

**Appl No:** 16/P/01080                      **8/13 week deadline:** 30/09/2016  
**Appl Type:** Full Application  
**Parish:** Wisley                              **Ward:** Lovelace  
**Agent:** Montagu Evans                      **Applicant:** The Royal Horticultural Society

**Location:** Royal Horticultural Society Gardens, Wisley Lane, Wisley, Woking, GU23 6QS

**Proposal:** Erection of new part single-storey part two-storey building accommodating retail, entrance and visitor facilities and alterations to the car parking and hard and soft landscaping and following the demolition of the existing plant centre, the extensions to the Laboratory building, toilet blocks, Aberconway Cottage and part of Aberconway House.

### **Site description.**

The application site comprises a section of the Royal Horticultural Society (RHS) Gardens at Wisley. The gardens extend to approximately 67ha and comprise a mixture of formal and informal decorative gardens and arboretum. The site also include a number of large buildings, including the laboratory building, glass houses, office buildings and visitor/catering facilities. The site is a major visitor attraction and includes a large car and coach park to the front of the site.

The site the subject of this application includes the front of house facilities including the ticket hall, cafe and plant centre and the car park.

The site is within the Green Belt. The gardens are Grade II\* Listed and the Laboratory building is Grade II listed.

### **Proposal.**

The application seeks permission for the erection of a new part single, part two storey building to include entrance facilities, retail space, restaurant and a new plant centre. The applications also includes the demolition of the existing plant centre, Aberconway Cottage and part of Aberconway House and some modern extensions to the Grade II Listed Laboratory building.

The application also includes works to make good the Laboratory building following the demolition works including reinstatement of original features such as the east entrance porch, creation of external steps, a window to the south porch, repairs to the parapet walls and rainwater goods on the east elevation, new door on west end of north elevation, removal of concrete block from 'student laboratory, and adaptation of easternmost ground floor door.

### **Relevant planning history.**

The application site has a long and complex planning history however none of this is relevant to the consideration of the current application.

This application forms the first of a series of applications to redevelop the site and to improve the visitor experience at the Gardens. The following applications are inter-related to this proposal.

<b>Reference:</b>	<b>Description:</b>	<b>Decision Summary:</b>
16/P/01081	Listed building consent for the erection of new part single-storey part two-storey building accommodating retail, entrance and visitor facilities and alterations to the car parking and hard and soft landscaping with associated alterations to the Laboratory building including the demolition of the existing extensions and alterations to the fenestration, demolition of Aberconway Cottage and part of Aberconway House.	Pending
16/P/00954	Erection of a new single storey building for offices, ancillary to the use of RHS Wisley, and associated works.	Approved
16/P/01037	Erection of three single storey electricity substations to serve RHS Wisley and associated works.	Approved
16/P/00976	Demolition of existing buildings and erection of a two storey building accommodating science, education, research and restaurant facilities, associated landscaping including a landscape bund and other works associated with the development.	Pending

### **Consultations.**

County Highway Authority: No objection subject to conditions and contribution to highway improvements on Wisley Lane

English Heritage: No objection

Ripley Parish Council: No objection subject to assessment of highway impacts

Ockham Parish Council: No objection subject to no rights of way being removed and a condition to prevent construction traffic using minor roads.

Natural England: No objection subject to conditions

Tree Officer: Discussed proposals at pre-app stage, requested replacement planting and tree protection, no additional comments to make on this proposal.

Lead Local Flood Authority: No objection

### **Third party comments:**

No representations received.

### **Planning policies.**

The following policies are relevant to the determination of this application.

