

DATED

14TH OCTOBER

2024

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

(1)

and

K W BELL GROUP LIMITED

(2)

DEED OF VARIATION BY AGREEMENT

under

Section 106 of the Town and Country Planning Act 1990

Relating to land to the south of the A465 Burley Gate, Herefordshire

Herefordshire Council

Legal Services

Plough Lane

Herefordshire

HR4 0LE

Council's Legal Ref: 016302

THIS DEED of VARIATION is dated

14th OCTOBER

2024

BETWEEN

- (1) **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Plough Lane Offices, Plough Lane, Hereford HR4 0LE (the **Council**); and
- (2) **K W BELL GROUP LIMITED** (Company registration number 01873421) whose registered office is situate at Whimsey Industrial Estate, Steam Mills, Whimsey, Cinderford GL14 3JA ("the **Owner**");

BACKGROUND

- (A) This Deed is supplemental to the S106 Agreement ("the Principal Deed") ;
- (B) The Council is the local planning authority for the purposes of the planning obligations pursuant to the provisions of Section 106 and Section 106A of the Act and is the body entitled to enforce the planning obligations created by the Principal Deed and this Deed;
- (C) The Owner is registered proprietor of the Land with title absolute under title number HE74502 at the Land Registry;
- (D) The Owner has requested a variation to the tenure of the Affordable Housing provisions in the Principal Deed;
- (E) The parties have agreed that the Principal Deed shall be varied in the manner set out in the Schedule hereof

AGREED TERMS

1. Interpretation

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

1.1 Definitions:

“Principal Deed”

a planning obligation pursuant to S106 of the Town and Country Planning Act 1990 dated 3rd October 2023 made between (1) the Council and (2) Edgar Cyril Enoch Simcock

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this Deed.
- 1.3 Clause headings shall not affect the interpretation of this Deed.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 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 or 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 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.
- 1.11 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 provision

This Deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3. Variations to the Principal Deed

- 3.1 The definition of Affordable Housing Units in the Principal Deed shall be deleted and replaced with:

“Affordable Housing Units” means (unless otherwise agreed in writing by the Council) five of the residential units and ancillary areas comprised within the Development to be comprised of three x 2 bedroom dwellings on plots 1, 2 and 3, and two x 3 bedroom dwellings on plots 4 and 5 and intended for occupation as Low Cost Market Housing forming part of the Application

- 3.2 The definition of Application in the Principal Deed shall be amended to include the following additional words after “2018”:-

“and the application under s.73 of the Town and Country Planning Act 1990 dated 6 October 2023 ref. 240933 validated on 4th April 2024 for the variation of condition 5 of planning permission granted on 6 October 2023 ref. 181678 to substitute a revised approved layout drawing”

- 3.3 The following new definition shall be added at Clause 1 of the Principal Deed:-

“Chargee” Any mortgagee or chargee (or any receiver, including an administrative receiver, appointed by any such mortgagee or charge or any other person appointed under security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator) of the whole or any part of the Affordable Housing Units

- 3.2 The following provisions of the Principal Deed are deleted (since the same are no longer applicable):-

First schedule part 2 para. 2.3.3

First schedule part 2 para. 2.5.3.3

- 3.3 In the First schedule of the Principal Deed part 2, para 2.7.7 is amended as follows (amendment underlined):-

"..... such that no disposition (other than a charge) of any Low Cost Market Unit will be registered unless"

- 3.4. In the First schedule of the Principal deed part 2 para. 2.10.1 the reference number of the Housing Development Officer (Strategic Housing) to be quoted is changed from "[1816780/O]" to:-

1816780/O and 240933/O

- 3.5 In all other respects, the Principal Deed (as varied by this deed) shall remain in full force and effect

4. Covenants to the Council

The Owner and the Lender covenant to observe and perform the covenants, restrictions and obligations contained in the Principal Deed as varied by this Deed.

5. Local land charge

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

6. Endorsement

Following completion of this Deed, the Council shall endorse a memorandum of variation on the Principal Deed in the following terms:

"This Agreement has been varied by a supplemental agreement dated [DATE] and made between The County of Herefordshire District Council and K W Bell Group Limited"

7. Council's costs

The Owner shall pay to the Council on or before the date of completion of this Deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed.

EXECUTED AS A DEED when)
THE COMMON SEAL OF THE)
COUNTY OF HEREFORDSHIRE)
DISTRICT COUNCIL was hereunto)
Affixed BY ORDER)

[Redacted Signature]

Authorised Officer

[Redacted Name]



EXECUTED AS A DEED
by K W BELL GROUP LIMITED
acting by

[Redacted Signature]
.....
Director

in the presence of:-

Signature of witness:-

Name of witness:-

Address of witness:-

[Redacted Witness Information]