Dated 1ST MAY **2024**

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

AND

MR JOHN SAMUEL BADHAM

PLANNING OBLIGATION BY AGREEMENT PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND ASSOCIATED POWERS

RELATING TO LAND ADJACENT TO OAKLEY END, SHELWICK, HEREFORDSHIRE

Herefordshire Council
Legal Services
Plough Lane
Herefordshire
HR4 0LE

Council's Legal Ref: **015241**

THIS DEED is made the 1ST day of MAY 2024

BETWEEN

(1) **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Plough Lane Offices, Plough Lane, Hereford HR4 0LE (**Council**);

(2) **John Samuel Badham of Ash Tree Cottage, Shelwick, Hereford HR1 3AL** (**Owner**);

BACKGROUND

(A) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Development is situated.

(B) The Owner is the freehold owner of the whole of the Site

(C) The Planning Application was submitted to the Council for permission to develop the Site for the purposes and in the manner described in the Planning Application.

(D) Having considered the Planning Application the Council has concluded that it is appropriate to grant the Planning Permission subject to conditions and the prior completion of this Deed.

(E) Pursuant to its statutory duty under section 63 of the 2017 Regulations the Council is required to undertake an appropriate assessment of the implications of the Development and to satisfy itself that the Mitigation secured by the allocation of Phosphate Credits to the Development will ensure the Development is Phosphate Neutral, and will not adversely affect the integrity of the Catchment Area as a Habitat Site.

(F) The Owner agrees to secure the Mitigation in accordance with the Council's Interim Phosphate Policy by the purchase of Phosphate Credits from the Council, in respect of the Development and enters into this Deed accordingly.

(G) The Council has considered the provisions of the development plan and taken into account material planning considerations affecting the site and considers that in the interests of the proper planning of its area the Development of the Site ought to be only permitted subject to the terms of this Deed and for that purpose the parties are expressly willing to enter into this Deed.

(H) The Owner has agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Deed and that they may be enforced by the Council against the Owner and its respective successors in title.

THIS DEED WITNESSES AS FOLLOWS:-

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 For the purposes of the recitals and the covenants in the Agreement, in this Deed the following words and expressions have the following meanings:

"1990 Act"	The Town and Country Planning Act 1990 (as amended);
"2017 Regulations"	The Conservation of Habitats and Species Regulations 2017 (as amended);
"Catchment Area"	means the River Lugg Catchment Area which is an integral part of the River Wye Special Area of Conservation;
"Commencement Date"	means any material operation as defined by section 56(4) of the 1990 Act in relation to any Dwelling on the Site and for the avoidance of doubt this shall include the: - site clearance, - demolition work, - environmental site investigations, - excavation and laying of foundations; - drainage; - erection of any building; - archaeological investigations, - site survey works; - investigations for the purpose of assessing ground conditions, - preparatory and remedial work in respect of any decontamination or - other adverse ground conditions, - diversion and laying of services,

- erection of any temporary means of enclosure and the temporary display of site notices or advertisements.

The words "Commence", "Commencement" shall be construed accordingly;

"Commencement Notice" means a written notice to be in the form set out in Schedule 3 to be served by the Owner on the Council not less than five Working Days prior to Commencement Date;

"Development" means the development of the Site as authorised by the Planning Permission;

"Disposal" means any disposition of whole of the Site under a transfer of the freehold title or grant of leasehold of at least 125 years;

"Dwellings" means the dwellings (including houses flats apartments and maisonettes) to be constructed on the Site pursuant to the Planning Permission and "Dwelling" shall be construed accordingly;

"Habitat Site" means any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites;

