

Dated: [Day] [Month] 20

WOKINGHAM BOROUGH COUNCIL

- and -

- and -

[MORTGAGEE]

Deed of Agreement to Provide Planning Obligations
pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 111
Local Government Act 1972
in relation to the proposed development on land at
Stokes Farm, Binfield Road, Wokingham, Berkshire, RG40 5PR
Planning Reference Number: **260204**

Wokingham Borough Council
Shute End
Wokingham
Berkshire
RG40 1BN

Legal Ref: 34000002/570

This Deed is made the day of 20

BETWEEN

1. **WOKINGHAM BOROUGH COUNCIL** of Council Offices, Shute End, Wokingham, Berkshire RG40 1WH ("**the Council**")

2. **[Owner] ("the Owner")**

3. (Company Registration Number) whose registered office is ("**the Mortgagee**")

WHEREAS

1. The Council is the local planning authority for the purpose of the Act for the area in which the Site is situated and by whom the obligations created by this Deed are enforceable.
2. The Council is the local highway authority for the area in which the Site is situated.
3. The Owner is the freehold owner of the Site.
4. The Mortgagee has a legal charge dated registered against the Site and consents to the Owner entering into this Deed
5. The Prior Approval Application has been made to the Council for Prior Approval for the Development on the Site.
6. The Site lies within 5 kilometres of the Thames Basin Heaths SPA.
7. The purpose of the planning obligations in this Deed is to avoid and mitigate any impact which the Development might otherwise have upon the integrity of the Thames Basin Heaths SPA.
8. The Head of Development Management acting under delegated authority of the Council has granted the Prior Approval, however the Parties recognise at the date of this Deed that the Owner cannot lawfully implement the Development (by operation of Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015) without first securing the planning obligations in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 **DEFINITIONS**

For the purposes of this Deed the following words and expressions shall have the following meanings:

"Act" the Town and Country Planning Act 1990, as amended

"Co-ordinating Authority" the authority designated from time to time in the Thames Basin Heath Framework Agreement as the co-ordinating authority for Thames Basin Heaths SPA Access Management and Monitoring Project

Commented [CB1]: Claire - Mortgagee references are kept in the draft for now pending proof of title.

Commented [CB2]: Claire - Has the PA been granted?

Commented [CM3R2]: It was approved under ref 243098 on 12/02/2025

"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of marking out, surveying, ground investigations, archaeological investigations, demolition, site clearance, site preparation, investigation for the purposes of assessing contamination, remedial action in respect of contamination, diversion and laying services and the erection of any temporary means of enclosure for the purposes of site security and the temporary display of advertisements and "Commence", "Commencement" and "Commence Development" shall be construed accordingly
"Development"	the proposed " <i>change of use of an agricultural building to 5no. residential dwellings (Use Class C3) with associated works.</i> " as authorised by the Prior Approval
"Dwelling"	any dwelling (including a house flat or maisonette with associated garden garage driveway and parking spaces) to be constructed on the Site pursuant to the Prior Approval
"Index"	the national all-in tender price index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or such other reference base used to compile the national all-in tender price index as shall be published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or its successor in function
"Index-Linked"	means that the sum of money payable to the Council under this Deed shall be varied by movements in the Index between the date of this Deed and the date of actual payment [and increased] in accordance with the following formula: Amount Payable = Relevant Amount x (A divided by B) Where the Relevant Amount = the payment to be Index Linked A = the figure for the Index which applied when the Index was last published prior to the date the Relevant Amount is actually paid under this Deed B = the figure for the Index which applied when the Index was last published prior to the date of this Deed

	PROVIDED THAT the Index-Linked sum shall never be less than the original sum specified as payable under this Deed It should be noted that the index presents forecast figures which are published quarterly. These forecast figures are updated and finalised periodically. If the indexation figure has not been finalised at such time as A is calculated then the forecast figure will be used for the purposes of the calculation
"Monitoring Fee"	means a sum calculated at a rate of five hundred and twelve pounds (£512.00) per planning obligation trigger for each distinct planning obligation in this Deed (based on the Council's annual Section 106 monitoring costs divided by the annual average number of planning obligation triggers over the preceding five year period) shall amount to a maximum total sum of XXXXX Pounds (£XXXXX)]
"Occupation" and "Occupied"	means personal residential occupation of a Dwelling by an individual or individuals in right of an interest in the Dwelling purchased or rented by that individual or individuals
"Owners"	the First Owner the Second Owner the Third Owner and shall include any successors in title to any of the parties comprised within the definition of the Owners
"Plan"	the plan attached to this Deed
"Prior Approval Application"	the application for prior approval for the Development made under reference 243098 for the Development
"Prior Approval"	the Prior Approval granted pursuant to the Prior Approval Application.
"Rooks Nest Wood SANG"	the Council designated 18.5ha Strategic Suitable Alternative Natural Green Space (SANG) in Barkham as
"Rooks Nest Wood SANG Contribution"	an Index-Linked sum of £11,049.02 (Eleven Thousand and Forty-Nine Pounds and Two Pence) towards the provision of the SANG Capacity in Rooks Nest Wood SANG to mitigate the impact of the Development on the SPA
"SANG Capacity"	[amount of capacity needed] of the Rooks Nest Wood SANG being the amount of SANG which needs to be provided to mitigate the adverse impacts of the Development upon the SPA.
"SPA"	Thames Basin Heaths Special Protection Area

Commented [CB4]: Claire - are we securing a monitoring contribution for this Agreement? I have left this as a placeholder but it can be removed if no MF is being sought.

