

DATED

2024

- (1) **THE BOROUGH COUNCIL OF WORTHING**
- (2) **PERSIMMON HOMES (THAMES VALLEY) LTD**
- (3) **E E REED AND CO. (BUILDERS) LTD**

**SUPPLEMENTAL DEED AND DEED OF
VARIATION TO A
SECTION 106 AGREEMENT DATED 8
FEBRUARY 2022**

relating to

**LAND NORTH WEST OF GORING RAILWAY STATION,
GORING STREET, WORTHING, WEST SUSSEX**

Planning Application Reference: AWDM/1264/20

Appeal Reference: APP/M3835/W/21/3281813

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BETWEEN:

- (1) **THE BOROUGH COUNCIL OF WORTHING** of Town Hall, Chapel Road, Worthing, West Sussex BN11 IHA (the "**Council**");
- (2) **PERSIMMON HOMES (THAMES VALLEY) LTD** (company registration number 02142835) of Persimmon House, Fulford, York YO19 4FE (the "**Developer**");
- (3) **E E REED AND CO. (BUILDERS) LTD** (company registration number 00638763) of Persimmon House, Fulford, York YO19 4FE (the "**Owner**");

collectively referred to as 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 is entitled to enforce obligations on the part of the Owner herein for the purposes of section 106(9) of the Act.
- B. The Owner is the registered proprietor of the freehold interest title absolute in the Site registered at the Land Registry under the title number WSX359197.
- C. The Developer submitted the Application and is proposing to carry out the Development on behalf of the Owner.
- D. The Application was refused by the Council on 11 March 2021 and the Developer subsequently lodged the Appeal.
- E. An agreement pursuant to section 106 of the Act in relation to the Application and subsequent Appeal was entered into between the Parties on 8 February 2022 (the "**Principal Agreement**").
- F. The Appeal was heard by Inspector Rory Cridland (LLB (Hons), PG Dip, Solicitor) at a public inquiry held on 18 to 21 January 2022 and 25 to 28 January 2022 and was subsequently allowed and Planning Permission granted pursuant to the Inspector's decision letter dated 25 February 2022.
- G. The said Inspector's decision letter was the subject of a statutory review challenge brought by the Council pursuant to section 288 of the Act, following which the Inspector's decision was quashed by order of Laing J in the High Court dated 1 August 2022.
- H. The Developer pursued an appeal against the Lang J's order with the Court of Appeal (case number: CA-2022-001665) but the appeal was dismissed by a judgment dated

30 June 2023. As a consequence, the Planning Permission issued by effect of the Inspector's decision letter dated 25 February 2022 is quashed and the Appeal must be redetermined by the Secretary of State.

- I. The redetermined Appeal is scheduled to be heard at a new public inquiry opening on 6 February 2024.
- J. The Parties to this Deed are satisfied that (subject to the relevant provisions of the Principal Agreement as supplemented by this Deed) the provisions of this Deed are relevant planning considerations concerning the Site, directly related to the Development, fairly and reasonably related in scale and kind to the Development and are reasonable in all other respects.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 This Deed is supplemental to the Principal Agreement and introduces additional obligations which will be subject to the same terms as those contained in the main body of the Principal Agreement save where the context provides otherwise.
- 1.2 The capitalised terms used in this Deed shall have the meaning ascribed to them in the Principal Agreement save where otherwise provided or the context otherwise requires.
- 1.3 Save where otherwise provided or the context otherwise requires, all the provisions of the Principal Agreement shall remain in full force and effect.
- 1.4 Where in this Deed reference is made to a clause, paragraph, schedule or plan it is to a clause, paragraph, schedule or plan in this Deed except where otherwise provided in this Deed or where the context otherwise requires.
- 1.5 A reference to any statute or statutory provision shall be constructed as a reference to the same as it may from time to time be amended, modified or re-enacted.
- 1.6 If any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected, impaired or called into question.
- 1.7 The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act.

