

Dated 9 November 2023

MID SUFFOLK DISTRICT COUNCIL (1)

AND

SUFFOLK COUNTY COUNCIL (2)

AND

BLOOR HOMES LIMITED (3)

DEED OF VARIATION

Varying the terms of deed dated 30 April 2021
made under s.106 of the Town and Country
Planning Act 1990 relating to land south of
Union Road, Onehouse, Stowmarket, Suffolk

DATED 9 November

2023

THIS DEED is made by:

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House 8 Russell Road, Ipswich IP1 2BX (the "District Council");
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road, Ipswich IP1 (the "County Council");
- (3) **BLOOR HOMES LIMITED** (company registration number: 02162561) of Ashby Road, Measham, Swadlincote DE12 7JP (the "Owner")

Together the "Parties"

RECITALS

- (A) The District Council is the local planning authority for the purposes of the Act for the area within which the Site is situated.
- (B) The County Council is the local highway authority (except for trunk roads) and the local education authority, and 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 of Variation are enforceable.
- (C) The Owner is the freehold owner of the Site pursuant to a transfer by Paul Gerald Barnard (the previous owner) dated 21 November 2021 which comprises the land registered with the Land Registry under title number SK192458 as more fully described in the s.106 Agreement.
- (D) The District Council has granted planning permission DC/20/01110 ("Outline Planning Permission").
- (E) The District Council and the County Council have previously entered into an agreement under s.106 of the Town and Country Planning Act 1990 relating to land south of Union Road, Onehouse, Stowmarket, Suffolk dated 30 April 2021 containing covenants for the benefit of the County Council ("the s.106 Agreement").
- (F) The Parties hereto have agreed to enter into this Deed of Variation to enter into new covenants relating to the Travel Plan Contribution under Section 106 of the Town and Country Planning Act 1990.

1 INTERPRETATION

- 1.1 Where in this Deed of Variation reference is made to any clause, paragraph, schedule or recital such reference is a reference to a clause, paragraph, schedule or recital in this Deed of Variation or the s.106 Agreement as the context dictates.
- 1.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all words shall be construed interchangeable in that manner.
- 1.3 Where there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 1.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.5 References to any party to this Deed of Variation shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the County Council the successors to their respective statutory functions.
- 1.6 References to "the parties" shall mean the parties to this Deed of Variation and reference to a "party" shall mean any one of the parties.
- 1.7 The headings are for reference only and shall not affect construction.
- 1.8 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.9 In this Deed of Variation unless the context otherwise requires the words and expressions contained herein shall have the same meaning as that ascribed to them in the s.106 Agreement.

2 STATUTORY AUTHORITY

- 2.1 This Deed of Variation is made pursuant to Section 106 of the Act.
- 2.2 The covenants given by the Owner under clause 3 of this Deed of Variation create planning obligations pursuant to Section 106 of the Act and are enforceable by the County Council as local planning authority against the Owner and any person deriving title in the Site or any part of it from the Owner.
- 2.3 The provisions of this Deed of Variation shall come into effect on the date hereof.

3 VARIATION OF THE S.106 AGREEMENT

- 3.1 The Parties agree that from the date of this Deed of Variation the S.106 Agreement shall be varied.
- 3.2 The definition of 'Travel Plan Contribution' shall be removed in its entirety from the S.106 Agreement.
- 3.3 The following definitions shall be inserted:

Full Travel Plan Means a working plan to include all measures to ensure sustainable means of travel are available to residents of the Development in accordance with the requirements of the National Planning Policy Framework and amended from time to time under the provisions of the Full Travel Plan Monitoring Report.

Full Travel Plan Monitoring Report Means the annual monitoring of the implementation of the Full Travel Plan.

Interim Travel Plan Means the travel plan approved as part of the Application and given reference number CCE/X511/IRTP-02.

Residential Travel Pack Means a printed product issued to each property upon first occupation, to include a multi-modal voucher equivalent to the greater of at least two (2) months bus travel to Ipswich town centre or £150 and developed in accordance with the Suffolk County Council Residential Travel Pack Components guidance.

Travel Plan Monitoring Fee Means the sum of one thousand pounds (£1,000) RPI Indexed per annum for the purpose of monitoring compliance with the Travel Plan.

- 3.4 Schedule 3, Part 4 (Travel Plan Contribution), Clause 1 shall be deleted in its entirety and replaced with the following:

"1. Unless otherwise agreed with the County Council the Owner covenants to implement the Interim Travel Plan in full.

2. The Owner covenants to submit a draft Resident Travel Pack to the County Council for written approval by the County Council no less than three months prior to the Occupation of the first (1st) Dwelling.

3. The Owner hereby covenants not to Occupy or permit or allow Occupation of any Dwelling until the draft Resident Travel Pack has been submitted to, and approved in writing by, the County Council.

4. The Owner covenants to provide a Residential Travel Pack including a multimodal voucher to the value of at least two (2) months bus travel to Ipswich town centre or £150, whichever is greater, to each Dwelling forming part of the Development within one (1) month of the first Occupation of each Dwelling.

5. The Owner covenants to submit the Full Travel Plan to the County Council for written approval by the County Council prior to the first Occupation of the fiftieth (50th) Dwelling.

6. The Owner hereby covenants not to Occupy or permit or allow Occupation of more than forty nine (49) Dwellings until the Full Travel Plan has been submitted to, and approved in writing by, the County Council.