#### **National Planning Policy Framework (NPPF)**

Core planning principles

Chapter 1. Building a strong, competitive economy

Chapter 3. Supporting a prosperous rural economy

Chapter 7. Requiring good design

Chapter 9. Protecting Green Belt land

Chapter 12. Conserving and enhancing the historic environment

#### **Guildford Borough Local Plan 2003 (as saved by CLG Direction 24 September 2007):**

G1 General Standards of Development

RE1 The extent of the Green Belt

RE2 Development within the Green Belt

HE4 New development which affects the setting of a Listed Building

HE12 Historic Parks and Gardens

### **Planning considerations.**

The main planning considerations in this case are:

- the principle of development
- the impact on the Green Belt
- the impact on Heritage Assets
- the level of parking and the impact on highway safety
- the impact on the Thames Basin Heaths Special Protection Area / biodiversity
- the impact on trees
- legal agreement requirements

#### The principle of development

The application site is located within the Green Belt; paragraph 89 of the NPPF advises that the erection of buildings in the Green Belt is inappropriate except in a limited range of circumstances. This includes the redevelopment of previously developed land (PDL) provided that the new development would not have a greater impact on the openness of the Green Belt than the existing development.

*Previously developed land is defined by the NPPF as "Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up*

*areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time."*

While RHS Wisley includes an element of horticulture its primary function is research and development and as a visitor / members destination open to the public. The use of the land is not considered to fall within the definition of agriculture. The area of the application site is occupied by a number of buildings and a large surface public car park. The site is considered to be PDL as defined by the NPPF and accordingly the relevant consideration is whether the proposed development would have a greater impact on the openness of the Green Belt than the existing development.

### The impact on the Green Belt

The application proposes the erection of a new front entrance to the gardens and the building will also include ticketing halls, retail space, restaurant and a plant centre. In total the proposed building would include approximately 5,740sq.m of floorspace excluding the plant centre. The application also includes the demolition and rationalisation of much of the existing front of house facilities including the demolition of the existing cafe, plant centre and retail space and also include the demolition of a number of unsympathetic additions to the Laboratory building. In total approximately 5,097sq.m of floor space is to be demolished.

While the proposed buildings represent an increase of approximately 9% the development would rationalise the floorspace into a more compact area. The building would be no higher than the adjoining buildings that are to remain and it is not considered that the proposed development would have a materially greater impact on openness than the existing development. While the external plant sales areas are also to increase, given these are open spaces they have less impact on openness and the display of plants is characteristic of the function of the site.

Taking all of the above into consideration it is concluded that the development would not result in a greater impact on the openness of the Green Belt and accordingly is not inappropriate development. For these reasons the development complies with the objectives of Policy RE2 of the Guildford Local Plan 2003 (as saved) and with the policy set out within the NPPF.

### The impact on Heritage Assets

The application site is within the RHS Wisley gardens, which are Grade II\* Listed and the laboratory building is also Grade II Listed in its own right. The proposed development includes a number of demolitions including the demolition of Aberconway Cottage, which is a curtilage listed structure, and the demolition of a number of previous extensions to the laboratory building. The application also includes the making good of this building following the demolition and the reinstatement of a number of original features.

The demolition of the existing entrance and visitor facilities currently attached to the laboratory building will remove the present visual clutter and reveal the east elevation to visitors on arrival and the proposed reinstatement of the porch on the eastern façade will reinstate an original feature. Whilst the majority of the buildings proposed for demolition date from the second half of the 20th century and have no architectural significance the proposals include the demolition of an early 20th century gardeners cottage and a stable and coach house; none of these buildings are of sufficient architectural or historic interest to be listed in their own right and have all been substantially altered, particularly the coach house and stables. Whilst the proposed demolition of these buildings could

be said to cause some harm to the significance of the group of heritage assets the benefit of the improvements to the listed laboratory building and its setting outweigh any small amount of harm that may be caused.

The new entrance and visitor facilities will be attached to the north of the laboratory and are of a very simple design and palette of materials, the massing has been broken down into a series of pavilions with varied roof forms so that whilst the new facilities will cover a large floor area they will appear to be a series of buildings subservient to the listed laboratory building. The land falls away to the north so the change in level helps to ensure that the proposed new buildings sit comfortably in the landscape and will not detract from the visual amenity of the garden or the special interest of the heritage assets. Subject to conditions to secure the quality of the finish of the building the development would be a sympathetic addition to this cluster of buildings and the garden as a whole.

