

Dated 7th March 2025

HINCKLEY AND BOSWORTH BOROUGH COUNCIL (1)

LEICESTERSHIRE COUNTY COUNCIL (2)

CAWREY LIMITED (3)

HSBC UK BANK PLC (4)

DEED OF VARIATION

TO A SECTION 106 AGREEMENT

relating to residential development on land
south of Markfield Road Ratby Leicestershire

Hinckley and Bosworth Borough Council Ref:
24/00645/CONDIT

THE DEED is made on

7th

day of

March

2025

BETWEEN

- (1) **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of Hinckley Hub, Rugby Road, Hinckley, Leicestershire LE10 0FR (the "**Borough Council**")
- (2) **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield, Leicester LE3 8RA (the "**County Council**")
- (3) **CAWREY LIMITED** (Company Registration Number 00827540) whose registered office is situated at Finance House, Beaumont Road, Banbury, England, OX16 1RH (the "**Owner**")
- (4) **HSBC BANK UK PLC** (Company Registration Number 09928412) whose registered office is situated at 1 Centenary Square, Birmingham, United Kingdom, B1 1HQ (the "**Chargee**")

WHEREAS

- (A) The Borough Council is the local planning authority for the purposes of the Act for the Borough of Hinckley and Bosworth within which the Application Land is situated.
- (B) The County Council is the local highway authority and also responsible for education and library services for the area in which the Application Land is situated.
- (C) The Borough Council and the County Council are both Principal Councils within the meaning of the Local Government Act 1972 (as amended) and the obligations contained herein are enforceable by the Borough Council and the County Council in respect of the obligations owed to each of them.
- (D) The Owner is the freehold owner of the Application Land dated 24 February 2023 registered at HM Land Registry with title absolute under title numbers LT154806 and LT288058 respectively.
- (E) The Chargee has the benefit of a charge dated 24 February 2023 over the Application Land.
- (F) On 9 March 2023 the Borough Council granted the First Section 73 Permission subject to conditions and the parties entering into the First Deed of Variation to the Original Agreement.
- (G) On 1 July 2024 the Second Section 73 Application was submitted to the Borough Council.

- (H) The parties hereto acknowledge that approval of the Second Section 73 Application would constitute the granting of a new planning permission for the development referred to in the Original Agreement.
- (I) The Borough Council is minded to approve the Second Section 73 Application subject to conditions and subject to the Owner entering into the obligations in this Deed in relation to the provisions in the Original Agreement and the First Deed of Variation without which the Second Section 73 Permission would not be granted.

NOW THIS DEED WITNESSES as follows:

1 INTERPRETATION

- 1.1 In this Deed in addition to the parties hereinbefore referred to the following words and expressions shall where the context so requires or admits have the following meanings:

"First Deed of Variation" the agreement entered into by the Owner (1) The Borough Council (2) and The County Council (3) and dated 8 March 2023 relating to the residential development on land south of Markfield Road Ratby Leicestershire

"First Section 73 Application" means the application submitted to the Borough Council on 8 December 2022 and allocated reference 22/00884/CONDIT for the variation of condition 2 (approved plans) of planning permission 20/00462/FUL (90 dwellings) to include changes to the approved planning drawings following technical design development

"First Section 73 Permission" means the planning permission granted by the Borough Council pursuant to the First Section 73 Application

"Second Section 73 Application" means the application submitted to the Borough Council on 1 July 2024 and allocated reference 24/00645/CONDIT for the variation of condition 2 (approved plans) of planning

permission 22/00884/CONDIT for the addition of two single garage structures to plots 89 and 90

“Second Section 73 Permission” means the planning permission granted by the Borough Council pursuant to the Second Section 73 Application

“The Original Agreement” the agreement entered into by the Owner (1) The Borough Council (2) and The County Council (3) and dated 30 April 2021 relating to residential development on land south of Markfield Road Ratby Leicestershire

“The Varied Agreement” means the Original Agreement as varied by the First Deed of Variation

In this Deed:

- 1.2 Unless the context requires otherwise, all words and phrases defined in the Varied Agreement shall have the same meaning in this Deed (except to the extent that they are expressly varied in this Deed).
- 1.3 The expression the "Owner" shall include persons successors in title to the Owner and its assigns and all persons deriving title to all or part of the Application Land under or through it.
- 1.4 References in this Deed to the "Borough Council" and "County Council" shall include any successor to their functions.
- 1.5 References in this Deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.6 The clause headings in this Deed are for convenience only and do not form part of this Deed.
- 1.7 References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Deed.
- 1.8 Obligations and liabilities of a party comprising more than one person are obligations of such persons jointly and severally.

- 1.9 Words of masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice-versa and words denoting persons shall include bodies companies incorporated associations and partnerships and vice versa.

2 COMMENCEMENT

- 2.1 The provisions of this Deed shall have effect from the date of this Deed.

3 STATUTORY POWERS

- 3.1 This Deed is made pursuant to s106 and s106A of the 1990 Act and pursuant to s111 of the Local Government Act 1972 (as amended) and any other enabling powers and is supplemental to the Section 106 Agreement and it is acknowledged by the parties that the obligations contained within this Deed are binding on the Application Land and subject to clauses 2.4 2.5 and 2.6 of the Section 106 Agreement are enforceable by the Borough Council and County Council (as appropriate) against the Owner of the Application Land and against its successors in title in respect of their interests in each and every part of the Application Land and those deriving title under it.

4 VARIATIONS TO THE VARIED AGREEMENT

- 4.1 Without prejudice to the other covenants in the Varied Agreement which shall continue in full force and effect, the parties to this Deed agree that from the date of this Deed the Varied Agreement shall be amended as set out in the Schedule to this Deed.

