMUNAL GARDENS
  - CONCRETE BLOCK PAVING - CHARCON EUROPA, COLOUR: BURNT OAK, PATTERN: HERRINGBONE STYLE OR SIMILAR APPROVED
  - CONCRETE BLOCK PAVING - CHARCON, FLAG PAVING, COLOUR: GREY GROUND, 450 X 450 X 70
  - EXISTING HEDGEROW MAINTAINED.
  - EXISTING TARMAC USED FOR CAR PARKING AND EXTENDED FOR FOOTPATH.
  - PROPOSED PLANTING.

revision	ref.	date	by	cd	amendment
A	15-04-13	MS			As issued for planning.
B	28-05-13	JD			Revised parking layout and pillar placement.
C	14-06-13	JD			Update to floor plans, external wall and parking spaces.
D	24-06-13	JD			Site store moved back to under the main building

**pearn & procter**  
chartered architects

Old Court, Babergh, Norwich, Norfolk, NR4 7BS, T: 01252 704849, F: 01252 744827  
email: info@pearnandprocter.co.uk website: www.pearnandprocter.co.uk

project title  
**16 AFFORDABLE FLATS, LEE COURT, NELSON ROAD, WESTWARD HO!**

scale  
1 : 100 @A1

drawn by  
MS

checked by  
PE

date  
15 : 04 : 13

drawing number  
P1255-05-D

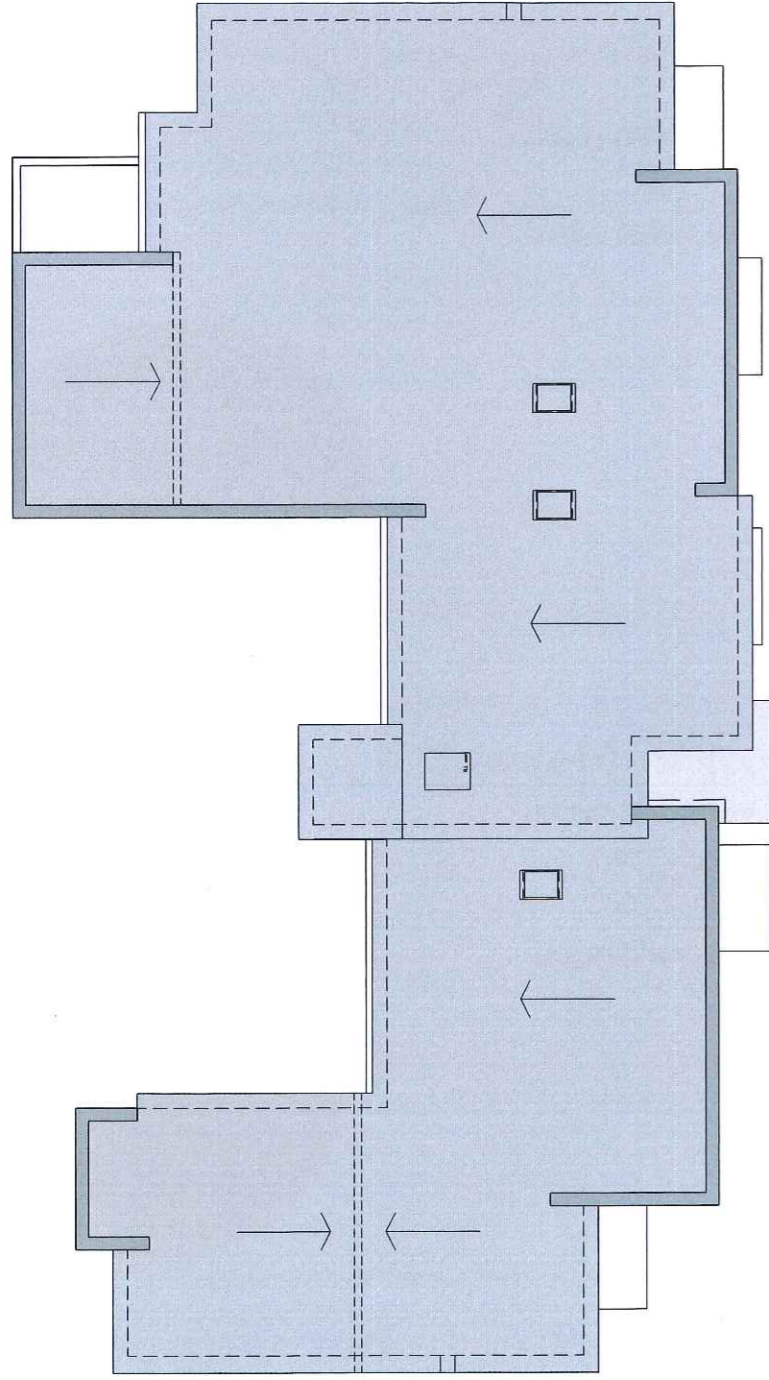
© Pearn & Procter Chartered Architects

drawing title  
**16 UNITS LOWER GROUND, AND GROUND FLOOR PLAN AS PROPOSED**

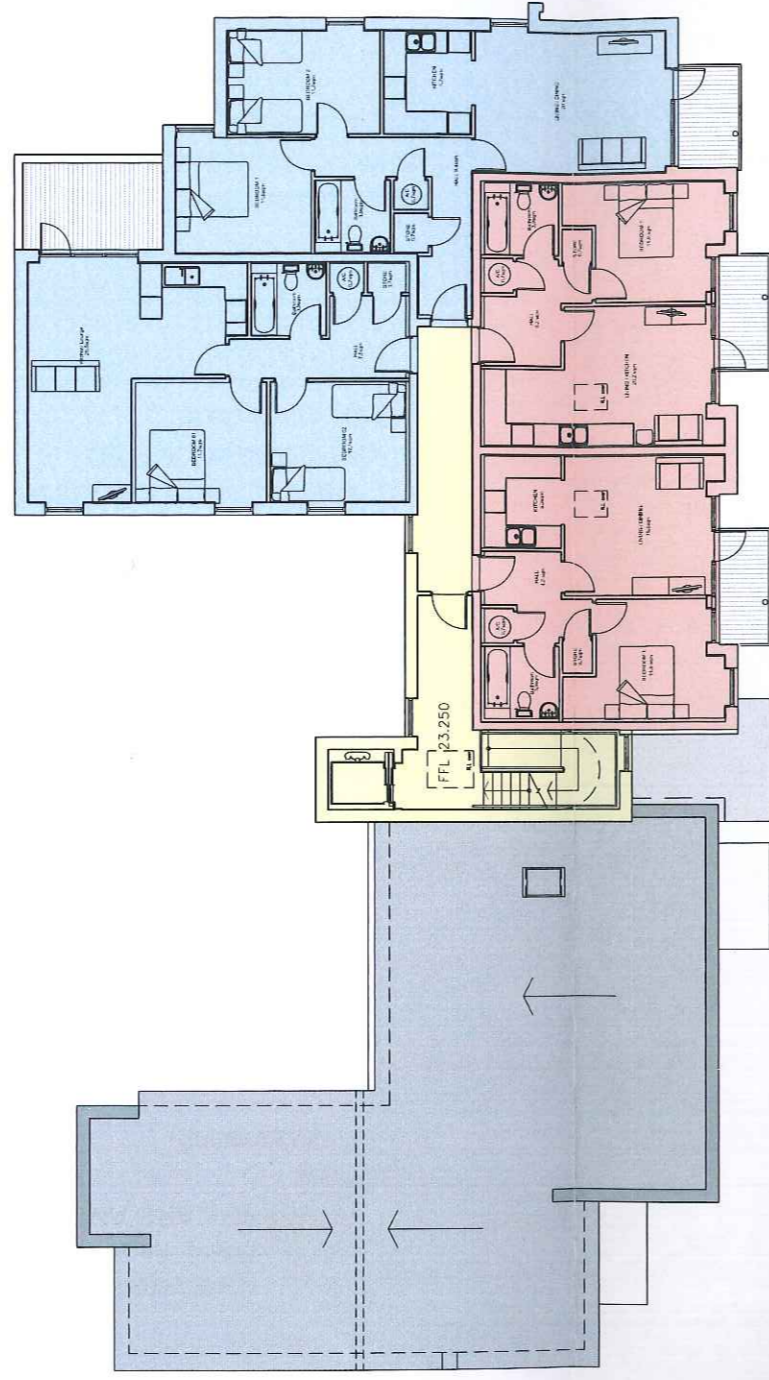
PLANNING



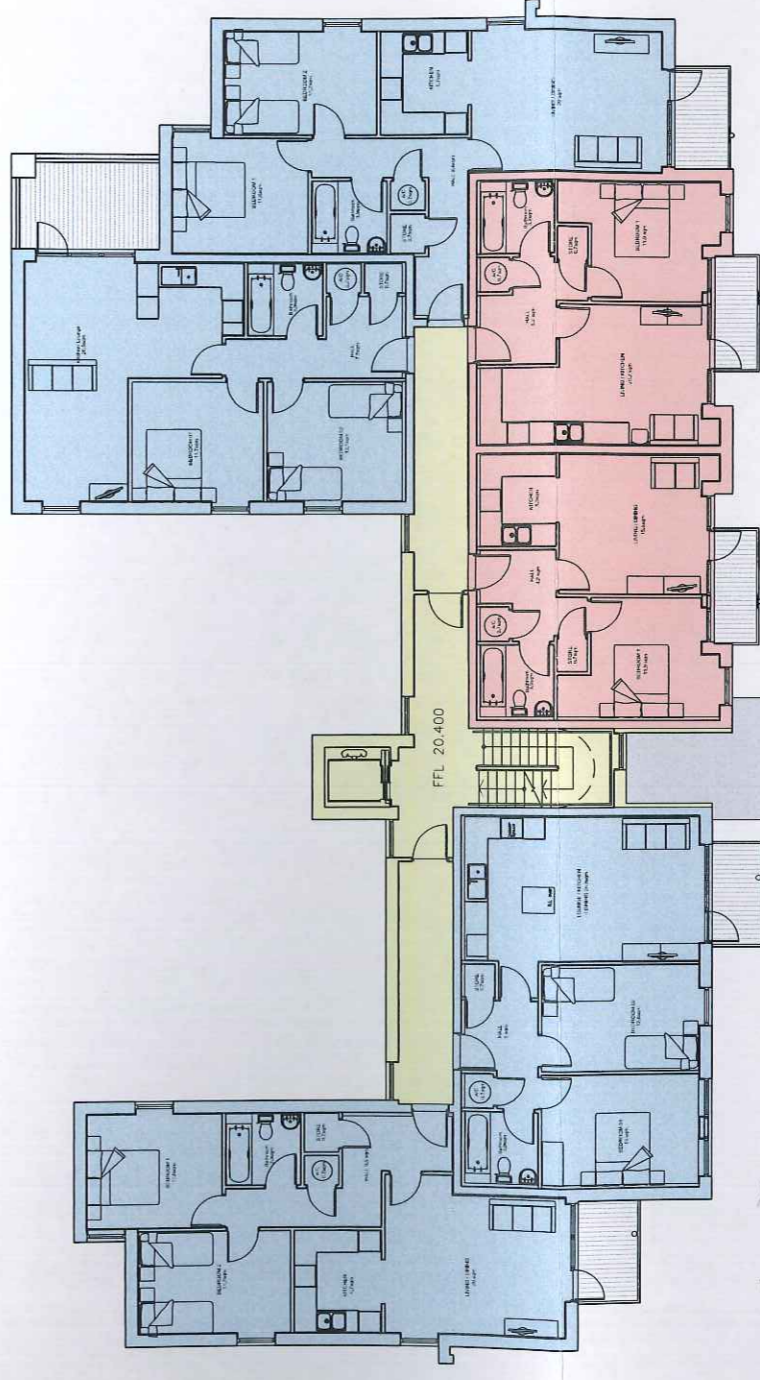
S496



ROOF PLAN



SECOND FLOOR PLAN



FIRST FLOOR PLAN


*Plan  
S. H. H. H.*



*X 8888*  
*X 1111*  
5496



ref	date	by	std	amendment
A	15.04.13	MS		As issued for planning.


  
 Old Court, Filton, Bristol, Avon, GL5 2BB, UK. Tel: 01752 704849 Fax: 01752 746827  
 e-mail: p.p@pearnprocter.co.uk website: www.pearnprocter.co.uk  
 project title:  
**16 AFFORDABLE FLATS, LEE COURT, NELSON ROAD, WESTWARD!**

scale	drawn by	drawn file
1 : 100 @A1	MS	P1255-FP-05
date	checked by	drawing number
15 : 04 : 13	PE	P1255. 06A

drawing status  
**PLANNING**

- 10 no. 2 BED, 4 PERSON = 67 sq. m.
- 6 no. 1 BED, 2 PERSON = 45 sq. m.

drawing title  
**16 UNITS, FIRST, SECOND AND ROOF PLAN AS PROPOSED**  
 © Pearn & Procter Chartered Architects

In witness whereof the parties hereto have executed this document as a deed the day and year first before written

Executed and delivered as )  
a Deed by affixing the common seal )  
of **GUINNESS CARE AND SUPPORT** )  
**LIMITED** )  
in the presence of: )

Authorised Officer



Authorised Officer



5496

Executed and delivered as )  
a Deed by affixing the common seal )  
of **WESTCOUNTRY HOUSING** )  
**ASSOCIATION LIMITED** )  
in the presence of: )

Authorised Officer



Authorised Officer