Both English Heritage and the Council Design and Conservation Manager have advised that they have no objections to the proposal. While less than substantial harm to heritage assets has been identified the public benefits of the development clearly outweigh the harm that would be caused and accordingly, having due regard to Section(s) 66 and 72 of the Planning (Listed Building and Conservation Area) Act 1990, permission may be granted.

#### The level of parking and the impact on highway safety

The application includes the rationalisation of the existing coach and car park which will enable the provision of an additional 91 car parking spaces. This is achieved through the relocation of some of the staff parking spaces and the reduction in the number of coach parking spaces. The applicant has submitted a Transport Assessment in support of the proposal which concludes that the change in the mix of parking from coach parking to car parking would better meet the needs of the site.

The proposed development would rationalise and improve a number of existing facilities but does not deliver new uses or a significant expansion of the gardens. Accordingly the development is unlikely to result in a significant increase in the volume of car parking required. The County Highway Authority have considered the application and have raised no objection on highway policy, safety or capacity grounds. They have, however, requested the realignment and improvement of an existing right of way that passes through the site and a contribution to improve pedestrian and cycling facilities on Wisley Lane. Subject to conditions and a legal agreement no objection is raised to the proposal on highway grounds.

#### The impact on the Thames Basin Heaths Special Protection Area / biodiversity

The development is located within 400m of the Thames Basin Heaths Special Protection Area however no residential accommodation is proposed. The development is unlikely to materially increase the number of staff on the site and would not be likely to result in an increase in visitors or recreational use of the TBH SPA. A planning condition is included to control the use of the car park to ensure that this is not used to facilitate access to the TBH SPA.

The application is supported by a detailed ecological appraisal which considers the potential for the development to impact on protected species. The report concludes that subject to mitigation and avoidance measures, the development would not adversely impact on protected species and presents the opportunities for biodiversity enhancements within the site.

#### The impact on trees

The application requires the removal of a number of mature trees including 24 A/B category trees. While the loss of these trees is regrettable the number of high quality trees to be removed is relatively limited compared to the number of trees on the site. The application proposes the planting of approximately 240 new trees and there is ample scope within the proposals to mitigate for the trees to be lost. The RHS also operates an ongoing tree renewal policy across the site. It is therefore concluded that, subject to conditions to secure replacement planting and the protection of the trees to be retained, the development would not have an unacceptable adverse impact on the tree stock within the site.

#### Legal agreement requirements

The application requires a legal agreement to secure:

- a contribution to highway improvements on Wisley Lane
- a contribution to secure the monitoring of the proposed Travel Plan

These obligations are relevant to the proposal and are reasonable given the scale of the proposed development. The obligations meet the requirements of regulations 122 and 123 of the CIL Regulations.

#### **Conclusion.**

The application is not inappropriate development in the Green Belt, would not conflict with the purposes of including land within the Green Belt and would not materially impact on the openness of the Green Belt. The development would not materially impact on the setting or the significance of the designated heritage assets and would not impact on highway safety.

Given the relatively modest net increase in net floor space it is not necessary to refer this application to the Secretary of State.

#### **RECOMMENDATION:**

#### **Approve subject to the following condition(s) and reason(s) :-**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004.

2. No development (excluding demolition, site preparation and groundworks) shall take place until details and samples of the proposed external facing and roofing materials including colour and finish have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and samples.

Reason: To ensure that the external appearance of the building is satisfactory.

3. No development (excluding demolition, site preparation and groundworks) shall

take place until 1:20 scale details of all eaves, verges, windows (including head, sill and window reveal details), doors, rainwater goods, and canopies have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the external appearance of the building is satisfactory.

4. No works (excluding demolition, site preparation and groundworks) shall take place until a sample panels of the external walls and roofing showing materials, face bond and pointing and joinings, has been constructed on site, inspected and approved in writing by the local planning authority. The panel shall remain on site until the completion of the development for comparison. The works shall thereafter be carried out in accordance with the approved sample panel.

Reason: To ensure that the external appearance of the building is satisfactory.