"Interim Phosphate Policy"	means the Council's Interim Phosphate Pricing Credit Pricing and Allocation Policy dated May 2022;
"Interest"	means interest at 4.5% above the base lending rate of the Bank of England from time to time;
"Mitigation"	means measures to reduce the input of phosphates to the Catchment Area to off-set the adverse impact of the phosphate output of development, to ensure that the Development is Phosphate Neutral in line with Natural England's policy requirements;
"Occupation"	means occupation for the purposes permitted by the Planning Permission but does not include occupation for the purposes of fitting out, decoration, marketing, staff training or site security and "Occupy" and "Occupying" shall be construed accordingly;
"Phosphate Neutral"	means that a development plan or project does not add to existing phosphate burdens within the Catchment Areas, so there is no net increase in phosphates as a result of the plan or project;
"Phosphate Credit"	means the instrument which represents the removal or offsetting of 1Kg at £14,000 plus VAT of phosphates per annum from the Catchment Area;
"Phosphate Credit Requirement"	means the **2.2** Phosphate Credits required pursuant to the calculations to secure the

	Mitigation and ensure that the Development will be Phosphate Neutral;
"Phosphate Credit Sum"	a payment of thirty thousand eight hundred pounds (£30,800) paid by the Owner to the Council to meet the Phosphate Credit Requirement;
"Plan"	means the plan attached to this Deed at Appendix 1
"Planning Application"	means the application for Planning Permission for the Development submitted to the Council and to which the Council has allocated the reference **P193344/RM.**
"Planning Obligations Manager"	means the Council employee who manages, implements and monitors Section 106 agreements;
"Planning Permission"	means the planning permission subject to conditions which may be granted in respect of the Planning Application;
"Release Declaration"	means the declaration completed by the Owner agreeing to return any unused Phosphate Credits to the Council in accordance with Schedule 1 Part 1 and in the form annexed at Schedule 4;
"Site"	means the land shown edged red on the Plan against which this Deed may be enforced and being part of the land more particularly

	described in the Conveyance dated 7 August 1980 made between John Badham and Harriet Vera Badham (1) and John Samuel Badham (2)
"Working Day(s)"	Mondays to Fridays (excluding days that in England are public holidays) inclusive.

1.2 In this Deed:

1.2.1 the clause headings in this Deed are for convenience only and do not affect its interpretation;

1.2.2 unless otherwise indicated references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

1.2.3 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 and shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.2.4 the headings in this Deed are inserted for convenience only and shall not affect the construction or interpretation of this Deed;

1.2.5 where the agreement, approval, consent or an expression of satisfaction is required by the Owner under the terms of this Deed from the Council; that agreement, approval, consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed;

1.2.6 references to the Site include any part of it;

1.2.7 references to any party in this Deed include the successors in title of that party and assigns and any person deriving title through or under that party. In addition, references to the Council include any successor to its functions as local planning authority exercising planning powers under the 1990 Act;

1.2.8 any words following the term(s) **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.

1.2.9 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;

1.2.10 where two or more people form a party to this Deed the obligations of that party will be joint and several and may be enforced against them all jointly or against each of them individually;

1.2.11 if any provision of this Deed is held by a Court of competent jurisdiction to be illegal unlawful invalid or unenforceable then to the extent possible the offending provision(s) will be severed from the Deed and the legality lawfulness validity and enforceability of the remainder of the Deed shall be unaffected and continue in full force and effect

1.2.12 words importing the singular shall include the plural and vice versa;

1.2.13 words importing the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner.

1.3 Without prejudice to the terms of any other provision contained in this Deed the Owner shall pay all reasonable and proper costs, charges and expenses (including without prejudice to legal costs and Surveyor's fees) reasonably and properly incurred by the Council for the purpose of or incidental to the enforcement of any right or power of the Council or any obligation of the Owner arising under this Deed;

1.4 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 as amended, by any person not a party to it and the terms of this Deed may be varied by a deed agreed between the parties without the consent of any third party being required;

1.5 No party will be liable for any breach of the terms of this Deed occurring after the date on which they part with their entire interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any breaches of this Deed occurring before parting with such interests. Neither the reservations of any rights nor the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this sub-clause;

1.6 This Deed shall not be enforceable against owners/occupiers or tenants of an individual Dwelling nor against those deriving title from them, or any Mortgage Lender not in possession;

1.7 The obligations in this Deed will not be enforceable against a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker;

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

2. EFFECT OF THIS DEED

2.1 This Deed is made pursuant to section 106 of the 1990 Act and to the extent that they fall within the terms of section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.

