

DATED

2024

(1) E E REED AND CO. (BUILDERS) LTD

and

(2) PERSIMMON HOMES (THAMES VALLEY) LTD

to

(3) THE BOROUGH COUNCIL OF WORTHING

UNILATERAL UNDERTAKING

Pursuant to Section 106 of The Town and Country Planning Act 1990 (as amended)
relating to:

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

PLANNING APPLICATION NUMBER: AWD/1264/20

PLANNING APPEAL REFERENCE: APP/M3835/W/21/3281813

CONTENTS

RECITALS

Recitals.....2

CLAUSE

1. Interpretation 3
2. Statutory Provisions 6
3. Conditionality..... 6
4. Covenants 7
5. General Provisions..... 7
6. Local Land Charge..... 8
7. Declarations 8
8. Notices 8
9. Third Party Rights 9
10. Execution 9
11. Governing Law 9

APPENDIX

APPENDIX A - SITE PLAN 11
APPENDIX B – FERRING GAP LAND PLAN..... 12

THIS UNILATERAL UNDERTAKING is dated

2024

AND IS GIVEN BY:

- (1) **E E REED AND CO. (BUILDERS) LTD** (company registration number 00638763) of Persimmon House, Fulford, York YO19 4FE (the "**Owner**"); and
- (2) **PERSIMMON HOMES (THAMES VALLEY) LTD** (company registration number 02142835) of Persimmon House, Fulford, York YO19 4FE (the "**Developer**");

TO:

- (3) **THE BOROUGH COUNCIL OF WORTHING** of Town Hall, Chapel Road, Worthing, West Sussex BN11 IHA (the "**Council**").

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 Owner is also the registered proprietor of the freehold interest title absolute in the Ferring Gap Land registered at the Land Registry under the title number WSX362743.
- D. The Developer submitted the Planning Application and is proposing to carry out the Development on behalf of the Owner.
- E. The Planning Application was refused by the Council on 11 March 2021 and the Developer subsequently lodged the Appeal.
- F. An agreement pursuant to section 106 of the Act in relation to the Planning Application and subsequent Appeal was entered into between the parties to this Deed and West Sussex County Council on 8 February 2022 (the **Principal Agreement**).
- G. 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.

- H. 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.
- I. 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.
- J. The redetermined Appeal is scheduled to be heard at a new public inquiry opening on 6 February 2024.
- K. In addition to the obligations provided within the Principal Agreement and other additional obligations which are to be secured in a supplemental deed which is being completed between the Owner, the Developer and the Council concurrently with this Deed, the Owner and the Developer have determined that they will also provide the obligations set in this Deed in favour of the Council.
- L. The Owner and the Developer are satisfied that 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.

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Deed:

1.1 Definitions:

Appeal: the appeal lodged by the Owner with the Secretary of State against the Council's refusal of the Planning Application pursuant to section 78 of the TCPA 1990 under Planning Inspectorate reference APP/M3835/W/21/3281813

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this Deed and for no other purpose, the following operations: operations in connection with any archaeological

investigations works of excavation; demolition site clearance; diversion of services; installation of services for construction purposes only; site or soil investigations remedial action in respect of any contamination; landscaping works; provision of construction access; noise attenuation works; or the erection of hoardings and fences and “**Commence Development**” and “**Commenced**” shall be construed accordingly

- Development:** the development of the Site for mixed use development comprising up to 475 dwellings along with associated access, internal roads and footpaths, car parking, public open space, landscaping, local centre (uses including A1, A2, A3, A4, A5, D1, D2, as proposed to be amended to use classes E, F and Sui Generis) with associated car parking, car parking for the adjacent railway station, undergrounding of overhead HV cables and other supporting infrastructure and utilities (Outline with all matters reserved)
- Dwelling:** a building erected or proposed to be erected upon the Site pursuant to the Planning Permission or part of such building designed for residential occupation by a single household and includes flats and maisonettes
- Ferring Gap Land:** the land shown edged red for identification purposes only on the Ferring Gap Land Plan
- Ferring Gap Land Plan:** the plan of the Ferring Gap Land annexed to this Deed at Appendix 2
- Occupation:** occupation for the purposes permitted by the Planning Permission but shall not include occupation for the purposes of construction or fitting out or for marketing security purposes and ‘Occupy’ and ‘Occupied’ shall be construed accordingly
- Planning Application:** the application for Planning Permission submitted to the Council and assigned reference number AWDM/1264/20 by the Council
- Planning Permission:** Planning Permission granted for the Development pursuant to the Appeal as may from time to time be amended by the approval of a non-material amendment pursuant to Section 96A of the TCPA 1990 or a Section 73 Permission
- Secretary of State:** the Secretary of State for Levelling Up, Housing and Communities (or where the context so requires any successor in function as relates to the Appeal) including

(where the context so requires) any inspector appointed by him to determine the Appeal

Site: land north west of Goring Railway Station, Goring Street, Worthing, West Sussex

Site Plan: the plan of the Site annexed hereto at Appendix A

Section 73 Permission: a planning permission which may be granted by way of approval of an application under Section 73 of the TCPA 1990 permitting the Development subject to conditions which differ from the conditions of the Planning Permission

