

DATED

7th May

2025

HINCKLEY BOSWORTH BOROUGH COUNCIL (1)

and

DAVIDSONS DEVELOPMENTS LIMITED (2)

DEED OF VARIATION

Section 106 and Section 106A of the Town and Country Planning Act 1990 (as amended) in respect of the residential development on Land North of Deepdale Farm, Lutterworth Road, Burbage



CAMBRIDGE • LEICESTER • MANCHESTER
MILTON KEYNES • NORTHAMPTON • NORWICH

MM/190647.937

THIS DEED is made

7th

day of

May

2025

BETWEEN

- (1) **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of the Hub, Hawley Road, Hinckley, LE10 0FR ("Borough Council")
- (2) **DAVIDSONS DEVELOPMENTS LIMITED** (Co. Reg. No. 04346861) of Unit R, Ivanhoe Park Way, Ashby-De-La-Zouch, England, LE65 2AB ("Owner")

together known as the "Parties" and "Party" shall be construed accordingly

WHEREAS:

- A The Borough Council is the local planning authority for the area in which the Site is situated and the enforcing authority for the purpose of the provisions of this Deed.
- B On 6th October 2021 outline planning permission was granted at appeal pursuant to appeal reference number APP/K2420/W/20/3265143 following refusal of application number 19/01405/OUT for the development of up to 135 dwellings (amended from 165) with all matters reserved except access (the "Planning Permission"). The Planning Permission was granted subject to a legal agreement which was made under section 106 of the Act and completed on 25th August 2021 to which the Borough Council, Leicestershire County Council, the Owner and others who no longer have a legal interest in the Site were parties (the "Principal Agreement").
- C Approval of reserved matters was granted by the Borough Council on 6 July 2023 pursuant to reference 22/00636/REM.
- D A non-material amendment was subsequently made to the Planning Permission dated 20th April 2023 pursuant to reference number 23/00160/NMA which changed the wording of condition 20 to reflect the updated biodiversity metric calculation.
- E Further non-material amendments were made to 22/00636/REM dated 18th October 2023 pursuant to reference number 23/00977/NMA (which substituted house types on the development), and dated 29th May 2024 pursuant to reference number 24/00388/NMA (which substituted house types on the development) and dated 14th February 2025 pursuant to reference number 24/01159/NMA (which changed the house types and repositioned plots on the development).
- F The Parties have agreed that affordable housing in respect of the Development will be secured as a financial contribution instead of on site as varied by the terms of this Deed which have immediate effect.
- G Leicestershire County Council are not affected by the terms of this Deed and are not a party to it.

OPERATIVE PROVISIONS:

INTERPRETATION

1. Unless otherwise stated, defined terms used in this Deed shall have the meanings given to them in the Principal Agreement.

CONTINUING OBLIGATIONS

2. This Deed is supplemental to and varies the Principal Agreement and is made under the provisions of Section 106A of the Act and shall be deemed to be a planning obligation for the purposes of the said Sections 106A and Section 111 of the Local Government Act 1972 (as amended) and all other enabling powers and the obligations herein shall be enforceable by the Borough Council pursuant to the Principal Agreement as varied herein.
3. The Owner covenants with effect from the date hereof that the obligations and covenants in the Principal Agreement as varied continue to bind the Site in respect of any Development of the Site carried out pursuant to the Planning Permission.
4. The covenants and obligations given by the Owner herein shall bind the Owner's interests in the Site and any successor in title thereto save that the Owner shall not be liable for the breach of any covenant or obligation after they have parted with its interest in the Site save and unless such breach occurred prior to the disposal of such interest.
5. 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 or the Principal Agreement as varied or otherwise.

IMMEDIATE EFFECT

6. This Deed and the variations as set out in the Schedule have immediate effect.

LOCAL LAND CHARGES

7. This Deed is a local land charge and shall be registered as such by the Borough Council.

THIRD PARTY RIGHTS

8. A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 (as amended) to enforce any term of the Principal Agreement as varied by this Deed.

JURISDICTION

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

LEGAL COSTS

10. The Owner shall pay to the Borough Council its reasonable legal costs in connection with the preparation and completion of this Deed on completion of the same.

THE SCHEDULE

1. Variations to the Principal Agreement

1.1. The following amendments shall be made to the Principal Agreement:

Definitions

The following definitions shall be inserted into the Principal Agreement:

"Affordable Housing" means housing for sale or rent, for those who cannot afford to buy or rent dwellings appropriate to their needs on the open market (including housing that provides a subsidised route to home ownership and/or is for essential local workers) and which is in accordance with the meaning of "Affordable Housing" for the purposes of the National Planning Policy Framework (NPPF) December 2024 (as currently set out in Annex 2: Glossary of the NPPF, and as may be updated from time to time)

"Affordable Housing Contribution" means a contribution of One Million Nine Hundred and Five Thousand and Ninety Five Pounds (£1,905,095) index linked in accordance with the All in Tender Price Index of Building Cost Information Services (BCIS) from the date of this Deed until the date of payment of the said contribution paid by the Owner to the Borough Council for the provision of Affordable Housing within the administrative area of the Borough Council

2. The following definitions within the Principal Agreement shall be amended or deleted as follows:

2.1. Clause 3.1 (including sub- clauses 3.1.1 – 3.1.8.5) shall be removed with immediate effect and all affordable housing definitions associated with this clause shall be deleted such that the Principal Agreement shall no longer contain any obligations relating to the onsite provision of Affordable Housing and shall be replaced as set out at clause 3 below.

3. A new replacement Clause 3.1 of the Principal Agreement which bears the heading "Affordable Housing" shall be included as follows:

Affordable Housing

3.1. The Owners hereby covenant with the Borough Council as follows:

3.1.1. Not to Occupy more than 50% of the Dwellings unless and until the Owners have paid to the Borough Council 50% of the Affordable Housing Contribution.

3.1.2. Not to Occupy more than 80% of the Dwellings unless and until the Owners have paid to the Borough Council the remaining 50% of the Affordable Housing Contribution.

4. The existing clause 7.7 which bears the heading "Deed of Release" shall be renumbered as 7.8.

5. A new clause 7.7 which bears the heading "Affordable Housing Contribution" shall be included as follows:

Affordable Housing Contribution

7.7. The Borough Council covenants with the Owners as follows:

- 7.7.1. to apply the Affordable Housing Contribution solely towards Affordable Housing within the Borough and for no other purpose whatsoever.
- 7.7.2. if any of the Affordable Housing Contribution has not been expended for the specified purposes within the period of ten years from the date of the final payment received to repay to the Owners on written demand such part of the Affordable Housing Contribution as has not been so expended.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS DEED THE DAY AND YEAR FIRST ABOVE WRITTEN

The COMMON SEAL of
HINCKLEY AND BOSWORTH BOROUGH COUNCIL
was hereto affixed in the presence of:

Authorised Signatory

Jim Stagg



13030

EXECUTED AS A DEED by
DAVIDSON'S DEVELOPMENTS LIMITED
Acting by one Director

C. J. O'Connell

Director's signature

C. J. O'CONNELL

Director's full name

in the presence of: (

Witness *Sally Bennie*

Witness Name SALLY BENNIE

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