

25th November
DATED ~~10TH MARCH~~ 2025

MARIA LOUISE BORTHWICK (1)
and
BANK OF SCOTLAND PLC (2)
to
HINCKLEY & BOSWORTH BOROUGH COUNCIL (3)

UNILATERAL UNDERTAKING

SECTION 106 DEED

Under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to Pinewood Overton Road Nailstone Nuneaton
Leicestershire LE67 6PD

25th

November

J.S.

THIS DEED is made the ~~10TH~~ day of ~~MARCH~~ Two Thousand and Twenty Five

BY:

- (1) **MARIA LOUISE BORTHWICK** of Pinewood, Overton Road, Ibstock, LE67 6PD (the "Owner") of the first part; and
- (2) **BANK OF SCOTLAND PLC** (Scot. Co. Regn. No. SC327000) of Halifax Division, 1 Lovell Park Road, Leeds LS1 1NS (the "Mortgagee") of the second part

TO:

- (3) **HINCKLEY & BOSWORTH BOROUGH COUNCIL** of Hinckley Hub, Rugby Road, Hinckley Leicestershire, LE10 0FR ("the Council") of the third part

1. DEFINITIONS

Wherever the context so permits in this Deed the following shall have the following meanings:

"The 1990 Act"	means the Town and Country Planning Act 1990 (as amended)
"The Application"	means an outline planning application under reference No. 24/00286/OUT for the Development
"Commencement of Development"	means the carrying out of any act pursuant to the Planning Permission which constitutes a material operation as defined by Sections 56 (4) and 93 of the 1990 Act other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance (other than demolition), archaeological excavations, investigations for the purposes of assessing ground conditions, remedial work in respect of contamination or other adverse ground conditions, erection of any temporary means of enclosure and the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
"The Council"	means Hinckley & Bosworth Borough Council or any successor to its statutory functions

"The Development"	means the construction of 1no. Self Build Dwelling pursuant to the Planning Permission
"Dwelling"	means a residential unit permitted to be constructed on the Land pursuant to the Planning Permission and for the avoidance of doubt shall comprise of the Self Build Dwelling and reference to "Dwellings" shall be construed accordingly
"the Land"	means the area of land shown edged red on the Plan shown in Appendix A
"Occupation"	means the date at which a Dwelling is first occupied for the purposes permitted by the Planning Permission but excluding occupation of a Dwelling where that Dwelling is being used solely for the purpose of a show home/flat (where no persons are resident) in the course of marketing the Development and not including occupation by personnel engaged in construction fitting out or decoration or occupation in relation to security operations and "Occupied" and "Occupy" will be construed accordingly
"the Owner"	means Owner of the Land and such expression shall include successors in title to the Owner
"Plan"	means the plan attached to this Deed
"The Planning Permission"	means the permission to be granted pursuant to the Application and subject to clause 13 of this Deed any new permission granted pursuant to Section 73 of the 1990 Act and any approved non material amendment(s)
"Protected Occupation Period"	means the period of three years beginning with the first Occupation of the Self Build Dwelling by the initial owner and ending on the third anniversary thereof
"Self-Build and Custom Housebuilding"	means self-build and custom housebuilding as defined by Section 1 of the Self Build and Custom Housing Building Act 2015 as amended by the Housing and Planning Act 2016
"Self-Build Dwelling"	means (for the purposes of this Deed) a Dwelling to be either constructed or commissioned as part

	of the Development by a person or persons who intend to live in the said Dwelling and which meets the definition of Self Build and Custom House Building and provided in accordance with the provisions of Schedule 1 to this Deed and reference to "Self Build Dwellings" shall be construed accordingly
"Self-Build Plot"	means a plot on the Development on which a Self-Build Dwelling is to be constructed and which has unfettered access for vehicles and pedestrians to a public highway and be provided with access to foul drainage mains water and mains electricity supply available at the plot boundary within the duration of the Planning Permission and reference to "Self Build Plots" shall be construed accordingly
"Working Day"	means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday a statutory bank holiday or a day falling within the period 24 December to the immediately following 2nd January (inclusive)

2. CONSTRUCTION

- 2.1 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.
- 2.2 Reference to any statute or statutory provisions includes a reference to:-
- 2.2.1 that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and
- 2.2.2 all statutory instruments or orders made pursuant to it whether before or after the date of this Deed
- 2.3 The term "the Owner" shall include their assigns and successors in title to their legal interest in the Land or any part or parts thereof at the date hereof and to the rights and obligations created by this Deed.
- 2.4 A covenant not to do something includes a covenant not to permit or suffer that thing to be done.
- 2.5 Any covenants obligations or other commitments given by more than one party to this Deed shall be joint and several and where any party consists of two or more persons obligations

expressed to be made by or with that party are deemed to be made by or with such persons jointly and severally.

