

DATED

15th November 2022

2022

MID SUFFOLK DISTRICT COUNCIL (1)

-and-

SUFFOLK COUNTY COUNCIL (2)

-and-

LOVELL PARTNERSHIPS LIMITED (3)

-and-

THE HAVEBURY HOUSING PARTNERSHIP (4)

**DEED OF VARIATION OF PLANNING OBLIGATION
UNDER SECTION 106 AND 106A
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

relating to land west of Wattisfield Road, Walsham-Le-
Willows, Suffolk

Planning Ref: DC/20/04630 & DC/21/01351

This Deed is dated

15th September

2022

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the District Council") and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the County Council")
- (3) **LOVELL PARTNERSHIPS LIMITED** (company registration number: 02387333) of Kent House, 14-17 Market Place, London, W1W 8AJ ("the First Owner")
- (4) **THE HAVEBURY HOUSING PARTNERSHIP** (Registered Society Number RS007648) whose registered office is at Havebury Way, Western Way, Bury St Edmunds, Suffolk IP33 3SP ("the Second Owner")

Together "the Parties"

INTRODUCTION

- (A) The District Council is a local planning authority for the purposes of the Act for the area in which the Site (as defined in the Original Agreement) is located
- (B) The First Owner is the freehold owner of part of the Site which is registered at the Land Registry with Title Absolute under Title Number SK393143
- (C) The Second Owner is the registered proprietor of part of the Site which is registered at the Land Registry with Title Absolute under Title Number SK404842
- (C) On 5 July 2018 the District Council, the County Council, Neil Donaghy, Carole Donaghy, Paul Grantham and Jane Grantham entered into the Original Agreement. The freehold owner of the Site is now the First Owner and the Second Owner
- (D) The First Owner has submitted the S.73 Application and the Variation Application to the District Council and the Parties agree to enter into this Deed to vary the Original Agreement as set out in this Deed and for the purposes of ensuring that Development carried out pursuant to the S.73 Application shall comply with and be bound by the provisions of the Original Agreement as varied by this Deed.
- (E) The expressions in this Deed have the meaning ascribed to them in the Original Agreement save as expressly provided in this Deed

1. DEFINITIONS

- 1.1 In this Deed the definitions in the Original Agreement unless the context otherwise

requires.

1.2 In this Deed the following expressions which have the following meanings:

| | |
|-------------------------|--|
| “Act” | means the Town and Country Planning Act 1990 (as amended) |
| “Original Agreement” | means an agreement dated 5 July 2018 made under Section 106 of the Act between 1) Mid Suffolk District Council; 2) Suffolk County Council, 3) Neil Donaghy, Carole Donaghy, Paul Grantham and Jane Grantham, containing planning obligations and other provisions pursuant to section 106 of the Act enforceable by the District Council relating to planning application reference 1352/17 |
| “S.73 Application” | means the application made pursuant to S73 of the Act to vary Conditions 1, 2, 3, 16 and 18 of the Planning Permission Omission of twin garage to plots 29 and 30; Provision of garden sheds for plots 11, 12, 15, 16, 17, 19, 20, 27, 28, 29, 30, 37, 38, 43-52, 54, 55, 56 and 57; and amended fence and gate positions (revisions proposed to facilitate increase in affordable provision from 21 to 31). As per drawings and documents submitted 17/10/2020 given reference number DC/20/04630 |
| “S.73 Permission” | means planning permission granted pursuant to the S.73 Application |
| “Variation Application” | means the application for the Modification of a Section 106 Planning Obligation - Variation of S106 Legal Agreement dated 5th July 2018 under 1352/17 given reference number DC/21/01351 |

2. LEGAL BASIS

2.1 This Deed is supplemental to the Original Agreement and is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning

obligations for the purposes of section 106 of the Act enforceable by the District Council.

2.2 The terms, conditions and definitions of the Original Agreement shall remain in full force and effect except as varied by this Deed.

3. COMMENCEMENT

This Deed shall take effect upon the date hereof.

4. VARIATION

4.1 With effect from the date of this Deed the Parties agree to vary the Original Agreement as set out in the Schedule to this Deed.

4.2 The First Owner and Second Owner covenant with the District Council and the County Council that from the Commencement Date pursuant to the S.73 Permission that any development carried out pursuant to the S.73 Permission shall be bound by the Original Agreement as varied by this Deed of Variation

4.3 In all other respects the contents of the Original Agreement are confirmed and agreed and shall continue to bind the Site as varied by this Deed.