2. LEGAL EFFECT

- 2.1 This Deed is made pursuant to Sections 106 and 106A of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other powers enabling in that behalf.
- 2.2 The covenants, undertakings and obligations contained in the Principal Agreement as supplemented and varied by this Deed shall bind the Site with the intent that the same shall be enforceable without limit of time not only against the Owner but also against their successors in title and assigns.
- 2.3 This Deed shall be binding and take effect from the date of this Deed.

3. ADDITIONAL OBLIGATIONS AND VARIATION OF THE PRINCIPAL AGREEMENT

- 3.1 The Parties agree that the Principal Agreement is supplemented by this Deed and the additional obligations set out in the First Schedule to this Deed will apply in addition to the obligations secured in the Principal Agreement with effect from the date of and subject to the terms of this Deed.
- 3.2 The Parties further agree that that the Principal Agreement is varied as set out in the Second Schedule to this Deed.
- 3.3 The Principal Agreement shall remain in full force and effect as supplemented and varied by this Deed.

4. COSTS

The Owner will pay to the Council on completion of this Deed the Council's reasonable legal and administrative costs incurred in the negotiation, preparation and completion of this Deed.

5. REGISTRATION

This Deed will be registered as a local land charge in the Register of Local Land Charges maintained by the Council.

6. GENERAL

Waiver

- 6.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants undertakings obligations or restrictions contained in this Deed or the Original Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertakings obligations or restrictions from acting upon any subsequent breach or default in respect thereof by the Owner.

Third Parties

- 6.2 A person who is not named in this Deed does not have any right to enforce any term of this Deed under the Contracts (Rights of Third Parties) Act 1999.

Miscellaneous

- 6.3 Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise by it of its statutory functions and the rights powers duties and obligations of the Council under private or public statutes bye-laws orders and regulations may be fully and effectively exercised as if it were not a party to this Deed.

Jurisdiction

- 6.4 This Deed is governed by and shall be interpreted in accordance with the laws of England.
- 6.5 The courts of England are to have jurisdiction in relation to any disputes between the Parties arising out of or related to this Deed.

Execution

- 6.6 The Parties have executed this Deed as a deed and it is delivered on the date set out above.

Counterparts

- 6.7 This Deed may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

FIRST SCHEDULE – OPEN MARKET HOUSING REQUIREMENTS

Definitions

The following additional definitions are to apply in relation to this First Schedule of this Deed.

“Borough” means the borough of Worthing being the administrative area of the Council

“Local Connection Person” means:

- (i) a person who has for a continuous period of twelve (12) months immediately prior to Occupation of a Dwelling lived and had their only or principal home in the Borough; or
- (ii) a person who has for a period of twelve (12) months immediately prior to their Occupation of a Dwelling been employed and had their principal place of work in the Borough; or
- (iii) a person who has lived and had their only or principal home in the Borough for a continuous period of three (3) years; or
- (iv) a person who has a family resident being one (1) or more of their parents, grandparents, children or siblings living within the Borough for a continuous period of three (3) years

or any person who is the spouse, partner, civil partner, dependant, carer or otherwise a co-habitant of a person who meets one of the above criterion and **“Local Connection Persons”** shall be construed accordingly

“Market Housing Units” means those Dwellings which are not Affordable Housing

“Open Market Value” means the market value of a Dwelling as defined in the RICS Valuation Professional Standards (the Red Book)

“Phase” means a phase of the Development as corresponds to a part of the Development (within which any dwellings are to be constructed) against which a specific application for the approval of Reserved Matters is submitted to the Council or which is otherwise identified as a phase of the Development on any phasing plan for the Development approved by the Council

“Reserved Matters” means those matters relating to the Development which under the terms of the Application have been reserved for subsequent approval by the Council

“Wheelchair User Units” means Dwellings which are built to meet M4(3) of part M of the Building Regulations 2010

The Owner covenants with the Council:

Market Housing for Local Connection Persons

1. To use reasonable endeavours to ensure that not less than 40% of the Market Housing Units in each Phase of the Development are Occupied by a Local Connection Person.
2. The use of reasonable endeavours pursuant to paragraph 1 of this Schedule shall require the Owner to (unless otherwise agreed in writing by the Council) market the relevant Dwellings exclusively for sale to Local Connection Persons for a period of no less than 6 months.
3. Following the marketing of the relevant Dwellings as described in paragraph 2 above for the minimum period of 6 months, the Owner shall be free to market and sell the relevant Dwellings to persons other than Local Connection Persons.
4. For the avoidance of doubt, nothing in paragraphs 1-3 of this Schedule shall be construed as obliging the Owner to sell any Dwelling for a consideration which is less than Market Value.

Wheelchair User Units

5. To ensure that 3% of the Market Housing Units in each Phase of the Development are constructed as Wheelchair User Units.

SECOND SCHEDULE – VARIATION OF THE PRINCIPAL

The Owner covenants with the Council and the Owner and Council agree and acknowledge that the Principal Deed is varied as follows:

Biodiversity Net Gain Delivery and Maintenance

1. The following new definitions shall be inserted at clause 1 (Definitions):

“Biodiversity Net Gain” means an enhancement in the ecological habitats on the Site by reference to the (pre-Development) baseline position as set out in the Biodiversity Net Gain Assessment produced by Urban Edge Environmental Consulting and dated July 2020, submitted with the Application

“Biodiversity Net Gain Plan” means a plan that sets out:

- (i) how a minimum of 10% Biodiversity Net Gain will be achieved on-Site pursuant to the Development;
- (ii) the details of the management and maintenance measures to be undertaken for a minimum period of 30 years from the Completion of the Development in relation to the Biodiversity Net Gain features to be provided on-Site;

the details for securing ongoing written monitoring reports to the Council as relates to the management and maintenance of the Biodiversity Net Gain features to be provided on-Site together with details of the access and inspection arrangements to facilitate such monitoring². The definition “Ecological Management Plan” is deleted from clause 1 (Definitions).

3. In the Fourth Schedule:

- (i) the words “Part 1 –” are inserted before the sub-heading “Public Open Space and Infrastructure” and the words “and Ecological Management Plan” are deleted in paragraph 1.1;
- (ii) a new Part 2 headed “Biodiversity Net Gain” is inserted after paragraph 9 under which the following provisions are incorporated:

The Owner covenants with the Council as follows

1. To submit a Biodiversity Net Gain Plan for each Phase of the Development to the Council for approval prior to the Commencement of Development and not to Commence Development of a Phase until a Biodiversity Net Gain Plan has been approved by the Council for that Phase.

2. To deliver the Biodiversity Net Gain features for each Phase of the Development in accordance with the approved Biodiversity Net Gain Plan for the relevant Phase.
3. To thereafter manage and maintain the Biodiversity Net Gain features delivered pursuant to the relevant approved Biodiversity Net Gain Plan in accordance with the requirements set out in the relevant approved Biodiversity Net Gain Plan.
4. Notwithstanding the requirements at paragraphs 2 and 3 above of this Part 2 of the Fourth Schedule, to otherwise implement, observe, adhere to and perform the requirements of each approved Biodiversity Net Gain Plan.

**THE COMMON SEAL OF
WORTHING BOROUGH COUNCIL**

was affixed in the presence of:
Authorised Signatory

EXECUTED as a **DEED** by
PERSIMMON HOMES (THAMES VALLEY) LTD
acting by a director and secretary

.....

SIGNATURE OF DIRECTOR

.....

SIGNATURE OF SECRETARY

EXECUTED as a **DEED** by
E E REED & CO (BUILDERS) LTD
acting by a director and secretary

.....

SIGNATURE OF DIRECTOR

.....

SIGNATURE OF SECRETARY

ANNEX

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