

Dated

2021

THURROCK COUNCIL (1)

- and -

MARK ROBERT STOLKIN and FAYE MARY CLEMENTS (2)

- and -

PETER BLOMFIELD WILLOWS and MICHAEL ELWYN HUGHES (3)

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

**relating to Planning Application 20/00453/CV and 14/01321/OUT
development of land south of Manor Way, Stanford le Hope**

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PARTIES

- (1) **THURROCK BOROUGH COUNCIL** of Civic Offices, New Road, Grays, Essex RM17 6SL (the “**Council**”);
- (2) **MARK ROBERT STOLKIN and FAYE MARY CLEMENTS** both c/o Edwards Duthie Shamash Solicitors, Bank House, 269-275 Cranbrook Road, Ilford, Essex IG1 4TG (the “**Owner**”); and
- (3) **PETER BLOMFIELD WILLOWS and MICHAEL ELWYN HUGHES** of Clarendon House, Clarendon Road, Redhill, Surrey RH1 1FB (the “**Mortgagees**”)

together referred to as the “**Parties**”

INTRODUCTION

- (A) This Agreement is supplemental to an agreement dated 16th December 2015 (the “**Original Agreement**”)
- (B) The Council is the local planning authority for the area within which the Site is located.

~~(C) The Parties have agreed to vary the Original Agreement and to enter into this Deed to document the same.~~

~~(D)(C) The Owner owns the freehold of the Site registered at HM Land Registry under title number EX583390 subject to two charges in favour of the Mortgagees but otherwise free from financial charges.~~

~~(D) The Parties have agreed to vary the Original Agreement and to enter into this Deed to document the same~~

~~(E)(E) The Parties agree that as a result of this variation all of the residential units at the Property will comprise affordable housing in the form of shared ownership residential units which will increase the eligibility of the development for grant funding.)~~ The expressions in this Deed have the meaning ascribed to them in the Original Agreement save as expressly provided in this Deed.

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

Original Agreement An agreement dated 16th December 2015 made under Section 106 of the Act between Thurrock Council and the Owner containing planning obligations enforceable by the Council as varied by a deed dated 30th September 2020

2. LEGAL BASIS

2.1 This Deed is supplemental to the Original Agreement and is made pursuant to Section 106A of the 1990 Act and Section 112 of the Local Government Act 1972

and Section 1 Localism Act 2011 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 Council.

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

3. **VARIATION**

- 3.1 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.

- 3.2 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 and shall bind the Parties.

4. **OTHER PROVISIONS**

- 4.1 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed in the sum of £[].

- 4.2 The Owner warrants that they have full power to enter into this Deed and other than the Mortgagees there is no other person whose consent is necessary to make this Deed binding on the Site.

- 4.3 The Mortgagees acknowledge and declare that this Deed has been entered into by the Owner with their consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagees shall otherwise have no liability under this Deed unless they take possession of the Site (or part) in which case they too will be bound by the obligations as if they were a person deriving title from the Owner.

- 4.4 Nothing in this Deed affects the Council's powers in respect of any subsisting or antecedent breach or omission in relation to the Original Deed.

- 4.5 This Deed shall be registered by the Council as a Land Charge.

SCHEDULE

Variation

1. The Parties agree to vary the Original Agreement (as varied) as follows:
 - 1.1 The definition of "*Accredited Body*" shall be deleted and all references to "*Accredited Body*" shall be replaced with reference to "*Registered Provider*"
 - 1.2 The definition of "*Affordable Housing Units*" shall be deleted and replaced with the following new definition:

"Affordable Housing Units" means ~~35~~100% of all Residential Units to be provided as Affordable Housing to be constructed as part of the Development as identified on the Affordable Housing Plan
 - 1.3 A new definition shall be inserted as follows:

"Affordable Housing Plan" means a plan to be submitted to and approved by the Council detailing the location and layout and tenure of the Affordable Housing Units
 - 1.4 The definition of "*Affordable Rented Units*" shall be deleted and replaced with the following new definition:

"Affordable Rented Units" means Affordable Housing let by a Registered Provider for a rent which inclusive of any service charge (if any) does not exceed 80% of the open market rent
 - 1.5 A new definition shall be inserted as follows:

"Index Linked" means adjusted proportionately to changes in the Index from 16 December 2015 until the date that the relevant sum becomes payable
 - 1.6 The definition of "*Intermediate Housing Units*" shall be deleted and replaced with the following:

"Intermediate Housing Units" means Affordable Housing disposed of by a Registered Provider using the model shared ownership lease published by the Homes England from time to time whereby (i) a Registered Provider sells shares in the equity of an Affordable Housing Unit to an occupier who pays rent upon the remainder and (ii) Staircasing to 100% of the equity of the dwelling is allowed and "Intermediate Housing Terms" shall mean Dwellings provided as described in this definition;
 - 1.7 A new definition shall be inserted as follows:

"Market Housing" means a Dwelling that is not an Affordable Housing Unit
 - 1.8 In clause 7.2 the words "*insofar as they are referable to the ownership of or relate to such part of the Site*" shall be deleted and replaced with the words "*insofar as they relate to that part*"
 - 1.9 In clause 7.3 the words "*insofar as they are referable to the ownership of the Site*" shall be deleted.

