

DATED 29 November 2024

(1) OWL HOMES LIMITED

AND

(2) HINCKLEY AND BOSWORTH BOROUGH COUNCIL

DEED OF VARIATION

in connection with an Agreement made under Section 106 of
the Town and Country Planning Act 1990 (as amended)

relating to residential development on land off Wood Lane, Main Street, Higham-on-the -
Hill

(24/00651/DoV)

THIS DEED is made the 29 day of November 2024

BETWEEN:

- (1) **OWL HOMES LIMITED** incorporated and registered in England and Wales with company number 09784650 whose registered office is at Unit W1a, Birch Coppice Business Park Arley Drive, Dordon, Tamworth, Staffordshire, England, B78 1SA (the “**Owner**”) of the first part;
- (2) **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR (“the **Council**”) of the second part.

1 DEFINITIONS

1.1 In this Deed these words and expressions shall have the following meanings:-

“ 1990 Act ”	means the Town and Country Planning Act 1990 (as amended);
“ Application ”	shall have the same meaning as defined in the Section 106 Agreement;
“ Deed ”	means this deed;
“ Application Land ”	shall have the same meaning as defined in the Section 106 Agreement;
“ Planning Permission ”	means the planning permission issued pursuant to the Application subject to the Section 106 Agreement and shall have the same meaning as defined in the Section 106 Agreement;
“ Section 106 Agreement ”	means the Agreement made pursuant to Section 106 of the 1990 Act between (1) the Council and (2) Robert John Jones (the previous owner) and (3) Leicestershire County Council dated 16 August 2022 pursuant to the Application.

- 1.2 Where the context so requires: -
- 1.2.1 save as is otherwise varied by this Deed, all words and phrases defined in the Section 106 Agreement shall have the same meaning in this Deed;
 - 1.2.2 clause headings are for reference only and shall not affect the construction of this Deed;
 - 1.2.3 any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing;
 - 1.2.4 the masculine and the feminine and neuter gender include each of the other genders and extend to include a corporation sole or aggregate and the singular includes the plural and vice versa;
 - 1.2.5 a reference to an Act of Parliament refers to the Act as it applies at the date of this Deed and any later amendment or re-enactment of it and any regulations or statutory instrument made under it; and
 - 1.2.6 a reference to a clause paragraph or schedule is a reference to a clause paragraph or schedule contained in this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.4 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.5 Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.
- 1.6 A reference to any party shall include that party's personal representatives, successors in title to the Land or permitted assigns and in the case of the Council the successor to its respective statutory functions.

2 **RECITALS**

- 2.1 The Council is the local planning authority for the purpose of Section 106 of 1990 Act for the area within which the Application Land is situated and is the authority by whom the obligations hereby created are enforceable.

- 2.2 This Deed is supplemental to the Section 106 Agreement and varies the Section 106 Agreement only to the extent set out in this Deed. The Section 106 Agreement remains in full force and effect save as varied by this Deed.
- 2.3 The Owner is now the registered proprietor with absolute title of the Application Land registered at HM Land Registry under title number LT84952.
- 2.4 The Owner has applied to vary the Section 106 Agreement by application reference 24/00651/DOV.
- 2.5 The Council is minded to vary the Section 106 Agreement as set out in this Deed.

3 IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:-

- 3.1 This Deed is made pursuant to sections 106 and 106A of the 1990 Act section 111 of the Local Government Act 1972 and all other powers so enabling and is a planning obligation for the purposes thereof with the intent that that the covenants contained herein shall bind the interests held by the Owner in the Application Land and its successors in title to each and every part of the Application Land and their assigns and any person claiming through or under it an interest or estate in the Application Land or any part or parts thereof as provided in the clauses of this Deed and in the clauses of the Section 106 Agreement.
- 3.2 The planning obligations contained in this Deed are enforceable by the Council as local planning authority in accordance with section 106 of the 1990 Act.
- 3.3 This Deed is supplemental to the Section 106 Agreement only to the extent set out in this Deed.
- 3.4 This Deed shall become effective on the date of this Deed.
- 3.5 The parties hereto hereby mutually agree to vary and supplement the terms of the Section 106 Agreement as set out in the Schedule
- 3.6 For the avoidance of doubt, all existing references to Planning Application and Planning Permission in the Section 106 Agreement are to be construed in accordance with the above.
- 3.7 This Deed shall be construed as one with the Section 106 Agreement.

