

DATED

4th September

2015

UNILATERAL UNDERTAKING GIVEN BY DEED

BY

THE LONDON LEGACY DEVELOPMENT CORPORATION
(as Owner)

pursuant to section 106 of the Town and Country Planning Act 1990 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 local planning authority) pursuant to Section 201 of the Localism Act 2011 relating to the same development and entered into on the date hereof

THIS UNILATERAL UNDERTAKING is given on 4th September 2015

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

IN FAVOUR OF

the **LOCAL PLANNING AUTHORITY** from time to time.

RECITALS

Background

- (A) 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.
- (B) 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.
- (C) LLDC is the owner of the Developer's Land to which this Deed relates. Details of LLDC's interests in the Developer's Land are set out in Schedule 1 to this Deed.
- (D) Within its area and pursuant to the London Legacy Development Corporation (Planning Functions) Order 2012, LLDC is also the local planning authority for the purposes of Part 3 of the 1990 Act. It exercises this power in place of the Host Boroughs.
- (E) LLDC's Board has delegated the exercise of LLDC's planning functions to a department within LLDC known as PPDT. Although it acts independently, PPDT remains part of the same legal entity as LLDC.
- (F) LLDC (acting through PPDT) is therefore the Local Planning Authority for the area within which the Developer's Land and the Site are located.
- (G) At the time this Deed is entered into, it is expected that that LLDC will be a time limited organisation and planning powers will eventually revert to the Host Boroughs or transfer to a successor organisation(s).

Legacy Communities Scheme

- (H) 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.
- (I) On 28 September 2012 the Olympic Delivery Authority, London Legacy Development Corporation (as Owner) and Transport for London entered into the Original Agreement and the Original Permission for such residential-led legacy redevelopment of the Site was granted.
- (J) 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 Application

- (K) 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.
- (L) 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.
- (M) In its role as land owner, 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).
- (N) 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.
- (O) To overcome this obstacle, LLDC as landowner unilaterally undertakes herein to abide by the terms of and to perform the Developer's obligations set out in the Original Agreement as though the Original Agreement had been formally varied by the Draft Deed attached hereto at Annex 1 thereby binding itself and with the intention of binding its interests in the Developer's Land.
- (P) To the extent that obligations incorporated into this Deed fall within the scope of Section 106 (1) of the 1990 Act, LLDC as Owner of the Developer's Land intends that they create planning obligations for the purpose of Section 106 of the 1990 Act binding itself and its interests in the Developer's Land. LLDC intends that such obligations will be enforceable against any Owner of the Developer's Land or any part of it under Section 106 (3) of the 1990 Act in accordance with the provisions of this Deed.
- (Q) To the extent that such obligations fall outside of the scope of Section 106 (1) of the 1990 Act, LLDC as Owner intends that they will be enforceable against the LLDC in accordance with the normal principles of contract law.
- (R) In addition the LPA has entered into the Reciprocal Undertaking with the intention of binding itself and its successors in function with the terms and obligations set out in the Original Agreement as though it had been varied by the Draft Deed.
- (S) LLDC also recognises that while it is both Owner and LPA, it cannot enforce the obligations secured by this deed against itself. If a breach of the terms of this deed occurs while LLDC is both Landowner and LPA, LLDC and PPDT will seek to resolve that breach in accordance with the terms of the Enforcement Protocol.
- (T) Once land from within the Developer's Land is transferred to a third party and the obligations contained in this Deed can be enforced against such third party in accordance with clause 2.2 of this Deed or once LLDC's planning functions pass to a successor local planning authority, then LLDC intends that the obligations in this Deed automatically crystallise as planning obligations under section 106 of the 1990 Act and will be enforceable in accordance with the terms of this Deed.
- (U) As LPA, LLDC has approved the Variation Application subject to conditions and the requirements of the Draft Deed as secured by this Deed and issued the Variation Approval on the same date as this Deed.
- (V) This Deed is to be read alongside the Reciprocal Undertaking.

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 and Country Planning Act 1990 (as amended).

Developer means the Developer as defined in the Draft Deed.