5. Prior to the commencement of development (excluding demolition, site preparation and groundworks) large scale details (not less than 1:20) of the proposed access ramp and proposed door to the north elevation of the Laboratory building shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.

Reason: In the interests of preserving the appearance of this heritage asset.

6. Prior to the commencement of development (excluding demolition, site preparation and groundworks) a Schedule of Repair for the Laboratory building detailing the repair and making good of the building following completion of the demolition works. The development shall be undertaken in accordance with the approved details.

Reason: In the interests of preserving the appearance of this heritage asset.

7. Before the is occupied commenced Footpath 7 shall be widened to 3m and surfaced to allow both pedestrians and cyclists access and a sign shall be located at either end of Footpath 7 where it joins with Wisley Lane to indicate the shared use.

Reason: In order that encourage sustainable travel choices.

8. No new development shall be occupied until space has been laid out within the site in accordance with the approved plans, Drawing No. 150327-20, Revision E, for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. The parking/turning area shall be used and retained exclusively for its designated purpose.

Reason: In order that the development should not prejudice highway safety nor cause inconvenience to other highway users.

9. No development shall commence until a Construction Transport Management Plan, to include details of :
- (a) parking for vehicles of site personnel, operatives and visitors
  - (b) loading and unloading of plant and materials
  - (c) storage of plant and materials
  - (d) programme of works (including measures for traffic management)
  - (e) provision of boundary hoarding behind any visibility zones
  - (f) measures to prevent the deposit of materials on the highway
  - (g) on-site turning for construction vehicles

has been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.

Reason: In order that the development should not prejudice highway safety nor cause inconvenience to other highway users.

10. The development hereby approved shall not be first opened for trading unless and until the following facilities have been provided in accordance with the approved plans for:

- (a) The secure parking of bicycles within the development site,
- (b) The provision of electrical vehicle charging bays

thereafter the said approved facilities shall be provided, retained and maintained to the satisfaction of the Local Planning Authority.

Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles.

11. The approved Travel Plan shall be implemented upon first occupation of the development and for each and every subsequent occupation of the site thereafter maintain and develop the Travel Plan to the satisfaction of the Local Planning Authority.

Reason: To encourage travel by means other than private motor vehicles.

13. Prior to the commencement of development (excluding site clearance, demolition and groundworks) details of measure to ensure that construction activities will not adversely impact on the Thames Basin Heath Special Protection Area shall be submitted to and approved by the Local Planning Authority. This shall include details of dust management and control, lighting control, pollution runoff control and areas for the storage of plant and materials. The development shall be undertaken only in accordance with the approved details.

Reason: To ensure that the construction would not impact on the Thames Basin Heath Special Protection Area.



14. The development hereby approved shall be undertaken in accordance with the mitigation measures contained with section 6 of the Ecological Appraisal dated April 2016. There shall be no variation to the approved details unless first agreed in writing with the local planning authority.

**Reason:** In the interests of biodiversity.

15. Prior to the first occupation of the development hereby approved a Biodiversity Enhancement Plan shall be submitted to and approved by the Local Planning Authority detailing biodiversity enhancements to be delivered through the proposed development or on the land surrounding the application site. The agreed measures shall thereafter be implemented within 1 year of the first occupation of the development.

**Reason:** To ensure that the development would make a contribution to delivering biodiversity enhancements.

16. Prior to the first occupation of the development hereby approved a Car Park Management Plan shall be submitted to and approved by the Local Planning Authority. The plan shall include details of measures to prevent the general public who are not using the site from gaining access to the Thames Basin Heaths Special Protection Area such as visible signage erected at the sites entrance stating the car park is only for users of the site and the inclusion of barriers or gates that will be closed and locked outside of opening hours.

**Reason:** To ensure that the development would not impact on the Thames Basin Heaths Special Protection Area.

17. Prior to the first occupation of the development hereby approved full details, of both hard and soft landscape proposals, including a schedule of landscape maintenance for a minimum period of 10 years, shall be implemented in accordance with a scheme that has been submitted to and approved by the local planning authority.