1.10 In clause 7.5 the reference to "Affordable Housing" shall be deleted and replaced with a reference to "Residential Units";

1.11 A new clause 7.9 and a new clause 7.10 shall be inserted as follows:

"7.9. This Agreement shall not be enforceable against any statutory undertaker or entity providing utilities or services to the Development

7.10 This Agreement shall not be enforceable against individual owners or occupiers of Market Dwellings"

1.12 In Paragraph 1.1 of Schedule 6, reference to "2016" shall be deleted;

1.13 Schedule 8 shall be deleted and replaced with the following new Schedule 8:

"

Schedule 8 – Affordable Housing

1. Tenure Mix of Affordable Housing Units

1.1 Subject to Paragraph 1.2 of this Schedule the Affordable Housing Units shall comprise the following tenure mix:

1.1.1 ~~30~~100% of the Affordable Housing Units shall comprise Intermediate Housing Units; ~~and~~

1.2

~~1.1.2 70% of the Affordable Housing Units shall comprise Affordable Rented Housing~~

~~1.2 Notwithstanding Paragraph 1.1 the Registered Provider may elect to provide (at its absolute discretion) Market Housing on Intermediate Housing Terms (by way of additional Affordable Housing but free from the restrictions of this Schedule 8) and upon disposal of at least 60% of the total number of Dwellings on Intermediate Housing Terms the Registered Provider shall not be obliged to provide any Affordable Rented Housing, and the mix of Affordable Housing Units required pursuant to this Schedule 8 shall comprise 100% Intermediate Housing Units~~

2. Delivery of Affordable Housing Units

The Owner covenants with the Council:

2.1 Not to Occupy, or permit to be Occupied, more than 75% of the Market Housing within the Development until:

(a) the Affordable Housing Units within the Development have been completed and (save where the Site is already owned by a Registered Provider) a binding contract has been entered into with a Registered Provider to transfer the Affordable Housing Units to the Registered Provider; and

(b) paragraphs 2.2 and 2.3 and 2.4 of this Schedule have been complied with;

- 2.2 *That the binding contract referred to in paragraph 2.1 (a) shall provide for the transfer of the Affordable Housing Units by means of either the freehold or the grant of a lease of not less than 125 years (or a combination of the two) in each case;*
- (a) with vacant possession;*
 - (b) free of financial charges and of any other encumbrances which would prevent their use as Affordable Housing Units;*
 - (c) with connections to such services as are necessary for the reasonable enjoyment of the Affordable Housing Units as such;*
 - (d) on terms that the Registered Provider shall enter into a Nominations Agreement with the Council in relation to any Affordable Rented Units unless it is agreed between the Registered Provider and the Council that there is no requirement to have a Nominations Agreement in place (or unless there are no Affordable Rented Units to be provided);*
 - (e) together with the grant (and subject to the reservation) of such rights as may reasonably be necessary or desirable for the construction and future occupation of the Development as a whole;*

But otherwise on such terms as may be negotiated with the Registered Provider;

2.3 *a certified copy of the binding contract referred to in paragraph 2.1(a) shall be provided to the Council within five (5) Working Days of it being exchanged;*

2.4 *Prior to Commencement of Development the Owner shall submit the Affordable Housing Plan to the Council for approval identifying the Affordable Housing Units on the Land such plan to include location, unit size and tenure of the Affordable Housing Units*

3. Exclusions

3.1 *This Schedule 8 and any Nominations Agreement shall not be binding on a 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 or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:*

- *such mortgagee or chargee or Receiver 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 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 month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the provisions of this Schedule 8 which provisions shall determine absolutely*

3.2 *The provisions of this Schedule 8 and any Nominations Agreement shall:*

- 3.2.1 *cease to apply to any part or parts of the Site which are disposed of in accordance with paragraph 3.1;*
- 3.2.2 *cease to apply to any completed Affordable Housing Units where a Registered Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 180 of the Housing, Regeneration Act 2008, Part VI of the Housing and Planning Act 2016 or any similar or substitute right applicable;*
- 3.2.3 *cease to apply to any completed Affordable Housing Units where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof; and*
- 3.2.4 *cease to apply to any Intermediate Housing Unit where the tenant or mortgagee has staircased up to 100% in accordance with the terms of the shared ownership lease."*
- 3.3 *The provision of this Paragraph 3 shall be inserted into any Nominations Agreement that the Registered Provide may be required to enter into*

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
THURROCK BOROUGH COUNCIL**
was affixed in the presence of:

Authorised Signatory:

**EXECUTED AS A DEED by
MARK ROBERT STOLKEIN**
In the presence of:

EXECUTED AS A DEED by
FAYE MARY CLEMENTS
In the presence of:

EXECUTED AS A DEED by
PETER BLOMFIELD WILLOWS
In the presence of:

EXECUTED AS A DEED by
MICHAEL ELWYN HUGHES
In the presence of:

Comparison Details	
Title	pdfDocs compareDocs Comparison Results
Date & Time	07/04/2021 15:31:43
Comparison Time	1.55 seconds
compareDocs version	v4.3.300.62

Sources	
Original Document	[#146949673] [v1] Deed of Variation T&H amends 09.03.2021.docx
Modified Document	[#146949673] [v2] Deed of Variation T&H amends 09.03.2021.docx

Comparison Statistics	
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Deletions	8
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Moves	2
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Paragraph Style Changes	0
Character Style Changes	0
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Deletions	
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