2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 2 of the Local Government Act 2000, section 1 Localism Act 2011 and all other enabling powers, with the intend to bind the Owners and successors in title.

2.3 The covenants, restrictions and requirements of the Owner contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by them in the Site and their respective successors and assigns.

2.4 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.

2.5 This Deed will be registered as a local land charge by the Council.

3. MISCELLANEOUS

3.1 Nothing in this Deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Deed, whether or not pursuant to an appeal.

3.2 Nothing in this Deed shall be construed as a grant of planning permission.

3.3 Unless expressly agreed otherwise in this Agreement, the covenants in this Deed shall be enforceable without any limit of time against the Owner and any successors in title to the Site and assigns of the Owner in an interest or estate to the Site or any part or parts of the Site as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

4. COMMENCEMENT

The provisions of this Deed shall have immediate effect on the date upon which it is completed.

5. OBLIGATIONS OF THE OWNER

The Owner covenants with the Council as set out in Schedule 1 of this Deed.

6. OBLIGATIONS OF THE COUNCIL

The Council covenants with the Owner as set out in Schedule 2 of this Deed.

7. TERMINATION OF THIS DEED

7.1 This Deed will cease to have effect (insofar only as it has not already been complied with) if:

7.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn prior to the Commencement Date so as to render this Deed or any part of it irrelevant, impractical or unviable or;

7.1.2 the Planning Permission expires prior to the Commencement Date.

7.2 The Council shall upon receipt of a written request by the Owner and without unreasonable delay at any time after this Deed has come to an end under clause 7.1 or the obligations contained in the Schedules hereto have been discharged issue written confirmation thereof and note all related entries in the Register of Local Land Charges provided that the Owner has adequately set out the basis for making such a request.

8. NOTICES

8.1 A notice under this Deed is valid only if it is given by hand, sent by recorded delivery or document exchange and it is served at the address shown in this Deed for the receiving party or at any address specified in a notice given by that party to the other parties.

8.2 A notice sent to the Council:

8.2.1 in relation to any matters arising from Schedule 1 (Part 2) of this Deed shall be addressed to the Planning Obligations Manager Development Management Team, Herefordshire Council, Plough Lane, Hereford HR4 0LE quoting reference P193344/RM;

8.3 A notice:

8.3.1 if delivered by hand, on signature of a delivery receipt provided that, if delivery occurs:

(a) 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

(b) 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

8.3.2 sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post or on the third working day after posting if sent by second class post;

8.3.3 sent through a document exchange is to be treated as served on the first working day after the day on which it would normally be available for collection by the recipient.

9. CHANGE IN OWNERSHIP

9.1 At the time of execution of this Deed, the Owner warrants that no person other than the Owner has any legal or equitable interest in the Site.

9.2 The Owner agrees to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company address or usual address if not) together with the

area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this clause shall not apply in respect of the disposal of any individual Dwelling.

10. ENFORCEMENT

10.1 This Deed is to be governed by and interpreted in accordance with the law of England;

10.2 The Courts of England are to have jurisdiction in relation to any disputes between the parties out of or related to this Deed. This clause operates for the benefit of the Council who retains the right to sue the Owner and enforce any judgment against the Owner in the courts of any competent jurisdiction.

11. DISPUTE

Any dispute or disputes between any of the parties to this Deed arising out of the provisions of this Deed (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) shall be referred to a single arbitrator to be agreed between the parties or in default of agreement on the application of any party by the President of the Royal Institute of Chartered Surveyors in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment for the time-being in force.