**Reason:** To ensure the provision, establishment and maintenance of an appropriate landscape scheme in the interests of the visual amenities of the locality.

18. Prior to the first occupation of the development hereby permitted, a certificate of compliance from an accredited assessor confirming that the development has achieved a BREEAM rating of Very Good shall be submitted to and approved in writing by the local planning authority.

**Reason:** To ensure that the development is sustainable and makes efficient use of energy, water and materials.

19. Prior to the commencement of development (excluding demolition, site preparation and groundworks) the following information on the proposed Sustainable Drainage System (SuDS) shall be submitted to and approved in

writing by the Local Planning Authority:

- a) results from infiltration testing in accordance with BRE Digest 365
- b) details of storage volumes for each Sustainable Drainage system feature
- c) a drainage layout detailing the location of SuDS elements and all associated works such as soakaways/ manholes/ chambers/ pipes/ points of connection to other SuDS elements (If applicable) etc
- d) a pervious / impervious area plan showing whole area(the value for proposed development area
- e) long or cross sections of each SuDS elements
- f) details of how the SuDS will cater for system failure or exceedance events, both on and offsite
- g) details of the proposed maintenance regimes for each of the SuDS elements
- h) details of how the SuDS will be protected and maintained during the construction of the development

The Sustainable Drainage System shall be implemented and thereafter managed and maintained in accordance with the approved details.

Reason: To ensure that the principles of sustainable drainage are incorporated into the development.

20. The development hereby approved shall be undertaken in accordance with the Tree Protection Plan and Arboricultural Method Statement contained in the Arboricultural Impact Assessment dated 16th May 2016. There shall be no variation to the approved details unless first agreed in writing with the local planning authority.

Reason: In the interests of good arboricultural practice.

21. Within 6 months of the first occupation of the approved development, the buildings shown to be demolished on the approved plans shall be demolished and the sites cleared of demolition spoil.

Reason: In the interests of the openness of the Green Belt.

22. The development hereby permitted shall be carried out in accordance with the following approved plans as detailed in the schedule of drawings titled Schedule WFOH2 and dated 19th May 2016.

Reason: To ensure that the development is carried out in accordance with the approved plans and in the interests of proper planning.

23. There shall be no commencement of the development until a planning obligation has been entered into between any persons with an interest in the Site and Guildford Borough Council on terms which are substantially in accordance with the draft section 106 agreement which is attached this decision.

Reason: To secure the delivery of the highway improvements.

**Informatives:**

1. This statement is provided in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Guildford Borough Council seek to take a positive and proactive approach to development proposals. We work with applicants in a positive and proactive manner by:

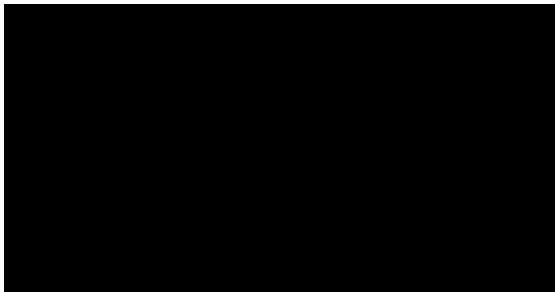
1. Offering a pre application advice service
2. Where pre-application advice has been sought and that advice has been followed we will advise applicants/agents of any further issues arising during the course of the application
3. Where possible officers will seek minor amendments to overcome issues identified at an early stage in the application process

In this case pre-application advice was sought and provided which addressed potential issues, the application has been submitted in accordance with that advice and no further issues have arisen.