- 2.6 The headings in this Deed are for ease of reference only and cannot be taken into account in its interpretation.
- 2.7 Where the agreement, consent, approval or expression of satisfaction (or anything of a like nature) from the Council is required by the Owner or any other party then such agreement, consent, approval or expression of satisfaction shall not be unreasonably or arbitrarily withheld or delayed.
- 2.8 Where there is reference to an officer of the Council in this Deed such reference shall include the officer referred to and any future officer (howsoever named) that carries on the same or similar function to the officer referred to AND any officer to whom such officers have delegated responsibility.

3. **HISTORY**

- 3.1 The Council is the appropriate Local Planning Authority for the purpose of the 1990 Act in respect of the area which includes the Land.
- 3.2 The Council is also the housing authority for the purposes of the Housing Act and as the housing authority is required by Section 8 of the Housing Act to consider housing conditions in its district and the needs of the district with respect to the provision of further housing accommodation.
- 3.3 The Owner is the freehold owner of the Land registered with title absolute at the Land Registry under Title No. LT468997.
- 3.4 The Mortgagee registered its charge dated 17 August 2021 with the Land Registry on the 24th August 2021.
- 3.5 The Owner and the Mortgagee are willingly entering into this Deed .
- 3.6 The Application was submitted on behalf of the Owner to the Council and validated on the 25th March 2024.
- 3.7 The Owner has agreed to offer this Deed with the intention that the obligations contained in this Deed shall bind the Land and may be enforced by the Council against the Owner as set out herein and subject to clause 14 against the Mortgagee.

4. **PLANNING OBLIGATIONS**

The covenants contained in Schedule 1 to this Deed are planning obligations for the purposes of Section 106 of the 1990 Act.

NOW THIS DEED WITNESSETH as follows:

5. BINDING EFFECT OF THE AGREEMENT

- 5.1 This Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Sections 8 and 9 of the Housing Act and all other enabling powers and it and the covenants contained in it are enforceable by the Council pursuant to such Acts
- 5.2 The Owner in respect of the Land hereby covenants and undertakes in respect of each and every part of the Land to observe and perform the covenants which are contained in Schedule 1 to this Deed with the intent that the same shall bind the Land and be enforceable without limit of time not only against the Owner but also (subject to clauses 8.11 and 8.12 of this Deed) against each and any of their successor in title and any person claiming any legal or equitable estate or interest in the Land or any part or parts of it as if that successor and person had also been an original covenanting party

6. EFFECTIVE DATE

The provisions of this Deed shall come into effect upon the;

6.1 grant of Planning Permission; and

6.2 Commencement of Development

7. WARRANTIES

The Owner hereby warrants to the Council that in respect of the Land:

- 7.1 he is at the date of this Deed the registered freehold proprietor of the Land registered with title absolute at the Land Registry under Title No. LT468997 free from any encumbrances other than those contained mentioned or referred to in the register to that title; and
- 7.2 he has obtained all necessary permissions and consents required from any covenantees or any other persons to him entering into this Deed and that he enters into this Deed with full capacity and ability to observe and perform the obligations hereunder

8. DECLARATIONS

IT IS HEREBY AGREED AND DECLARED

- 8.1 The planning obligations on the part of the Owner shall be in addition to and not in derogation of the Planning Permission.

- 8.2 Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the 1990 Act or any other Act regulation or byelaws.
- 8.3 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 Council or any other appropriate person or authority pursuant to the provisions of the 1990 Act.
- 8.4 Subject only to clause 13 and to the provisions of Sections 106A and 106B of the 1990 Act the terms and conditions of this Deed can only be varied by a supplemental deed
- 8.5 No waiver whether express or implied 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 Council from enforcing any of the said covenants or from acting upon any subsequent breach or default in respect thereof by the Owner.
- 8.6 The Owner waives any rights to claim compensation arising from any limitation or restriction on the planning use of the Land under the terms of this Deed.
- 8.7 If the Planning Permission at any time is quashed or revoked or is otherwise withdrawn by any statutory procedure or expires before Commencement of Development this Deed shall cease to have effect.
- 8.8 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 8.9 If any individual clause or paragraph in this Deed is subsequently held to be unenforceable by a court the parties agree that the offending clause or paragraph shall cease to be binding and will be severed from this Deed PROVIDED THAT the severing of such a clause or paragraph shall not affect the continuing enforceability of the remainder of this Deed.
- 8.10 The validity construction and performance of this Deed shall be governed by English law and each party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under this Deed.
- 8.11 No person shall be liable for a breach of this Deed:
- 8.11.1 after he shall have parted with all interest in the Land or that part in respect of which such breach occurred but without prejudice to liability for any subsisting breach which occurred prior to parting with such interest; and
- 8.11.2 to the extent that such breach relates to any part of the Land in which the person has no interest
- 8.12 Statutory undertakers or other utility suppliers with an interest in the Land only by virtue of the location of their structures or other apparatus on the Land (including electricity substations, poles stays gas governor stations and/or pumping stations) are specifically excluded from liability under this Deed