- 3.8 The provisions of the Section 106 Agreement continue to be enforceable by the Council and to bind the Application Land in all respects save as varied by this Deed but for the avoidance of doubt the alterations and amendments hereby agreed shall to the extent only that they are material supersede specific provisions to the contrary in the Section 106 Agreement and the Section 106 Agreement as varied by this Deed shall always be read together (*mutatis mutandis*) with the latter to that extent predominating .
- 3.9 The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Section 106 Agreement as varied by this Deed.
- 3.10 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term hereof provided that this Clause shall not affect any right of action of any person to whom this Deed is lawfully assigned or in whom it becomes vested in law.
- 3.11 This Deed shall be registered as a Local Land Charge.
- 3.12 The Owner shall pay to the Council on or before the date of completion of this Deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed in the sum of £825.00.
- 3.13 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).
- 3.14 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 the Deed and the remainder of this Deed shall continue in full force and effect.
- 3.15 No waiver (whether expressed or implied) by the Council 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 from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

SCHEDULE

Variations to Section 106 Agreement

1. The Section 106 Agreement shall be varied as follows: -

1.1. In clause 1.1 Definitions and Interpretation the following definitions shall be deleted:-

“Affordable Dwellings” means the units to be constructed as part of the Development as Affordable Housing being 40% of the total number of Dwellings and to comprise:

- i. 75% Affordable Housing for Rent; and
- ii. 25% Shared Ownership Dwellings.

“Affordable Housing Scheme” means the scheme for the provision of the Affordable Dwellings as part of the Development to be submitted to and approved by the Borough Council in accordance with clause 3.1.1 hereof and containing details of the location of the Affordable Dwellings, the house types, and size and tenure of the Affordable Dwellings and details of the Registered Provider if known.

1.2. In clause 1.1 Definitions and Interpretation the following new definitions shall be inserted: -

“Affordable Dwellings” means the four (4) units numbered plots 15 – 18 on the Site Layout Plan to be transferred to the Borough Council pursuant to paragraphs 3.1.2 and 3.1.3 hereof to be provided by the Borough Council as Affordable Housing for Rent.

“Affordable Housing Offsite Contribution” means the sum of two hundred and ten thousand and seventy four pounds and seventy eight pence (£210,074.78) to be used to support the delivery of affordable housing elsewhere in the Borough Council area

“Site Layout Plan” means the drawing annexed hereto numbered 1023-AD-002 H

1.3. Clause 3.1 of the Section 106 Agreement shall be deleted in its entirety and replaced as follows: -

3.1 The Owner covenants with the Borough Council as follows: -

3.1.1 To provide the Affordable Dwellings in accordance with the details approved by the Planning Permission.

3.1.2 Not to Occupy or permit the Occupation of more than 65% of the Market Dwellings until the Affordable Dwellings have been constructed ready for Occupation and the freehold interest in them has been transferred to the Borough Council.

3.1.3 The transfer to the Borough Council under clause 3.1.2 shall contain the following provisions: -

3.1.3.1 the transfer shall be at a consideration of £1.00;

3.1.3.2 together with the grant and reservation by the Owner of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Dwellings and the remainder of the Dwellings constructed or to be constructed as part of the Development;

3.1.3.3 subject to the imposition of such covenants that the Owner shall reasonably require as are consistent with the sale of any of the Dwellings within the Development;

3.1.3.4 subject to provisions that:-

(i) save as provided in (ii) below and clause 3.1.4 the Affordable Dwellings shall not be used for any purpose other than as Affordable Housing for Rent under the Hinckley and Bosworth Choice-Based Lettings Scheme and in accordance with the objectives of the Borough Council's Housing Allocations Policy ("HAP") in force from time to time to persons in need of Affordable Housing within the Parish of Higham on the Hill and being such persons as the Borough Council determines satisfy the Parish/Village connection with the Local Connections criteria as identified in the HAP;

(ii) In the event that there is no person(s) who satisfies the Parish/Village connection with the Local Connections criteria as defined within the HAP, such other person(s) in need of Affordable Housing within the Borough of Hinckley and Bosworth as shall be determined by the Borough Council to satisfy the Borough Connection with the Local Connections criteria as defined within the

HAP provided that if within 28 days of an Affordable Housing for Rent becoming vacant no such qualifying person(s) can be found to Occupy the Dwelling the Borough Council may let the Affordable Dwelling to any person(s) who satisfies its normal letting criteria.