5 DECLARATIONS

It is hereby agreed and declared:

- 5.1 Nothing in this Deed shall be construed as restricting the exercise by the Borough Council or County Council of any powers exercisable by them under the Act or any other act regulation or byelaws.
- 5.2 This Deed shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or has been at any time issued by the Borough Council or any other appropriate person or authority pursuant to the provisions of the Act.

- 5.3 No waiver whether express or implied by the Borough Council of any breach or default by the Owner in performing or observing any of the covenants of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Borough Council from enforcing any of the said covenants or from acting upon any subsequent breach or default in respect thereof by the Owner.

6 COVENANTS BY THE OWNER

- 6.1 The Owner covenants with the Borough Council and the County Council that the covenants restrictions and obligations contained in the Varied Agreement, as amended by the terms of this Deed, shall continue in full force and effect and shall be deemed by virtue of this Deed to apply to and to bind the Application Land in relation to Development pursuant to the Planning Permission and/or the First Section 73 Permission and/or the Second 73 Permission.

7 CHARGEES CONSENT

- 7.1 The Chargee consents to the Owner entering into this Deed and acknowledges that this Deed binds the Application Land PROVIDED THAT the Chargee shall only be liable for any breach of this Deed or the Varied Agreement if it itself caused the breach whilst mortgagee in possession of the Application Land and shall not be liable for any pre-existing breach

8 LOCAL LAND CHARGE

- 8.1 This Deed is a local land charge and the Borough Council shall register it as such as soon as practicable after the completion of this Deed.
- 8.2 Following the performance and satisfaction of all the obligations contained in the Varied Agreement as amended by this Deed the Borough Council shall upon receipt of a written request so to do as soon as reasonably practicable mark the Varied Agreement and this Deed in the local land charges register as having been complied with.

9 SEVERABILITY

- 9.1 It is agreed that if any part of this Deed is declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the offending provision(s) will be severed from this Deed and the remainder of this Deed shall continue in full force and effect.

10 LEGAL COSTS

10.1 The Owner will no later than the date of this Deed pay the Borough Council their reasonable and proper legal costs of eight hundred and fifty pounds (£850.00) for the preparation, negotiation and completion of this Deed.

10.2 The Owner will no later than the date of this Deed pay the County Council their reasonable and proper legal costs of ~~£~~one thousand pounds (£1,000.00) for the preparation, negotiation and completion of this Deed. *£1000*

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

11.1 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 (as amended) no part of this Deed shall be enforceable by a third party who is not a party to this Deed.

12 JURISDICTION

12.1 This Deed is governed by and interpreted in accordance with the Laws of England.

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

THE SCHEDULE

AMENDMENTS TO THE VARIED AGREEMENT

The Varied Agreement shall be amended as follows:

1 AMENDMENTS

1.1 The definition of "**Section 73 Application**" at Clause 1 shall be amended to "**First 73 Application**." *First Section*

1.2 The definition of "**Section 73 Permission**" at Clause 1 shall be amended to "**First 73 Application**." *First Section Permission*

1.3 The definitions of "**Second Section 73 Application**" and "**Second Section 73 Permission**" set out below shall be inserted into Clause 1:

"Second Section 73 Application" means the application submitted to the Borough Council on 1 July 2024 and allocated reference 24/00645/CONDIT for the variation of condition 2 (approved plans) of planning permission 22/00884/CONDIT for the addition of two single garage structures to plots 89 and 90;

"Second Section 73 Permission" means the planning permission granted by the Borough Council pursuant to the Second Section 73 Application

1.4 The definition of "**Development**" in Clause 1 shall be deleted in full and replaced with the following:

"Development" means the development described in the Planning Application and/or the First Section 73 Application and/or the Second Section 73 Application and to be carried out pursuant to the Planning Permission;

- 1.5 The definition of "**Planning Permission**" in Clause 1 shall be deleted in full and replaced with the following:

"Planning Permission" means the planning permission granted pursuant to the Planning Application, the First ^{Section} Section 73 Permission and the Second ^{Final} Section 73 Permission.

- 1.6 The following clause shall be inserted in the Varied Agreement:

"Section 73 Permissions

- 2.21 If the Council agrees pursuant to an application under Section 73 of the Act to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under Section 78 of the Act the covenants or provisions of this Agreement may be deemed to bind the varied permission and to apply in equal terms to the new planning permission subject to contrary agreement between the parties hereto"

EXECUTED as a DEED
 by affixing **THE COMMON SEAL**
 of **HINCKLEY AND BOSWORTH BOROUGH COUNCIL**
 in the presence of:

Authorised Signatory



EXECUTED as a DEED
 by affixing **THE COMMON SEAL**
 of **LEICESTERSHIRE COUNTY COUNCIL**
 in the presence of:

Authorised Signatory



416889(a)

EXECUTED as a DEED by
CAWREY LIMITED
 acting by

Director

In the presence of:

Witness

Name:

DEBORAH CHESTERMAN

Address:

Lagan Homes Ltd
 Finance House
 Beaumont Road
 Banbury
 Oxfordshire
 OX16 1RH

IN WITNESS WHEREOF this document which is intended to take effect as a Deed has been duly executed by a duly authorised Official of HSBC UK Bank plc as Attorney of HSBC UK Bank plc the date and year first above written.

SIGNED as a DEED

By: Richard James Collins

As Attorney for

HSBC UK BANK PLC

in the presence of:

Witness:

Name: Richard James
Etches

Address:

Grosvenor House
1 Wellington Street
SHEFFIELD
S1 4NB

HSBC UK Bank plc
Sheffield Securities
Processing Centre

Bank Official