

DATED

2023

HINCKLEY AND BOSWORTH BOROUGH COUNCIL (1)

and

LEICESTERSHIRE COUNTY COUNCIL (2)

and

BH STOKE GOLDING PROPERTY LLP (3)

DEED OF VARIATION

Section 106 and Section 106A of the Town and Country Planning Act 1990 (as amended) in respect
of land to the east of Roseway, Stoke Golding, Nuneaton

THIS DEED is made the

day of

2023

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) BH STOKE GOLDING PROPERTY LLP (registered in England and Wales under no. OC442480) whose registered office is at Grovelands Business Park, West Haddon Road, East Haddon, Northamptonshire NN6 8FB (**the “Owner”**);
- (4) CLOSE BROTHERS LIMITED (registration number 195626) whose registered office is at 10 Crown Place, London EC2A 4FT (**“the Mortgagee”**);

together the parties listed above shall be known as the “Parties” and “Party” shall be construed accordingly

WHEREAS:

- A. The Borough Council is the local planning authority for the Application Land for the purposes of the Act.
- B. The Owner is the owner of the Application Land registered at HM Land Registry under title number LT496957 subject to a registered charge dated 10th August 2022 in favour of the Mortgagee.
- C. On 23 June 2021 the Borough Council granted outline planning permission under planning reference 20/00779/OUT. In support of this application, a section 106 agreement was completed dated 18 June 2021 and made between (1) Sybil Dorothy Furniss and Anna Louise Furniss and Irene Ruth Milmo (2) the Borough Council and (2) the County Council (**“the Original Obligation”**).
- D. The Owner acquired the freehold interest in the Application Land on 27th July 2022.
- E. The Owner has requested that the Borough Council vary the terms of the Original Obligation and the Parties have agreed to enter into this Deed to secure the variations to the Original Obligation as detailed herein.

OPERATIVE PROVISIONS:

INTERPRETATION

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

CONTINUING OBLIGATIONS

2. This Deed is supplemental to the Original Obligation and is made under the provisions of Section 106 and 106A of the Act and shall be deemed to be a planning obligation for the purposes of the said Sections 106 and 106A and Section 111 of the Local Government Act 1972 and all other enabling powers and the obligations herein shall be enforceable by the Borough Council pursuant to the Original Obligation as varied by this Deed..
3. The Owner covenants with effect from the date hereof that the obligations and covenants in the Original Obligation (as varied where appropriate) save to the extent that they have already been satisfied continue to bind the Application Land in respect of any Development of the Application Land.
4. The covenants and obligations given by the Owner herein shall bind the Owner's interests in the Application Land and any successors in title thereto save that the Owner shall not be liable for the breach of any covenant or obligation after they have parted with their interest in the Application Land 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 Original Obligation.
6. The Parties agree from the date hereof to vary the Original Obligation in the manner appearing in the Schedule to this Deed in respect of Development carried out pursuant to the Planning Permission herein referred to save that in all other respects the terms of the Original Obligation shall remain in full force and effect subject to such variations as have been or may in the future be agreed.

LOCAL LAND CHARGES

7. This Deed is a local land charge and the same 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 to enforce any term of the Original Obligation 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.

COSTS

10. The Owner covenants to pay the Borough Council's legal costs in respect of the negotiation of this Deed prior to the completion hereof.

MORTGAGEE CONSENT

11. The Mortgagee consents to the Owner enter into this Deed and acknowledges that the Original Obligation shall be varied as herein stated save that the Mortgagee will not be liable for the Original Obligations unless the Mortgagee takes possession of the Application Land

The Schedule

1. Variations to the Original Obligation

The words “*this clause*” shall be deleted from clause 3.1.10 and replaced with “*clause 3.1*”.

IN WITNESS whereof these presents have been executed by the Parties hereto as a deed and delivered the day and year first above written.

The Common Seal of THE COUNCIL OF THE)
BOROUGH OF HINCKLEY AND BOSWORTH)
was affixed to this deed in the presence of:

.....
Authorised Signatory

The Common Seal of LEICESTERSHIRE
COUNTY COUNCIL was affixed to this deed in the
presence of:

.....
Authorised Officer

[Gateleys to insert appropriate execution clauses for
the Owner and Mortgagee]