5. OTHER PROVISIONS

5.1 On completion the First Owner and Second Owner will pay the District Council's reasonable legal costs in connection with this Deed

5.2 The First Owner and Second Owner warrant that they have full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Land

6. LOCAL LAND CHARGE

6.1 This Deed shall be registered as a local land charge.

The Schedule

Variations

1. The Parties agree to vary the Original Agreement as follows:
 - 1.1. The definition of Affordable Housing Units shall be amended so that the words “a minimum of” shall be inserted between the word “means” and “35%”
 - 1.2. The definition of Application shall be deleted and replaced with the following new definition:

“means the application for outline planning permission to develop the Site in accordance with the application plans and other materials deposited with the District Council and validated on the 6th April 2017 and bearing the District Council’s reference number 1352/17 and/or the application made pursuant to S73 of the Act to vary Conditions 1, 2, 3, 16 and 18 of planning permission 1352/17 as per drawings and documents submitted 17/10/2020 given reference number DC/20/04630”
 - 1.3. The definition of Chargee shall be deleted in its entirety
 - 1.4. Clause 2.8 of the Original Agreement shall be deleted and replaced with the following new clause 2.8:

“Save for the provisions contained in the First Schedule none of the covenants contained in this Deed on the part of the Landowner shall be enforceable against owner occupiers or their mortgagees, Registered Providers or their mortgagees or tenants of the Dwellings nor against those deriving title from them”
 - 1.5. Paragraph 3 Part 3 First Schedule shall be deleted in its entirety and replaced with the following new paragraph 3

“3. The obligations and restrictions contained in this Schedule shall not be binding upon:

 - 3.1 a mortgagee chargee or receiver appointed by a chargee who has first complied with the provisions of paragraph 4 of this Part 3;
 - 3.2 any RTA Purchaser;
 - 3.3 any Affordable Housing Unit where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, a voluntary grant scheme under section 21 of the Housing Act 1996 or any amendment or replacement thereof;
 - 3.4 a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire or a voluntary right to buy scheme under the Housing Act 1985 or the Housing and Planning Act 2016 or a right to acquire under the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right including the preserved right to buy) in respect of an Affordable Dwelling;

3.5 a leaseholder who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest or by a person who has acquired 100% of a Shared Ownership Unit;

3.6 a mortgagee or chargee (or any receiver (including an administrative receiver or administrator) 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 (however so appointed) including a housing administrator (each a "Receiver") of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT it has first complied with the following:

3.6.1 such mortgagee or chargee or Receiver shall first give notice to the Council of its intention to dispose of the Affordable Housing Units 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 Housing Units to another Registered Provider or to the Council 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, costs and expenses; and

3.6.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the obligations contained in this Schedule which provisions shall determine absolutely in relation to the affected Affordable Housing Units

3.7 all persons or bodies deriving title under or through any persons or bodies referred to in paragraphs 3.1 - 3.6 above (including their mortgagees and successors in title)

1.4 Paragraph 4 Part 3 First Schedule shall be deleted in its entirety

IN WITNESS whereof the parties hereto have executed this document as a Deed on the day and year first before written.

The COMMON SEAL of)
MID SUFFOLK DISTRICT COUNCIL)
was affixed in the presence of:)



[Handwritten signature]

Authorised Signatory

The COMMON SEAL of)
SUFFOLK COUNTY COUNCIL)
was affixed in the presence of:)



Authorised Signatory

[Handwritten signature]

Signed as a deed by **DAVID GOUGH** and **M GOAWES**
as attorneys for **LOVELL PARTNERSHIPS LIMITED** under a power of attorney
in the presence of:

[Handwritten signature] SIGNATURE

[Handwritten signature]
as atty for Lovell Partners Ltd

WITNESS

[Handwritten signature] SIGNATURE

SUZANNE MOORE NAME
MARSTON PARK

TAMWORTH ADDRESS
STAFFORDSHIRE
B78 3HN

[Handwritten signature] SIGNATURE
as attorney for Lovell Partnerships Limited

WITNESS

[Handwritten signature] SIGNATURE

Andy Starlings NAME
Lakeside 500

Broadland Business Park ADDRESS
Norwich, NR7 0WG

Executed as a deed by

THE HAVEBURY HOUSING

PARTNERSHIP acting as it's
attorney ^{James Howard} ~~Chimi Shakohoxha~~ in the
presence of:



.....

Director

Name

James
Howard

~~Chimi-~~

~~Shakohoxha as~~

attorney

For The Havebury

Housing

Partnership

Witness Name: *Anett Lengyel*

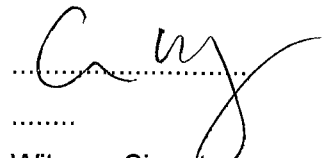
Witness Address:

CAPSTICKS
Solicitors LLP

1 St George's Road, Wimbledon,
London, SW19 4DR

.....
Director/Secretary

Name



.....
Witness Signature