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 this Deed 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 to this Deed) 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 deed attached to this Deed at Annex 1.

Enforcement Protocol means the protocol for enforcing the terms of this Deed contained at Annex 2 as approved by PPDT's planning committee at its meeting on 29 April 2014 and as approved by LLDC as amended 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.

LBH Land means that part of the Developer's Land in which LBH has a freehold or leasehold interest.

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

Original Permission means permission for the legacy redevelopment of the Developer's Land granted by the Olympic Delivery Authority and given reference 11/90621/OUTODA.

Original Agreement means the agreement entered into pursuant to the 1990 Act in respect of the Original Permission as deemed to be varied by the unilateral undertakings as set out in Annex 5.

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.

Planning Policy & Decisions Team or PPDT means the department within the legal entity known as the London Legacy Development Corporation to which LLDC's planning functions have been delegated by a Board resolution made on 27 September 2012.

Reciprocal Undertaking means a completed unilateral undertaking of even date with this Deed given by LLDC as LPA in which the LPA undertakes for the benefit of the Owner of the Developer's Land to abide by the terms and to comply with the obligations given on the part of the LPA 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 benefiting from the Original Permission and the S73 Permission and 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 approvals issued pursuant to the Variation Application.

All other definitions shall have the same meaning as set out in the Original Agreement.

2. OPERATION OF THIS UNILATERAL UNDERTAKING

2.1 This unilateral undertaking is given by Deed entered into pursuant to Section 106 of the 1990 Act.

2.2 To the extent that the obligations, covenants, undertakings, restrictions and agreements undertaken by the Owner under Clause 4 of this Deed constitute planning obligations for the purposes of Section 106 of the 1990 Act, the Owner undertakes that they shall bind the Owner's freehold & leasehold interests in the Developer's Land details of which are set out in Schedule 1 and shall be enforceable under Section 106 (3) of the 1990 Act not only against the Owner but also against any freehold or leasehold successors in title to or assigns of the Owner and/or any person claiming through or under the Owner a freehold or leasehold interest or estate in the Developer's Land in accordance with the following provisions:

2.2.1 while LLDC remains the local planning authority for the purposes of Part 3 of the 1990 Act for the Developer's Land, this Deed shall be enforceable by LLDC as local planning authority against any freehold or leasehold successors in title to or assigns of the Owner and/or any person claiming a freehold or leasehold interest or estate in the Developer's Land through or under the Owner provided that such successor or person is not part of the same legal entity as LLDC;

2.2.2 after LLDC's function as the local planning authority for the Developer's Land has been transferred to a successor planning authority, this Deed shall be enforceable

by such successor local planning authority;

PROVIDED THAT any enforcement of the terms of this Deed shall be subject to the restrictions on the enforcement of the Original Agreement as set out in the Original Agreement.

2.3 While LLDC is both the Owner and the local planning authority, LLDC will comply with the terms of the Enforcement Protocol.

2.4 To the extent that the obligations, covenants, undertakings, restrictions and agreements undertaken by the Owner under Clause 4 of this Deed do not constitute planning obligations for the purposes of Section 106 of the 1990 Act, the Owner intends that they shall be enforceable in contract by any successor authority to the LLDC's planning functions.

3. **CONDITIONALITY**

3.1 This Unilateral Undertaking is conditional on the grant of the Variation Approval and the LPA entering into a Reciprocal Undertaking.

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

4.1 The Owner undertakes in favour of the LPA that it shall observe and perform the terms, obligations, covenants, undertakings, restrictions and agreements imposed on the Developer by the Original Agreement as though it had been amended by the Draft Deed and where the Owner is LLDC, undertakes in favour of the LPA and TfL that it shall observe and perform the terms, obligations, covenants, undertakings, restrictions and agreements imposed on LLDC by the Original Agreement as though it had been amended by the Draft Deed.

4.2 Within seven Working Days of the Owner disposing of a freehold or leasehold interest in all or any part of the Developer's Land it shall notify the LPA of such transaction PROVIDED THAT the Owner shall not be required to provide such notification in respect of any third party against whom the provisions of this Deed cannot be enforced pursuant to Clause 2.2 of this Deed.