2. If you need any advice regarding Building Regulations please do not hesitate to contact Guildford Borough Council Building Control on 01483 444545 or [buildingcontrol@guildford.gov.uk](mailto:buildingcontrol@guildford.gov.uk)

**Paul Sherman**  
Majors Planning Officer

Signed:



**THIS AGREEMENT** is made the                      day of                      2016

**BETWEEN:**

- (1) **THE COUNCIL OF THE BOROUGH OF GUILDFORD** the principal administrative office of which is at Millmead House Millmead Guildford Surrey GU2 4BB ("the Council")
- (2) **THE ROYAL HORTICULTURAL SOCIETY (Charity number 222879)** of 80 Vincent Square London SW1P 2PE (the " Owner")

**BACKGROUND**

- (i) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Land is situated
- (ii) The Applicant has the estate or interest described in the First Schedule
- (iii) The Application has been submitted to the Council by the Owner
- (vi) Surrey County Council is the highway authority (within the meaning of the Highways Act 1980) for the area within which the Land is situated and has required a contribution of £87,000 towards Sustainable Transport Improvements in the vicinity of the Land together with a contribution of £4,600 towards the monitoring of the travel plan
- (vii) The parties to this Deed have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS**

For the purposes of all provisions in this Deed the following expressions shall have the following meanings:

"1990 Act"                      the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991

"Application "	Erection of new part single-storey part two-storey building accommodating retail, entrance and visitor facilities and alterations to the car parking and hard and soft landscaping and following the demolition of the existing plant centre, the extensions to the Laboratory building, toilet blocks, Aberconway Cottage and part of Aberconway House under reference 16/P/01080.
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure and the temporary display of site notices or advertisements and the phrases "Commence Development" and "Development will Commence" shall be construed accordingly.
"Development"	the Development of the Land as set out in and as detailed in and as authorised by the Planning Permission
"Index"	All Items Index of Retail Prices issued by the Office for National Statistics

"Interest"	interest at 4 per cent above the base lending rate of the HSBC Bank Plc from time to time in force
"Land"	the land and premises against which this Deed may be enforced as detailed in the First Schedule and more particularly delineated edged with a red line on the Plan
"Members"	those persons who have taken out annual or life membership of the Royal Horticultural Society
"Opening"	the date on which the Development is opened for use by Members or the public (or if earlier the date on which any part of the Development is made available for use by Members or by the Public) and 'Open' shall be construed accordingly
"Plan"	Means the Plan entitled Proposed Site Plan with drawing number 212_P_00_01
"Planning Permissions"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application or by the Secretary of State for Communities and Local Government on appeal
"Section 106"	Section 106 Town and Country Planning Act 1990 as substituted by Section 12 Planning and Compensation Act 1991
"Sustainable Transport"	the provision of a shared footway/cycleway to be implemented on the existing footway adjacent to

Improvements"	Wisley Lane, to encourage users of all abilities to travel by foot or bicycle and the provision of improvements to the substandard footway between Footpath 7 to Footpath 3 which connects the site to the Byfleet area.
"Sustainable Transport Contribution"	the sum of EIGHTY SEVEN THOUSAND POUNDS (£87,000.00) being a contribution towards the provision of the Sustainable Transport Improvements
"Travel Plan Monitoring Contribution"	the sum of FOUR THOUSAND SIX HUNDRED POUNDS (£4,600) for the monitoring of the approved travel plan (submitted as part of the Application) compliance with which has been secured by condition
"Working Days"	all days except Saturdays Sundays Bank Holidays and all other Public Holidays

## **2 INTERPRETATION**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule such reference (unless the context otherwise requires) shall be a reference to a clause, paragraph or schedule in or to this Deed.
- 2.2 The headings to the clauses, schedules and paragraphs of this Deed shall not affect the interpretation of this Deed.

- 2.3 The Schedules to this Deed form part of it and the provisions set out in the Schedules shall have the same full force and effect as if expressly set out in the body of this Deed.
- 2.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.5 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.6 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations may be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.8 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 the successor to its statutory functions.
- 2.10 References to Development shall refer to the Development and any part thereof.



### **3. ENABLING PROVISIONS**

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and any other enabling powers.
- 3.2 This Deed is a planning obligation for the purposes of Section 106 of the 1990 Act as amended and the covenants, restrictions and requirements imposed upon the Owner under this Deed are enforceable by the Council as local planning authority against the Owner pursuant to Section 106(3) of the 1990 Act.
- 3.3 The parties hereto are satisfied that (where applicable) the provisions of this Deed comply with the requirement of Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010.