12. COUNCIL'S COSTS

The Owner covenants and agrees with the Council that prior to completion of this Deed the Owner shall pay to the Council its reasonable and proper legal costs in connection with the preparation of this Deed, together with all disbursements, incurred in connection with the negotiation, preparation, completion and registration of this Deed up to a maximum of £500;

13. LATE PAYMENT

Without prejudice to the Council's rights to enforce any breaches of this Deed (including by way of injunction) if any sum due to the Council from the Owner under

this Deed is not paid on or before the date upon which it is due then Interest shall be payable from the due date of payment until the actual date of payment

14. COMMUNITY INFRASTRUCTURE LEVY

The terms of this Deed comply in all respects with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 in that the obligations contained herein are necessary to make the Development acceptable in planning terms, directly relate to the Development and fairly and reasonably relate in scale and kind to the Development.

SCHEDULE 1

Owner's Obligations

The Owner covenants with the Council

1. To serve the Commencement Notice on the Council and;
2. Not to allow, suffer or permit the Commencement Date until the Commencement Notice has been served upon the Council.
3. To pay to the Council upon completion of this Deed the Phosphate Credit Sum.

Part 1

The Release of Phosphate Credits Purchased

1. In the event that this Deed terminates in accordance with clause 7.1.1 or 7.1.2 the Owner acknowledges that the Council shall be entitled to re-allocate the Phosphate Credits to other developments and projects in its administrative area.
2. That if the Release Declaration is served on the Council and the Phosphate Credit Sum is paid to the Owner (or such successor in title as provided in this Schedule) then the Owner (or such successor in title) shall not implement the Planning Permission.

Part 2

Disposal of the Site Prior to the Commencement Date:

1. If prior to Commencement Date there is a Disposal of the Site, the Phosphate Credits already purchased shall transfer to the purchaser/successor in title and the Owner shall be responsible for recovering the reimbursement of the Phosphate Credit Sum from the purchaser/successor in title if applicable.
2 If prior to Commencement Date there is a Disposal of the Site, the Owner shall notify the Council in writing within 14 days of the Disposal of the Site to a purchaser/successor in title.
3. The Owner agrees that the Council shall only be required to refund the Phosphate Credit Sum to the Owner or such purchaser/successor in title as notified under paragraph 2 of this Part 2 and provided that the Owner is registered as a freehold or long leasehold (of at least 125 years) owner of the entire Site at the HM Land Registry or is legal owner by

way of the Conveyance dated 7 August 1980 made between John Badham and Harriet Vera Badham (1) and John Samuel Badham (2)

4. The Owner acknowledges that the Council shall not be required to repay any part of the Phosphate Credit Sum due to part implementation of the Planning Permission unless as provided in Schedule 2 below.

SCHEDULE 2

Council's Obligations

The Refund of the Phosphate Credit Sum

1. The Council hereby covenants that on receipt of the completed Release Declaration by the Owner or purchaser or successor in title that it will refund the Phosphate Credit Sum to the Owner or purchaser or successor in title within 28 days of receipt **PROVIDED** always that such refund shall only be paid if the Commencement Date has not occurred.

2. The refund made by the Council in respect of the phosphate credits shall not accrue interest.

SCHEDULE 3
Commencement Notice

TO: Planning Obligations Manager
Hereford Council
Plough Lane
Hereford
HR4 0LE

("the Council")

FROM:

("the Owner")

DEVELOPMENT: (*description of development and site name):*

RELEVANT PLANNING PERMISSION (*reference number):*

RELEVANT SECTION 106 AGREEMENT (*date and parties):*

("the Section 106 Agreement")

I/We Owner * hereby put the Council on notice that we intend to commence development on [{}] 20[{}]. This notice is the Commencement Notice served pursuant to the Section 106 Agreement.

DATED this day of 202**[4]**

.....