7. The Owner covenants to submit to the County Council on an annual basis on the anniversary of the first occupation of the one hundredth (100th) Dwelling the Full Travel Plan Monitoring Report for a period of five years or until one year after occupation of the final Dwelling, whichever is the longer.

8. The Owners hereby agree and covenant to pay the Travel Plan Monitoring Fee to the County Council prior to first Occupation of the hundredth (100th) Dwelling and then a further Travel Plan Monitoring Fee to the County Council on each subsequent anniversary thereafter for a total of five years or until One Year after Completion of Development whichever is the later.

9. The Owner hereby covenants not to Occupy or permit or allow Occupation of more than ninety nine (99) Dwellings until the Owners have paid the first instalment of the Travel Plan Monitoring Fee to the County Council."

3.5 For the avoidance of doubt, subject to the amendments set out in Clauses 3.2 – 3.4 above, the S.106 Agreement shall continue in full force and effect.

4 RELEASE AND LAPSE

4.1 The Owner shall not be liable for a breach of any of its obligations under this Deed of Variation (save for antecedent breaches) after it shall have parted with all of its interests in the Site or such parts thereof in respect of which the breach occurs.

4.2 Nothing in this Deed of Variation shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed of Variation.

4.3 The covenants given in this Deed of Variation shall not be enforceable against the purchaser or occupier of an individual Dwelling erected on the Site pursuant to the Outline Planning Permission or against any statutory undertaker who has an interest in or arising purely in connection with its apparatus or operational land situated within the Development.

5 DUTY TO ACT REASONABLY

All parties to this Deed of Variation acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any deed consent approval or expression of satisfaction is due from one party to another under the terms of this Deed of Variation the same shall not be unreasonably withheld or delayed.

6 NO FETTER ON DISCRETION OR WAIVER

6.1 Nothing contained or implied in this Deed of Variation shall prejudice or affect the rights discretions powers duties and obligations of the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

6.2 No waiver (whether expressed or implied) by the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed of Variation shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

7 SEVERABILITY

If any part of this Deed of Variation shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Deed of Variation shall continue in full force and effect.

8 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed of Variation shall be enforceable by a third party who is not a party to this Deed of Variation and for the avoidance of doubt the terms of this Deed of Variation may be varied by deed between the parties and their successors in title and the County Council without the consent of any such third party.

9 NOTICES

9.1 Any notices required to be served by one party on another under this Deed of Variation shall be served by First Class prepaid post or by email in the following manner:

- (a) On the Council at the address shown above or as notified by the Council in writing to the Owner;
- (b) on the County Council at the address shown above or as notified by the County Council in writing to the Owner; and

- (c) on the Owner at the address detailed above or as notified by the Owner in writing to the Council and the County Council.

10 DISPUTE RESOLUTION

- 10.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) shall be referred to arbitration before a single Expert (the "Expert")
- 10.2 The Parties to the dispute shall jointly appoint the Expert not later than 20 (twenty) Working Days after service (on all other parties to the dispute) of a request in writing by any Party to the dispute to do so
- 10.3 If the Parties to the dispute are unable to agree within 20 (twenty) Working Days as to the appointment of such Expert then the Expert shall be appointed on the application of any of the Parties to the dispute as follows:
 - (a) difference or question related to the rights and liabilities of either Party to the dispute or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society; or
 - (b) difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers; or
 - (c) difference or question related to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Parties to the dispute but in default of agreement appointed at the request of a Party to the dispute by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or
 - (d) if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Parties to the dispute but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute.
- 10.4 In the event of a referenced to arbitration the parties to that dispute agree to:
 - (a) prosecute any such reference expeditiously; and
 - (b) do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable
- 10.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award
- 10.6 The award shall be in writing signed by the Expert and shall be finalised within 10 (ten) Working days of the hearing

- 10.7 The award shall be final and binding in the absence of manifest error both on the Parties to the dispute and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be and the Expert's costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares
- 10.8 Unless the Deed has already been terminated each of the Parties to the dispute shall in every case continue to comply with its obligation under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause 15 but without prejudice to the rights and obligations of the Parties in relation to the termination of this Deed and other methods of enforcement
- 10.9 The provisions of this clause shall not affect the ability of a party to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief

11 JURISDICTION

This Deed of Variation is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

12 DELIVERY

This Deed of Variation is a deed and for the avoidance of doubt this Deed of Variation shall be deemed not delivered despite being executed by the parties until such time as it is dated.

EXECUTED AS A DEED by)

affixing the common seal of)

MID SUFFOLK DISTRICT COUNCIL)

In the presence of [Redacted])

Authorised by [Redacted]



EXECUTED AS A DEED by)

affixing the common seal of)

SUFFOLK COUNTY COUNCIL)

in the presence of:)

Anna Mulholland.

Authorised signatory



EXECUTED AS A DEED by [Redacted])

BLOOR HOMES LIMITED)

In the presence of: [Redacted])

Anthony Lowe
Authorised Signatory

Michael Nash
Authorised Signatory

Witness Name:

Witness Address:

Occupation:

[Redacted]
Gaby Allen
Bloor Homes Ltd
Ashby Road
Measham
Swadlincote
Derbyshire DE12 7JP
Management Accountant