3.1.4 The Affordable Housing provisions contained in this clause 3.1 shall not be binding on: -

- (a) A mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a receiver) of the whole or part of the Affordable Dwellings or any person or bodies deriving title through such mortgagee or chargee or receiver provided that: -
 - i. Such mortgagee or chargee or receiver shall first give written notice to the Borough Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to a Registered Provider for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses; and
 - ii. If such disposal is not completed within the three-month period the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Dwellings free from the Affordable Housing provisions in this agreement which are determined absolutely
- (b) Any person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire the said Affordable Dwelling
- (c) A lessee under a shared ownership lease of an Affordable Dwelling or mortgagee or chargee of a shared ownership lease granted in respect of an Affordable Dwelling
- (d) A person who has staircased under a shared ownership lease or an Affordable Dwelling to acquire the freehold of the said Affordable Dwelling

or a mortgagee or chargee of such an Affordable Dwelling

- (e) To any person deriving title from any such person as is mentioned in (a) to (d) above.

3.1.5 For the avoidance of doubt, all Dwellings comprised in the Development other than the Affordable Dwellings shall be Market Dwellings capable of being Occupied and/or disposed of as Market Dwellings.

1.4. In clause 5 of the Section 106 Agreement The Borough Council's Covenants To The Owner a new clause 5.8 shall be inserted as follows:-

5.8 Upon receipt of written confirmation from the Owner that it wishes to transfer the Affordable Dwellings to the Borough Council pursuant to clause 3.1.3 the Borough Council shall cooperate with the Owner and shall accept a transfer of the Affordable Dwellings.

1.5. In clause 3 of the Section 106 Agreement a new clause 3.13 shall be inserted as follows: -

3.13 The Owner covenants with the Borough Council to pay the Affordable Housing Offsite Contribution to the Borough Council on the date of the transfer of the Affordable Dwellings to the Borough Council pursuant to clause 3.1.2.

1.6. In clause 5 of the Section 106 Agreement the following clause shall be inserted: -

5.9 The Borough Council covenants with the Owner that it will: -

- (a) apply the Affordable Housing Offsite Contribution for the defined purposes and for no other purposes whatsoever; and
- (b) further, if the Affordable Housing Offsite Contribution has not been expended for the defined purposes within the period of fifteen years from the date of payment of the Affordable Housing Offsite Contribution to refund directly to the Owner any unspent portion of the Affordable Housing Offsite Contribution.



Private Dwellings		
Type Ref	No. Beds	No. Units
Upton	4	4
Leamington	4	4
Twycross	4	5
Sibson	4	1
Cadeby	3	12
Essington	3	1
Heather	3	3
Brinklow	2	6
Heath	3	7
Barnes	3	3
Hutton	2	11
Total		57
Affordable Units		
Hobbs	1	2
Willis	1	2
Total		4
Grand Total		61

- NOTES
- Application Boundary
 - 7kW electric car charging points
 - Affordable Housing
 - Refuse Collection Point - to be used on collection days only
 - RCP2
 - Sewer Easement
 - Area of grasscrete to enable vehicle turning
 - Post & three rail fence
 - Knee high rail fence
 - Timber bollards
 - Maintenance Gate
 - Signage for pond area (Wording to be confirmed)

Revision		
A	Road amendment to suit approved layout. Other amendments to suit LA comments on application.	08/09/23 DC
B	Turning heads amended to suit highways comments	12/09/23 DC
C	Garage footprints updated	19/11/23 JD
D	Footprints amended	13/12/23 CM
E	Pri added	05/02/24 JD
F	Gates added to rear gardens	15/02/24 JD
G	Ball and Bird boxes added	25/03/24 JD
H	Affordable Housing Units Updated	08/08/24 JD

Wood Lane
Higham on the Hill

Site Layout

DATE: Feb 2023
SCALE: 1:500 @ A1
DRAWN: DC
CHECKED: -



OWL HOMES LIMITED
W1A, Aley Drive, Barn Coppe Business Park, Tamworth,
Staffordshire, B79 1SA
TELEPHONE: 01827 317790 EMAIL: info@owlhomes.co.uk

Drawing No: 1023-AD-002 H

Wood Lane, Higham on the Hill

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

THE COMMON SEAL of
THE COUNCIL OF THE BOROUGH
OF HINCKLEY AND BOSWORTH
was hereunto affixed in the presence of:

)
)
)
)



Authorised Signatory

)

: Jmstg

EXECUTED as a DEED by
OWL HOMES LIMITED
acting by a Director in the presence of:

)
)
)

Director

Signature of Witness

Name Andrew Hirston

Address 6 Arden Close, Lichfield
Staffs WS14 0QJ