

Dated 24 January 2023

MID SUFFOLK DISTRICT COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

BDW TRADING LIMITED (3)

LEGAL & GENERAL AFFORDABLE HOMES (4)
(DEVELOPMENT 2) LIMITED AND LEGAL &
GENERAL AFFORDABLE HOMES LIMITED

DEED OF VARIATION

made under section 106A of the Town and
Country Planning Act 1990 relating to the
development of land South of Stowmarket
Road, Woolpit, Suffolk
(planning application reference number
1636/16)



GOWLING WLG

Tel +44 (0)370 903 1000 Fax +44 (0)370 904 1099 mail@gowlingwlg.com www.gowlingwlg.com

Council ref: BM31.527

THIS DEED is made the

24

day of

January

2023
~~2022~~

BETWEEN

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich IP1 2BX (the "Council");
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX (the "County Council");
- (3) **BDW TRADING LIMITED (Company Registration Number 3018173)** whose registered office address is Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire LE67 1UF (the "First Owner"); and
- (4) **LEGAL & GENERAL AFFORDABLE HOMES (DEVELOPMENT 2) LIMITED (Company Registration Number 11907021)** whose registered office address is One Coleman Street, London, EC2R 5AA and **LEGAL & GENERAL AFFORDABLE HOMES LIMITED (Company Registration number 11223470)** whose registered office address is One Coleman Street, London EC2R 5AA (the "Second Owner").

Together "the Parties"

RECITALS

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated and by whom the Affordable Housing obligations are enforceable.
- (B) The County Council is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- (C) The First Owner is the freehold owner of the Site registered with the Land Registry under Title Number SK398349.
- (D) The Second Owner is the beneficial owner of part of the Site being the Affordable Rent Units and the Shared Ownership Units registered at the Land Registry under Title Numbers SK409691, SK412554 and SK412542 of which the transfers dated 5 July 2021, 26 November 2021 and 7 December 2021 are in the course of registration at the Land Registry.

- (E) On the 4 July 2018 (1) the Council; (2) Suffolk County Council; (3) Rosa Elizabeth Bolton, Jane Ursula De La Tour, Elizabeth Mary Freeman and David Mason Howlett, entered into an agreement made pursuant to s106 of the Act in respect of the Development at the Site (the **"Principal Agreement"**).
- (F) In addition to the Principal Agreement, on the 4 July 2018 (1) Rosa Elizabeth Bolton Jane, (2) Ursula De La Tour, (3) Elizabeth Mary Freeman and (4) David Mason Howlett entered into a unilateral undertaking to the Council and the County Council pursuant to s106 of the Act in respect to the Development at the Site which secured the transfer of land to the Council for use as a car park by Woolpit Health Centre (**"Unilateral Undertaking"**). This Deed does not vary the Unilateral Undertaking.
- (G) The Council, the County Council, the First Owner and the Second Owner have agreed to vary the Principal Agreement as set out in this Deed to ensure that the Affordable Housing obligations are acceptable to a Registered Provider and to secure the delivery of the Affordable Housing Units and confirm the position on future permissions pursuant to Section 73 of the Act.

1 INTERPRETATION OF THIS DEED

- 1.1 Words in this Deed importing the singular meaning shall where the context so admits include the plural meaning and vice-versa.
- 1.2 Words in this Deed of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa.
- 1.3 References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force.
- 1.4 The term "the Council" and the "County Council" shall include any officer employed by the Council who is authorised to act on its behalf.
- 1.5 References to the First Owner and Second Owner shall include successors in title and any person deriving title therefrom.
- 1.6 The Second Owner shall not be liable under the terms of the Principal Agreement or this Deed until such time as it takes possession of part of the Site.

1.7 For the avoidance of doubt any Schedules hereto are incorporated into and form part of this Deed.

1.8 In this Deed save where indicated otherwise words and phrases shall have the meanings ascribed to them in the Principal Agreement including, for the avoidance of doubt, in the recitals above.