### **4. COMMENCEMENT**

This Deed shall come into effect upon the date of this Deed but the obligations in Clause 5 (save for clause 5.2) and the Second Schedule shall be of no effect until the Commencement of Development occurs.

### **5. THE OWNERS COVENANTS**

- 5.1 The Owner has agreed the amount of the Sustainable Transport Contribution and Travel Plan Monitoring Contribution with Surrey County Council and covenants with the Council to make the Sustainable Transport Contribution and Travel Plan Monitoring Contribution payments as set out in the Second Schedule.

5.2 The Owner has paid and the Council hereby acknowledges receipt of the following sums from the Owner on the date hereof:-

5.2.1 the reasonable legal costs of the Council incurred in the negotiation, and execution of this Deed in the sum of £670.00 and;

5.2.2 a monitoring fee of £500.00 in connection with the Council's expenses incurred in monitoring and ensuring compliance with obligations on the part of the Owner comprised in this Deed

## **6. THE COUNCIL'S COVENANTS**

The Council covenants with the Owner as set out in the Third Schedule.

## **7. RIGHTS OF THIRD PARTIES**

None of the provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

## **8. REGISTRATION AS A LAND CHARGE**

8.1 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registrable as such by the Council.

8.2 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Director of Development.

8.3 The Council will upon the written request of the Owner at any time after all the obligations on the part of the Owner contained in this Deed have been fully discharged or performed issue the Owner with written confirmation of such discharge or performance and the Council will thereafter effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

8.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

## **9. DETERMINATION OF THE PLANNING PERMISSION**

9.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or it is modified (other than by agreement with or at the request of the Owner) or it expires by effluxion of time prior to the Commencement of Development.

9.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed but this Deed shall apply to any planning permission subsequently granted ("Subsequent Permission") under section 73 or 73A of the 1990 Act which permits non-compliance with any of the conditions attached to the Planning Permission and the Planning Permission shall be construed to include the Development as stated in the Subsequent Permission.

9.3 If there is any conflict between the terms of this Deed and any conditions attached to the Planning Permission the latter shall take precedence.

## **10. RELEASE**

- 10.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after he shall have parted with his entire interest in the Land but without prejudice to his liability for any subsisting breach arising prior to parting with such interest.
- 10.2 No obligations undertakings or liabilities under this Deed shall be enforceable against statutory undertakers or utilities companies in relation to any part of the Development acquired by them for electricity substations, gas governor stations and/or for the supply of any services comprised within the Development.

## **11. TITLE WARRANTIES**

The Owner warrants that:

- 11.1 it has full authority to enter into this Deed
- 11.2 no person other than the Owner has any legal or equitable interest in the Land
- 11.3 it has investigated as necessary all matters of title to the Land and knows of no impediment to the validity of this Deed
- 11.4 it shall make good any loss to the Council as a result of a breach of this warranty within seven days of a request to do so.

## **12. WAIVER**

- 12.1 No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
- 12.2 Nothing contained or implied in this Deed shall prejudice or affect the rights powers, duties and obligations of the Council in the exercise of its functions as local planning authority or under any public or private statute bylaw or regulation.

## **13. CHANGE IN OWNERSHIP**

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of its interest or any part of its interest in the Land occurring before all the obligations under this Deed have been performed and discharged. Such notice to give details of the transfereree's full name and registered office (if a company or usual address if not) together with (if the disposal is of part of the Land only) details of the part of the Land purchased by reference to a plan.

## **14. INDEXATION**

Any sum stipulated as being payable by the Owner to the Council shall be increased by an amount equivalent to the increase in the Index from the date of this Deed until the date on which such sum is payable pursuant to the provisions of this Deed.

**15. INTEREST**

If any payment due under the provisions of this Deed is paid more than seven days after the due date Interest shall in addition be payable on such sum from the date payment is due to the date of payment.