Signed by the Owner or an authorised signatory of the Owner

SCHEDULE 4

Release Declaration

Planning Obligations Manager
Hereford Council
Plough Lane Offices,
Plough Lane,
Hereford
HR4 0LE

Planning Application Site:	
the Applicant (full name):	
Development	
Details of the Planning Permission	
Details of the S106 Agreement	

The Owner entered into the above Section 106 Agreement with the Council on [DATE].

In the Section 106 Agreement the Owner agreed to purchase the Phosphate Credits in accordance with Clause 13.4, Schedule 1 of the Section 106 Agreement and the Council's Interim Phosphate Pricing Credit Pricing and Allocation Policy dated May 2022 to offset the phosphate output of the Development and thereby mitigating adverse effects resulting from increased phosphate levels within the River Wye/River Lugg Catchment Area.

The Owner HEREBY GIVES NOTICE to the Council that:

a. The Planning Permission referred to in the Section 106 Agreement has not been granted and the Owner does not intend to appeal this decision or the time for making an appeal against this decision has now expired;

b. The Planning Permission referred to in the Section 106 Agreement has been quashed, revoked or otherwise withdrawn before Commencement of Development;

c. It has been more than 3 years since the date on which the Planning Permission was granted and the Planning Permission has now expired.

[Delete as appropriate]

and the Owner agrees to return the Phosphate Credits as set out below:

I the Owner agree to return to the Council the Phosphate Credits Purchased under the S106 Agreement in respect of the Whole of the Development :	Details of the Phosphate Credits for the Development:
I the Owner agree to return to the Council the Phosphate Credits Purchased under the S106 Agreement for part of the Site:	Details of the Phosphate Credits for that part of the Site where the planning permission has not been implemented:

Signed .....

Owner

Print Name .....

DATED .....

APPENDIX 1 – LOCATION PLAN

[redacted]

Block Plan (survey by others)

[redacted]

Location Plan

HERFORDSHIRE COUNCIL
PLANNING SERVICES
DEVELOPMENT CONTROL
19 SEP 2019
Ref: .....
Ack'd: ..... File: .....

SCALE (m) 1:50
0 1 2 3 4

SCALE (m) 1:100
0 1 2 3 4 5

SCALE (m) 1:200
0 1 2 3 4 5 6 7 8 9 10

SCALE (m) 1:500
0 10 20 30 40

SCALE (m) 1:1250
0 10 20 30 40 50 60 70 80 90 100

SCALE (m) 1:2500
0 20 40 60 80 100

All figure dimensions and levels must be checked on site.
Do not scale dimensions or levels from this drawing for the purpose of setting out or ordering components.
If in doubt check with the consultant.
All scales are as indicated below.

All drainage used by more than one dwelling is now a public sewer, if not previously adopted, and any building over or within 2 metres may require a "building over agreement" with Welsh Water, it will be the responsibility of the client to enter into this agreement.

Revisions

	date	details
A	04.02.19	full planning details

scales 1:200 1:1250 (A1 print)

date 23.02.15 drawn by AG/JP

title
Proposed Dwellings
Land opposite to
Dorgar
Shelwick
Herefordshire
(survey by others)

client
Mr J Badham

drawing no. 854-20 rev. A

c copyright

John Phipps
Architectural Consultant
Bank Lodge
Coldwells Road Holmer Hereford HR1 1LH
01432 276424
Email: johnphipps@ukgateway.net

14026

IN WITNESS of which the parties have executed this Deed on the date of first written above.

EXECUTED AS A DEED when)

THE COMMON SEAL OF)

THE COUNTY OF HEREFORDSHIRE)

DISTRICT COUNCIL

Was hereunto affixed **BY ORDER**)

14026

Authorised Signatory [redacted]

SIGNED as a **DEED** by
MR JOHN SAMUEL BADHAM
in the presence of [redacted]

Witness Name
Signature of Witness [redacted]

Address

[redacted]
T.A. Matthews Solicitors Ltd
Broadway House
32 – 35 Broad Street
Hereford HR4 9AR