NOW THIS DEED WITNESSES as follows:

2 LEGAL BASIS

This Deed varies the Principal Agreement and is entered into and completed pursuant to:

- (a) Section 106A of the Act and the obligations entered into by the First Owner contained in this Deed shall constitute planning obligations to which the provisions of Section 106 of the Act shall apply and they shall be binding and enforceable from the date hereof by the Council and the County Council against the First Owner and any person deriving title therefrom as provided by section 106 and section 106A of the Act; and
- (b) section 1 of the Localism Act 2011 Act in relation to any covenants given under this Deed which fall outside the scope of sections 106 and 106A of the Act; and
- (c) all other enactments and/or powers which may be relevant for the purposes of giving validity hereto.

3 CONDITIONALITY

The provisions of this Deed shall become binding on the date hereof.

4 VARIATIONS TO THE PRINCIPAL AGREEMENT

- 4.1 The Principal Agreement shall be varied from the date of this Deed and shall otherwise remain in full force and effect.
- 4.2 The Parties hereto hereby agree and declare that the Principal Agreement shall be varied as follows:

- (a) The definitions of "Chargee" set out at Clause 1 and in Paragraph 1.4 of the Nominations Agreement attached to the Seventh Schedule shall both be deleted and replaced with the following:

"Chargee"

means any 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 any part of the Affordable Housing Units

- (b) The definition of "Chargee's Duty" at Clause 1 shall be deleted and replaced with the following:

"Chargee's Duty"

the tasks and duties set out in Paragraph 2.15 of the Third Schedule;

- (c) The definition of "Shared Ownership Lease" at Clause 1 shall be deleted and replaced with the following:

"Shared Ownership Lease"

means a lease or sub-lease of a Shared Ownership Unit granted at a premium whereby up to 75% (seventy five per cent) and not less than 10% (ten per cent) of the Open Market Value on first purchase of the legal and equitable interest in the Shared Ownership Unit is paid by the tenant upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% of the legal and equitable interest in the Shared Ownership Unit at some future date or dates and which lease shall allow a

rent to be charged on the remainder of the equitable interest in the Shared Ownership Unit at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease or such other figure permitted by HE from time to time. Where a leaseholder acquires 100% of the equity, the capital receipt received between 80% and 100% comprising any grant subsidy is to be recycled by the Registered Provider for new Affordable Housing in the district of Mid Suffolk subject to any such recycling of the grant subsidy being in accordance with the requirements of HE;

- (d) Clause 7.12 shall be amended to include the wording "Subject to Clause 21" before the words "Nothing in this Deed".
- (e) A new Clause 21 is to be added as follows:

"21 Future Permissions

21.1 In the event that any new planning applications are made in respect of the Development pursuant to Section 73 of the Act then with effect from the date that the new planning permission is granted pursuant to Section 73 of the Act:

21.1.1 the planning obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission shall also bind the Site in respect of any planning permission granted pursuant to Section 73 of the Act unless the Council requires otherwise; and

21.1.2 the definitions of "Application", "Development" and "Planning Permission" shall be assumed to include references to any applications under Section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this Clause 21 shall fetter the discretion of the Council in determining any applications under Section 73 of the Act and the appropriate nature and/or quantum of planning obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the Act (whether by way of a new Deed or Deed pursuant to Section 106 of the Act or a modification pursuant to Section 106A of the Act)."

- (f) Paragraph 2.15 of the Third Schedule and Paragraph 10.4 of the Nominations Agreement attached to the Seventh Schedule shall both be deleted and replaced with the following:

"The Affordable Housing provisions of this Schedule shall not be binding on a Chargee or any persons or bodies deriving title through such Chargee PROVIDED THAT:

such Chargee shall first give written 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 (3) 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 and costs and expenses; and

if such disposal has not completed within the three (3) month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely."