4.3 Subject to Clause 4.4 the Owner shall not transfer any interest in the Developer's Land to a transferee against whom the terms of this Deed could be enforceable in accordance with clause 2.2 above without first imposing a legally enforceable obligation on the transferee to complete the Draft Deed with the LPA within seven Working Days of the completion of such transfer, binding such transferred interest. The Owner shall ensure that such obligation to complete the Draft Deed is enforceable by the LPA under the Contracts (Rights of Third Parties) Act 1999 (as amended) 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.

4.4 The obligation in Clause 4.3 shall not apply if:

4.4.1 the interest in the Developer's Land which is being transferred has already been bound by a completed Draft Deed or has already been bound by any further variation to the Original Agreement which supersedes the obligations to be varied by the Draft Deed; or

4.4.2 the obligations which the Draft Deed proposes to amend cannot be enforced against the interest in the Developer's Land which is being transferred.

4.5 The Owner undertakes in favour of the LPA that from the date hereof the Development shall not be carried out other than 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.

4.6 The Owner undertakes in favour of the LPA that:

- 4.6.1 it shall use Reasonable Endeavours to procure that LBH and any other person deriving title from or under LBH enters into the Confirmatory Deed and (if requested by the LPA) the Draft Deed in respect of LBH Land not less than 6 months prior to Occupation of the First Primary School;
- 4.6.2 there shall be no Occupation of the First Primary School unless and until LBH and any other person deriving title from or under LBH has entered into the Confirmatory Deed and (if requested by the LPA) the Draft Deed in respect of LBH Land; and
- 4.6.3 until such time LBH and any other person deriving title from or under LBH has entered into the Confirmatory Deed and (if requested by the LPA) the Draft Deed in respect of LBH Land the Owner shall be responsible for complying with the terms of the Original Agreement relating to the First Primary School and FPS Playing Fields as though they had been amended by the Draft Deed.

5. LEGAL BASIS

- 5.1 This Deed is made under section 106 of the 1990 Act and under section 201 of the Localism Act 2011.

6. RIGHTS OF THIRD PARTIES

- 6.1 Save in respect of the LPA, 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 or expressed to be a beneficiary of this Deed.

7. CONFLICT


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

8. LOCAL LAND CHARGE

- 8.1 This Deed is a local land charge and is intended to be registered as such.

IN WITNESS whereof the London Legacy Development Corporation 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



SCHEDULE 1

THE OWNER'S INTERESTS IN THE DEVELOPER'S LAND (TITLE NUMBERS)

PART 1

FREEHOLD INTERESTS

1.	EGL266376	19.	AGL221079
2.	EGL533915	20.	EGL562684
3.	EGL557358	21.	EGL571226
4.	EGL561666	22.	EGL554302
5.	EGL533903	23.	EGL573078
6.	EGL533911	24.	EGL560513
7.	EGL562488	25.	EGL561244
8.	EGL533902	26.	EGL533904
9.	EGL527339	27.	EGL533909
10.	EGL571797	28.	EGL558925
11.	EGL562116	29.	EGL533913
12.	EGL572037	30.	EGL533916
13.	EGL574494	31.	EGL573100
14.	EGL572930	32.	[not used]
15.	EGL562684	33.	EGL356763
16.	EGL561805	34.	EGL533914
17.	TGL342249	35.	EGL533901
18.	EGL533910	36.	EGL556410
37.	TGL363543		

PART 2

LEASEHOLD INTERESTS

1.	63721	8.	NGL402655
2.	EGL151055	9.	EGL526862
3.	EGL157814	10.	EGL548490
4.	EGL221056	11.	EGL548491
5.	EGL428163	12.	NGL357211
6.	EGL534233	13.	EGL10453
7.	NGL80118		

PART 3

LAND OVER WHICH THE OWNER HAS AN EQUITABLE INTEREST

1.	EGL7626
2.	[TITLE CANCELLED]

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

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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**