- 8.13 Nothing in this Deed shall be construed as prohibiting or limiting any right to develop the Land (or any part or parts thereof) in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed which does not require the variation or revocation of this Deed.

9. **NOTICE OF DEED**

- 9.1 The Council will on completion of this Deed register it in the local land charges register pursuant to the provisions of the Local Land Charges Act 1975; and

10. **JURISDICTION**

- 10.1 Nothing in this clause shall be construed as ousting the jurisdiction of the courts to enforce the provisions of this Deed.

11. **NOTICES**

- 11.1 Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class post or recorded delivery post

- 11.2 The address for service of any such notice consent or approval as aforesaid shall in the case of service upon the Council be at the address aforesaid or such other address for service as shall have been previously notified by the Council to the Owner in the case of service upon the Owner will be at their last known address (if an individual).

- 11.3 A notice consent or approval under this Deed shall be deemed to have been served as follows:

11.3.1 If personally delivered at the time of delivery; and

11.3.2 If posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a prepaid first class or recorded delivery envelope (as appropriate) as the case may be.

12. **TERMINATION OF THIS DEED**

- 12.1 This Deed will come to an end if:

12.1.1 The Planning Permission is quashed, revoked or otherwise withdrawn or modified at any time so as to render this Deed or any part of it irrelevant, impractical or unviable;

12.1.2 The Planning Permission expires before the Commencement of Development

13. **SECTION 73 VARIATION**

13.1 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the 1990 Act for Development of the Land and unless otherwise agreed between the parties, with effect from the date that the new planning permission is granted pursuant to Section 73 of the 1990 Act:

13.1.1 The obligations in this Deed shall (in addition to continuing to bind the Land in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Land granted pursuant to Section 73 of the 1990 Act and the Land itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the 1990 Act;

13.1.2 The definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the 1990 Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permission(s); and

13.1.3 This Deed shall be endorsed with the following words in respect of any future Section 73 application:

"The obligations in this Deed relate to and bind the Land in respect of which a new planning permission reference [] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

ALWAYS PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations insofar as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to Section 106 of the 1990 Act.

14. **MORTGAGEE'S CONSENT**

14.1 The mortgagee hereby consents to this Deed and acknowledges that this Deed binds the Land. The Mortgagee shall only be liable for a breach of this Deed that it has itself caused whilst mortgagee in possession but shall not be liable for any pre-existing breach.