TCPA 1990: Town and Country Planning Act 1990

Transfer: a transfer of the freehold interest in the Ferring Gap Land

Transfer Terms: a Transfer made subject to the following terms:

- (i) the Transfer will be for (£)nil consideration;
- (ii) the Transfer will be subject to all matters appearing on the title as at the date of Transfer but will be free from any encumbrances which would prevent the Ferring Gap Land being used for the purpose of its Transfer (i.e. landscape and biodiversity preservation and enhancement);
- (iii) the Transfer will include the reservation of such rights, easements and privileges as reasonably required by the Owner;
- (iv) the Transfer will made subject to a restrictive covenant requiring the Ferring Gap Land to be used only for the purposes of facilitating landscape and biodiversity preservation and enhancement thereon; and
- (v) such other terms as may be negotiated between the Council and the Owner at the time of the Transfer

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

1.2 Clause headings shall not affect the interpretation of this Deed.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written includes fax but not e-mail.
- 1.11 A reference to this Deed or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Site and the Ferring Gap Land and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. CONDITIONALITY

- 3.1 Subject to clause 4.2 below and with the exception of clause 2, clause 3, clause 5, clause 7, clause 8, clause 9, clause 10 and clause 11 (which take effect immediately), this Deed is

conditional on the grant and issue of the Planning Permission and the Commencement of Development.

- 3.2 If the Secretary of State determines in his decision letter for the Appeal that any obligation(s) in this Deed are not compatible with any part of the criteria set out at Regulation 122 of the Community Infrastructure Regulations 2010 then the relevant obligations shall cease to have effect and will not be enforceable.

4. COVENANTS

- 4.1 The Owner covenants with the Council that prior to the Occupation of any Dwelling to duly execute and release to the Council a Form TP1 transfer deed (or such other instrument as may be applicable/appropriate at the time of the Transfer) for the Transfer of the Ferring Gap Land to the Council incorporating the Transfer Terms.
- 4.2 The Owner further covenants to the Council that the Owner shall notify the Council as follows:
- (a) immediately of any disposal of its interest in the Site and of the name and address of the new owner (save for the disposal of an individual Dwelling); and
 - (b) immediately of any disposal of its interest in the Ferring Gap Land and of the name and address of the new owner; and
 - (c) of the date of the Occupation of the first Dwelling within 10 Working Days of its occurrence.

5. GENERAL PROVISIONS

- 5.1 Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.
- 5.2 No waiver (whether express or implied) by a party of any breach or default in performing or observing any of the terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent a party from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof.
- 5.3 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Site and the Ferring Gap Land except in respect of any breach subsisting prior to parting with such interest.
- 5.4 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 and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality.
- 5.5 No purchaser (or his mortgagee) (or their respective successors in title) of any individual Dwelling nor any statutory authority or service company acquiring part of the Site for the purposes of undertaking its statutory functions shall be liable for any breach of this Deed.

- 5.6 If the Planning Permission shall expire within the meaning of sections 91, 92 or 93 of the TCPA 1990 or shall at any time be revoked or modified by any statutory procedure without the agreement of the Owner this Deed shall forthwith determine and cease to have further effect (insofar as it has not already been complied with) PROVIDED ALWAYS that the Development has not Commenced.
- 5.7 Nothing in this Deed shall prevent the Owner from developing the Site in accordance with a planning permission other than the Planning Permission.
- 5.8 Any person or body acquiring the benefit of a legal charge over the Site shall have no liability under this deed unless it takes possession of the Site or part thereof or appoints a receiver in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.
- 5.9 In the event that an application made pursuant to section 73 of the TCPA 1990 for an amendment to the Planning Permission is granted this Deed shall (unless the Council determines that revised or additional planning obligations are required as a result of such amendment) apply to development pursuant to the Section 73 Permission as well as to development pursuant to the Planning Permission without the need for a further deed to be entered into pursuant to section 106 of the TCPA 1990 unless the Council requires otherwise.

6. LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such by the Council.

7. DECLARATIONS

- 7.1 The Owner and Developer acknowledge that:
- (a) nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
 - (b) nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

8. NOTICES

- 8.1 Any notice or other communication to be given under this Deed must be in writing and must be:
- (a) delivered by hand; or
 - (b) sent by pre-paid first class post or other next Working Day delivery service.
- 8.2 Any notice or other communication to be given under this Deed must be sent to the relevant party as follows:
- (a) to the Council at the aforementioned address marked for the attention of the Planning Services Manager;
 - (b) to the Owner and the Developer c/o Knights Plc, 42 Kings Hill Ave, Kings Hill, West Malling ME19 4AJ marked for the attention of Haroon Khan;

or as otherwise specified by the relevant party by notice in writing to each other party.

8.3 Any notice or other communication given in accordance with clause 8.1 and clause 8.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting.

8.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

9. THIRD PARTY RIGHTS

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 this Deed SAVE THAT the Council may enforce the obligations in the Deed against the Owner.

10. EXECUTION

The Developer and the Owner have executed this Deed as a deed and it is delivered on the date set out above.

11. GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

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

APPENDIX A - SITE PLAN

APPENDIX B – FERRING GAP LAND PLAN