Scale
1:10,000

Plan showing extent of
London Legacy Development Corporation's
interests within land bound by
Legacy Communities Scheme Section 106
Appendix 3

28 September 2012

Legend

- LDC Planning Application Boundary
- LDC Freehold Title Extent (with Title ID)
- LDC Leasehold Title Extent (with Title ID)
- LDC Equitable Interest

LDC Registered Leasehold Titles

Title ID	Title No.	Title No.
11	1001/11/101	1001/11/101
12	1001/11/102	1001/11/102
13	1001/11/103	1001/11/103
14	1001/11/104	1001/11/104
15	1001/11/105	1001/11/105
16	1001/11/106	1001/11/106
17	1001/11/107	1001/11/107
18	1001/11/108	1001/11/108
19	1001/11/109	1001/11/109
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51	1001/11/141	1001/11/141
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55	1001/11/145	1001/11/145
56	1001/11/146	1001/11/146
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59	1001/11/149	1001/11/149
60	1001/11/150	1001/11/150

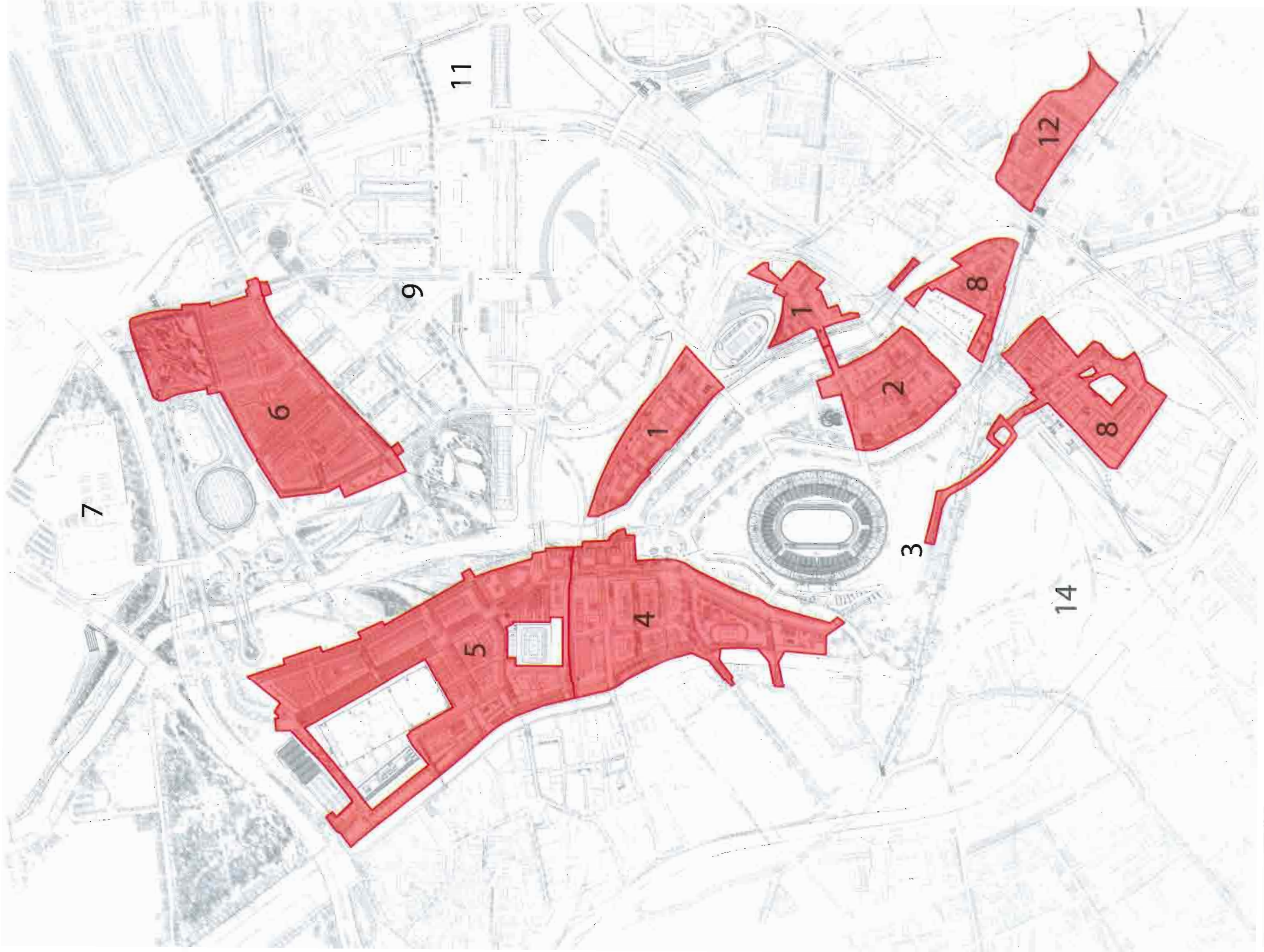
LDC Registered Freehold Titles

Title ID	Title No.	Title No.
61	1001/11/151	1001/11/151
62	1001/11/152	1001/11/152
63	1001/11/153	1001/11/153
64	1001/11/154	1001/11/154
65	1001/11/155	1001/11/155
66	1001/11/156	1001/11/156
67	1001/11/157	1001/11/157
68	1001/11/158	1001/11/158
69	1001/11/159	1001/11/159
70	1001/11/160	1001/11/160
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95	1001/11/185	1001/11/185
96	1001/11/186	1001/11/186
97	1001/11/187	1001/11/187
98	1001/11/188	1001/11/188
99	1001/11/189	1001/11/189
100	1001/11/190	1001/11/190





Signature

PLAN 1



KEY

-  LCS Planning Application boundary
-  Planning Delivery Zones within the LCS red line boundary