- 4.3 The definition of "Shared Ownership Lease" at Paragraph 1.17 of the Nominations Agreement attached to the Seventh Schedule shall be deleted and replaced with the following:

"Shared Ownership Lease"

means a lease or sub-lease of a Shared Ownership dwelling granted at a premium whereby up to 75% (seventy five per cent) and not less than 10% (ten per cent) of the

Open Market Value on first purchase of the legal and equitable interest in the Shared Ownership dwelling is paid by the tenant upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% of the legal and equitable interest in the Shared Ownership dwelling at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest in the Shared Ownership dwelling at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease or such other figure permitted by HE from time to time. Where a leaseholder acquires 100% of the equity, the capital receipt received between 80% and 100% comprising any grant subsidy is to be recycled by the Registered Provider for new Affordable Housing in the district of Mid Suffolk subject to any such recycling of the grant subsidy being in accordance with the requirements of HE.

- 4.4 Paragraph 3.1 of the Nominations Agreement attached to the Seventh Schedule shall be deleted and replaced with the following:

"3.1 Initial let

The Association hereby grants the Council nomination rights for 100% of the initial lets and thereafter 100% for voids in relation to the Affordable Housing Units."

5 MISCELLANEOUS

5.1 The First Owner and the Second Owner with the intent to bind their respective interests in the Site undertake to the Council and the County Council to observe and perform the obligations contained in the Principal Agreement (as amended) as if they were set out in full in this Deed subject to the provisions of the Principal Agreement (as amended) which shall remain in full force and effect.

5.2 Nothing contained or implied in this Deed shall prejudice or affect the rights powers and duties of the Council in the exercise of their functions as local planning authority and their rights powers and duties under all public and private statutes, by-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed.

6 COSTS

The Second Owner shall pay the reasonable legal fees of the Council and the County Council on or before the date of this Deed.

7 LOCAL LAND CHARGE

This Deed shall be registered by the Council as a local land charge for the purposes of the Local Land Charges Act 1975.

8 THIRD PARTY RIGHTS

Only the Parties to this Deed (or their successors in title) can enforce any term of this Deed and any other person will have no right to enforce any term of this Deed under the Contracts (Rights of Third Parties) Act 1999.

9 JURISDICTION

This Deed is to be governed by and interpreted in accordance with the laws of England and the courts of England shall have jurisdiction in relation to any dispute.

IN WITNESS whereof the Parties have executed this instrument as a Deed in the presence of the person(s) mentioned below the day and year first before written

THE COMMON SEAL of
MID SUFFOLK DISTRICT COUNCIL
was hereunto affixed by
in the presence of:

)
)
)
)



Full name:

Samuel Adams

Authorised Signatory

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



Authorised Signatory

EMILY SPRINGFORD



Executed as a DEED by)
)
and)
)
attorneys for and acting on behalf of)
BDW TRADING LIMITED in exercise)
of the powers conferred on them by a)
Power of Attorney dated)
)




Attorney

Matthew Cranfield

Witness signature: 


Witness full name: JOHN DUFFY
7 SPRINGFIELD LYONS APPROACH
CHELMSFORD
Witness address: ESSEX
CM2 5EY
PARTNERSHIP MANAGER

Witness occupation:



Attorney

Annette Hurst

Witness signature: 

Witness full name: JOHN DUFFY
7 SPRINGFIELD LYONS APPROACH
CHELMSFORD
Witness address: ESSEX
CM2 5EY
PARTNERSHIP MANAGER

Witness occupation:

Executed as a DEED by)
LEGAL & GENERAL AFFORDABLE HOMES)
(DEVELOPMENT 2) LIMITED)
acting under a power of attorney)
dated 17 June 2021.)



Full Name of Attorney

Rebecca David Denton

Witness signature



Witness full name

Lauren Moore
Receptionist
134 Akerwood Road
London
SE9 2LQ

Witness address

Witness occupation

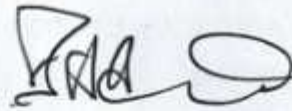
Executed as a Deed by

LEGAL & GENERAL AFFORDABLE

HOMES LIMITED

acting by a director

)
)
)
)



B. H. DEUTON

Director's Full Name

in the presence of:

Witness signature



Witness name

Witness address

Lauren Moore
Receptionist
134 Alderwood Road
London
SE9 2LQ

Witness occupation