**17. SERVICE OF NOTICES**

17.1 Any notice or written communication to be served pursuant to this Deed shall be deemed to have been validly served if delivered by hand or sent by recorded delivery post to the relevant address of the relevant party as stated at the beginning of this Deed or such other address as may from time to time be notified by one party to the other as its address for service for the purposes of this Deed and any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by a duly authorised signatory.

17.2 In the case in notices to the Owner they shall be marked "For the Attention of the Director General" and bearing the reference "RHS Wisley Gardens – Section 106 Agreement"

**18. VAT**

All sums payable in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable thereon.

**19. JURISDICTION**

This Deed is governed by and interpreted in accordance with the laws of England and Wales.

**20. DELIVERY**

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

IN WITNESS whereof the parties hereto have executed this agreement as a Deed on the day and year first before written

DRAFT

## **FIRST SCHEDULE**

### **Details of the Owner's Title, and description of the Land**

The Owner is the owner with Freehold Title of the Land shown more particularly edged with a red line on the Plan and which forms part of the land and premises known as the RHS Garden, Wisley, Woking, Surrey, GU23 6QB title to which is unregistered

## **SECOND SCHEDULE**

### **Owners Covenants to the Council**

The Owner covenants with the Council as follows:-

#### **1. Notices**

- 1.1 The Owner shall not Commence Development unless and until it has given the Council not less than 5 (five) Working Days prior written notification of the date upon which the Development will Commence
- 1.2 The Owner shall not Occupy the Development unless and until it has given the Council not less than 5 (five) Working Days prior written notification of the date of Occupation
- 1.3 The notices referred to in paragraphs 1.1 and 1.2 of this Schedule shall be addressed to "The Section 106 Officer" who can be contacted on telephone 01843 444463 and by email at [S106.officer@guildford.gov.uk](mailto:S106.officer@guildford.gov.uk)



**2. Payment of the Sustainable Transport Contribution and the Travel Plan Monitoring Contribution**

Subject to Commencement of Development having occurred and subject also to the covenants on the part of the Council in the Third Schedule the Owner HEREBY COVENANTS with the Council:

- 2.1 To pay the Sustainable Transport Contribution to the Council as a contribution towards Surrey County Council's costs and expenses (including preliminary investigation, design, legal and administrative and supervision fees, salaries and overheads and the costs of advertising and of public consultation) incurred by Surrey County Council as highway authority in carrying out the Sustainable Transport Improvements within 10 working days of the date of Commencement of Development
- 2.2 To pay the Travel Plan Monitoring Contribution to the Council within 10 working days of the date of Commencement of Development
- 2.2 Not to Open the Development or any part thereof until the Sustainable Transport Contribution and the Travel Plan Monitoring Contribution have been paid to the Council

**THIRD SCHEDULE**

**Council's Covenants**

Subject to the Owner carrying out the Owner's obligations as set out in the Second Schedule the Council covenants with the Owner as follows:

- 1 To pass the Sustainable Transport Contribution to Surrey County Council in accordance with such arrangements as may be agreed from time to time between the Council and Surrey County Council
  
- 2 Where an approval, permission, consent or other form of authorisation is required from the Council under this Deed, such approval, permission, consent or authorisation shall not be unreasonably withheld or delayed.

DRAFT

EXECUTED AS A DEED by affixing )  
THE COMMON SEAL of THE COUNCIL )  
OF THE BOROUGH OF GUILDFORD )  
in the presence of:- )

Authorised Signatory

**THE COMMON SEAL OF THE** )  
**ROYAL HORTICULTURAL** )  
**SOCIETY** )  
was hereunto affixed in the presence of: )

.....  
Authorised Signatory

.....  
Authorised Signatory

DATED \_\_\_\_\_ 2016

**THE COUNCIL OF THE BOROUGH  
OF GUILDFORD**

**and**

**THE ROYAL HORTICULTURAL  
SOCIETY**

**DEED**

Royal Horticultural Society Gardens,  
Wisley Lane, Wisley, Woking, GU23 6QS

Stevens & Bolton LLP

Wey House

Guildford

GU1 4YD

Ref: CFD/RO.1422.0006