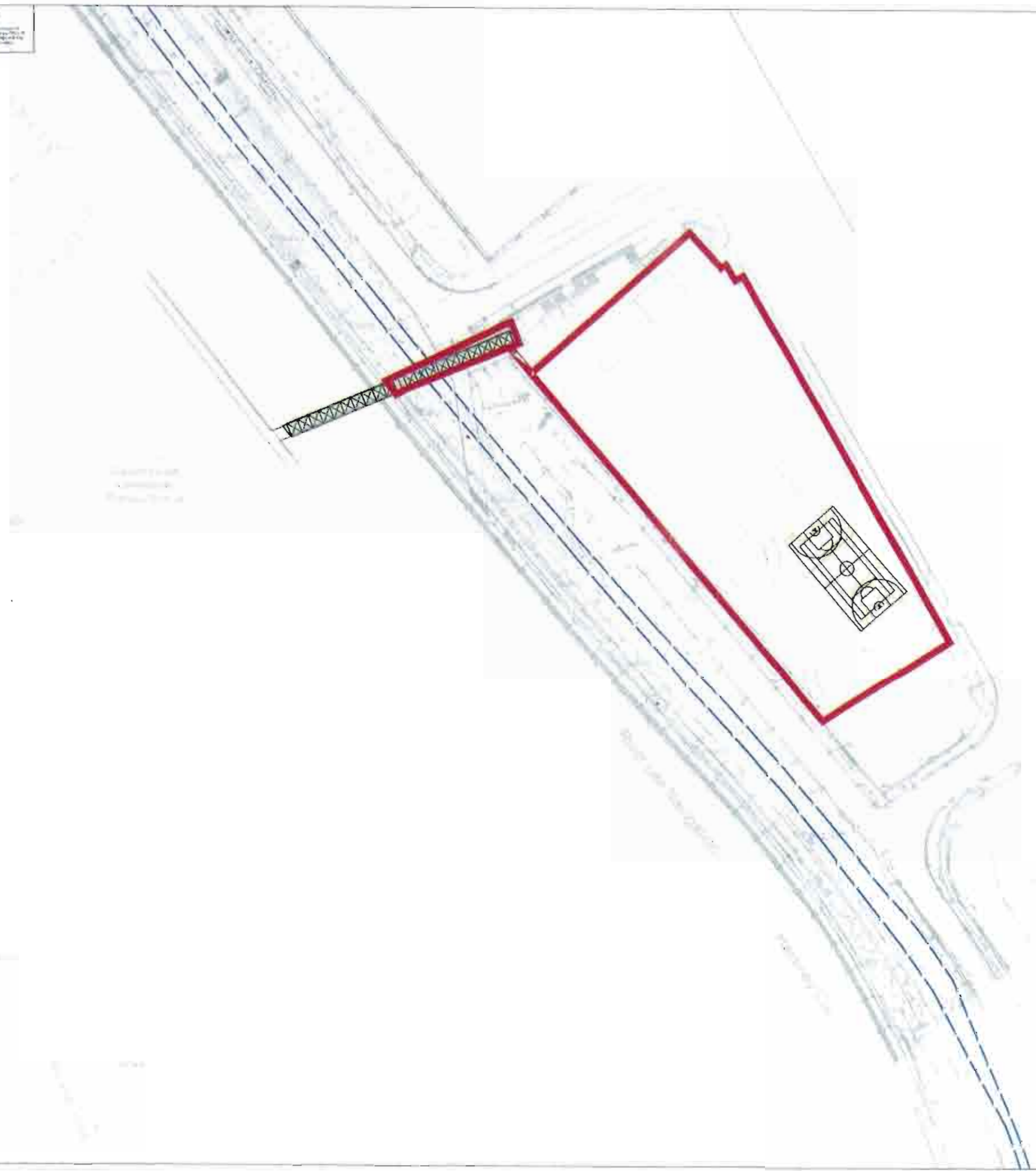
JAH
1

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REV	DESCRIPTION	BY	DATE
01	ISSUED FOR PERMIT	JJ	08/14/14
02	REVISION	DH	08/14/14
03	REVISION	RNS	08/14/14

Prepared by
Atkins
On behalf of the LLDC

Project Title:
**LAND TRANSFER PLAN
GAINSBOROUGH PLAYING FIELDS
SHEET 1 OF 4**

Project Title:
QUEEN ELIZABETH OLYMPIC PARK

Drawn	Checked	Approved
JJ	DH	RNS

Date:
18/03/2014

Scale:
1:500

Project No:
FOR INFORMATION

Revision No:
S2

Project Title:
LC810-LCLAPK-Z-DGA-0101

Sheet No:
P02

ANNEX 4
DRAFT VARIATION APPROVAL

Mr Duncan Bennett,
 CgMs Consulting
 140 London Wall
 London
 EC2Y 5DN

xxxx-2015

Dear Sir,

RE: GRANT of Non-material Amendments to a Planning Permission.

Application No:	14/00461/NMA
Location:	Legacy Communities Scheme, Development Parcels 5.10 and immediately adjoining areas, East of Lee Navigation and North West of Copper Box
Proposal:	Application for non-material amendments to the Parameter Plans and the associated Revised Development Specification and Framework approved under the Legacy Communities Scheme (LCS) (ref. 11/90621/OUTODA as varied by 14/00036/VAR) associated with the provision of the First Primary School (Development Parcel 5.10, PDZ 5).

I refer to your application received on 14th November 2014 and enclosures requesting non-material amendments as detailed below:

Planning Permission Reference:	11/90621/OUTODA as varied by 14/00036/VAR
Proposed Revisions:	<ol style="list-style-type: none"> 1. PDZ5 Minimum AOD Frontage Height Plans Parameter Plan – This plan demonstrates the minimum building frontage height to eaves, along the street frontage. The amendment seeks to reduce the minimum frontage height from 23m to 12m and removes the southern and western frontage (between the school and the Canal Park and school and playground). 2. Site Wide and PDZ5 Open Spaces and Play Spaces Parameter Plan – The amendment proposes to extend the limit of deviation for the local play space allowing it to be accommodated within the Canal Park. 3. Site Wide and PDZ5 Proposed Levels Parameter Plans – Changes to levels proposed to accommodate positioning of building in north-eastern corner of the Development Parcel, and extension of parcel size to include area between the western edge of Development Parcel 5.10 and the River Lee Navigation 4. PDZ5 Legacy Street Layout Parameter Plan – No changes to layout

proposed but parcel extended to include area between the western edge of Parcel 5.10 and the River Lee Navigation.