SCHEDULE 1

Self-Build and Custom Housebuilding

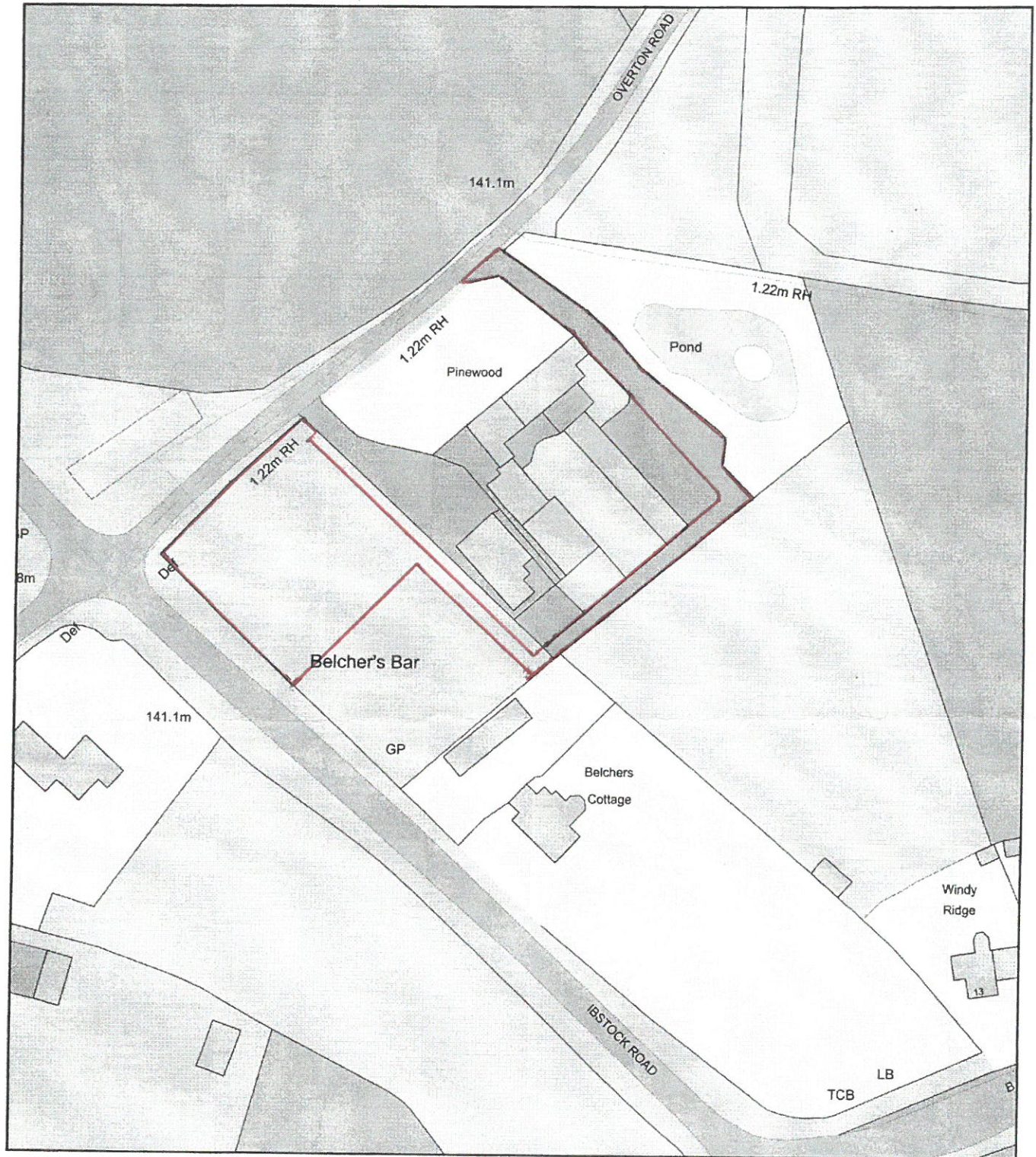
The Owner covenants to the Council as follows:

1. Completion of the Self-Build Dwelling shall be deemed to be either when either the NHBC Buildmark Certificate; a new homes warranty (or similar equivalent certification) shall have been issued in respect of such Dwelling or when the Council's building control consultancy or approved inspector certifies it complete if earlier.
2. To ensure that the Self Build Plot/Self Build Dwelling is sold and/or Occupied (as the case maybe) in accordance with the terms of this Schedule 1.
3. To provide the Self Build Plots and Self Build Dwellings subject to the terms of this Deed together with rights being granted over all access roads and footpaths; all services and conducting media serving the Self Build Plots and Self Build Dwellings.
4. Each Dwelling shall be constructed as a Self-Build Dwelling on a Self-Build Plot in accordance with the design and layout into which the first owner and occupier of each Dwelling has had primary input
5. Not to Occupy or allow the Self Build Dwellings to be Occupied otherwise than by a person who at the date of first Occupation inhabits the Self Build Dwellings as his/her sole residence.
6. Not to dispose of any of the Self Build Plots or Self Build Dwellings (as the case maybe) otherwise than by way of a mortgage or charge or to a purchaser who complies with the requirements of this Schedule by way of a freehold transfer
7. Not less than 10 Working Days prior to entering into a binding agreement for the sale of a Self Build Plot and/or Self Build Dwelling (as the case maybe) (or transferring it where there is to be no exchange of contracts) to certify and provide written evidence to the Council that the proposed sale of the Self Build Plot and/or the Self Build Dwelling (as the case maybe) is in accordance with the terms applicable to it in this Deed.
8. The first Occupation of each Self Build Dwelling shall not take place otherwise than by a person or persons who:
 - 8.1 had a primary input into the design and layout of the Self Build Dwelling (as built); and
 - 8.2 shall occupy the Self build Dwelling for the Protected Occupation Period as his/her sole residence in accordance with this Schedule 1; and
 - 8.3 who is registered with the Council and recorded on the register maintained pursuant to section 1 of the Self Build and Custom House Building Act 2015 (as amended).

Appendix A

Plan

Land south west Pinewood, Overton Road, Ibstock, LE67 6PD



0 50
Metres



Plan Produced for: Site Location Plan

Date Produced: 15 Mar 2024

Plan Reference Number: TQRQM24075113233597

Scale: 1:1250 @ A4