5. Site Wide Cut and Fill Parameter Plan – As approved, no cut or fill was approved within Development Parcel 5.10. The amendment proposes to cut to a maximum depth of -3.5m and fill to a maximum height of 2.5m. The amendment also includes an extension of the parcel to include the area between the western edge of Parcel 5.10 and the River Lee Navigation.
6. The application also proposes amendments to the Revised Development Specification and Framework. The amendments reduce the minimum floor space of the primary school within PDZ5 from 4,912sqm to 3,148sqm.

Submitted Plans / Documents:

Drawing title	Drawing reference	Revision	Date received
PDZ5 Street Layout Plan	LCS-DWG-APP-HWY-PAR-PDZ5-002	003	14/11/14
SW Open space and play	LCS-DWG-APP-OPS-PAR-GLB-001	005	06/02/15
PDZ5 Open space and play	LCS-DWG-APP-OPS-PAR-PDZ5-001	004	06/02/15
PDZ5 Minimum frontage heights	LCS-DWG-APP-HGT-PAR-PDZ5-002	003	06/02/15
SW Proposed levels	LCS-DWG-APP-TOP-PAR-GLB-000-001	006	14/11/14
PDZ5 Proposed levels	LCS-DWG-APP-TOP-PAR-PDZ5-000-001	004	06/02/15
SW Cut and Fill Plan	LCS-DWG-APP-TOP-PAR-GLB-000-002	006	14/11/15

'Revised Development Specification and Framework' ref. LCS-GLB-APP-DSF-007 received 14th November 2014

Superseded Plans / Documents:	Drawing title	Drawing reference	Revision previously approved
	PDZ5 Street Layout Plan	LCS-DWG-APP-HWY-PAR-PDZ5-002	002
	SW Open space and play	LCS-DWG-APP-OPS-PAR-GLB-001	004
	PDZ5 Open space and play	LCS-DWG-APP-OPS-PAR-PDZ5-001	003
	PDZ5 Minimum frontage heights	LCS-DWG-APP-HGT-PAR-PDZ5-002	002
	SW Proposed levels	LCS-DWG-APP-TOP-PAR-GLB-000-001	005
	PDZ5 Proposed levels	LCS-DWG-APP-TOP-PAR-PDZ5-000-001	003
	SW Cut and Fill Plan	LCS-DWG-APP-TOP-PAR-GLB-000-002	005
	'Revised Development Specification and Framework' ref. LCS-GLB-APP-DSF-006		

I confirm that the proposals are **acceptable** as non-material amendments to the planning permission noted above for the following reasons:

The Local Planning Authority have considered the proposals in wider planning terms, taking into consideration the scale of the Legacy Communities Scheme permission which has a site area of 64ha site and approved up to 759,900sqm (GFA) of floorspace, and consider that the proposals will have no material effect on the planning permission as originally granted. It is concluded, therefore, that the changes to the parameter plans and Revised Development Specification and Framework are acceptable as non-material amendments to the outline planning permission and therefore the application is recommended for approval.

The Local Planning Authority have assessed the proposed changes and concluded that they would have no material environmental effects over and above those previously assessed in the LCS Environmental Statement and Addendum and therefore the conclusions within those statements remain valid.

In providing this opinion, nothing in this letter will prevent the Local Planning Authority taking any action in respect of these matters at some time in the future.

Yours faithfully,

Anthony Hollingsworth
 Director of Planning Policy & Decisions
 London Legacy Development Corporation

Case Officer:	Sarah Jones
Direct Line:	020 3288 1486
Email:	sarahjones@londonlegacy.co.uk

ANNEX 5

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, family housing and affordable housing targets for PDZs 4 and 5 and site wide, new confidential appendix and consequential variations to the viability review schedule	At the date hereof not yet entered into