Commented [CM5R4]: Yes, it stays in.

Commented [CB6]: Claire - please can you confirm the amount of SANG Capacity that needs to be secured? This needs to be included because the Council can't allocate 'infinite' SANG at RNW.

Commented [CM7R6]: Please refer draft to Duncan Fisher/ Andy Glencroos to confirm amount of capacity.

Private: Information that contains a small amount of sensitive data which is essential to communicate with an individual but doesn't require to be sent via secure methods.

"Strategic Access Management and Monitoring Contribution"	an Index-Linked sum of £4,215.00 (Four Thousand Two Hundred and Fifteen Pounds) towards the management and monitoring of strategic access to the SPA
"Site"	the land known as Stokes Farm, Binfield Road, Wokingham, Berkshire and shown for identification purposes only edged red on the Plan
"Site Layout Plan"	the plan attached hereto so marked showing the proposed layout of the Site
"Thames Basin Heaths Framework Agreement"	The Thames Basin Heaths SPA Delivery Framework dated 14th July 2011
"Thames Basin Heaths Special Protection Area"	the area designated on 9 March 2005 under the Wild Birds Directive (Council Directive 79/409/EEC on the Conservation of Wild Birds) to protect three species of breeding birds; woodlark, Dartford warbler and nightjar being a fragmented area of European importance in the counties of Surrey, Hampshire and Berkshire
"Thames Basin Heaths SPA Access Management and Monitoring Project"	the project established to deliver measures required to avoid and mitigate against the recreational impacts of housing development on the SPA the detail of which is set out in Schedule 3 of the Thames Basin Heaths Framework Agreement

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of 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.
- 2.4 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of the restriction.
- 2.5 Where more than one person is obliged to observe or perform an obligation the obligation can be enforced against all such persons jointly and against each individually unless there is an express provision otherwise.
- 2.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

Private: Information that contains a small amount of sensitive data which is essential to communicate with an individual but doesn't require to be sent via secure methods.

- 2.7 References to any party to this Deed shall include the successors in title to that party and to anyone deriving title through or under that party and in the case of the Council the successor to its statutory functions.
- 2.8 The clause headings shall not be taken into account for the purposes of the construction or interpretation of this Deed.
- 2.9 References to this Deed include references to its schedules and the schedules form a part of this Deed.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to all powers enabling the parties and in particular Section 106 of the Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 Section 62 Berkshire Act 1986 and Section 1 Localism Act 2011 and creates planning obligations for the purposes of Section 106 of the Act and to the intent that it shall bind the Owner and its successors in title and assigns and the persons claiming under or through it.
- 3.2 The obligations imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and its successors in title and assigns and the persons claiming under or through it.

4 CONDITIONALITY

- 4.1 This Deed is conditional upon the grant of the Prior Approval.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in the First Schedule.
- 5.2 The Owner covenants with the Council that it will give not less than seven (7) days prior notice in writing to the Council of:
- 5.2.1 the date of Commencement of Development
- 5.2.2 the date of first Occupation of the Dwellings

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Second Schedule.

7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed;
- 7.2 It is hereby agreed and declared that a person who is not a party to this Deed shall not be entitled in his own right to enforce any of the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed shall be enforceable as a local land charge and shall be registered as such by the Council.

Commented [CM8]: Prior Approval was granted subject to Article 3 of the GPDO, the Deed is conditional on completion of this document.

7.4 Where the agreement, approval, consent or expression of satisfaction is to be given by any party or any person on behalf of any party hereto under this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction may only be given in writing and may be validly obtained only prior to the act or event to which it applies and the party giving such agreement, approval, consent or expression of satisfaction shall at all times act reasonably.

7.5 Where any payment of costs or other payments are to be made by the Owner to the Council such costs and other payments shall be deemed to be reasonable and proper.

7.6 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party, and in the case of any notice to be served upon the Council, if it is addressed to the [Head of Development Management/Developer Contributions Team]

7.7 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.

7.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Prior Approval shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

7.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a prior approval or planning consent (other than the Prior Approval) granted (whether or not on appeal) after the date of this Deed.

7.11 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions in any capacity (including in particular its capacities as highway authority and local planning authority) and the rights, powers, duties and obligations of the Council under private, public or subordinate legislation may be effectively exercised as if it were not a party to this Deed.

8 MORTGAGEE'S CONSENT

8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its 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 Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

9 WAIVER

9.1 No waiver (whether expressed or implied) by the Council 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 from

Commented [CB9]: Claire - where should any notices go under this agreement?

Commented [CM10R9]: Justin Turvey - Head of Development Management, Development Management and Compliance.

Commented [CM11R9]: The monies go to Developer Contributions - developer.contributions@wokingham.gov.uk

Commented [CM12]: I believe this comes out if there is no mortgage?

enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10 CHANGE IN OWNERSHIP

- 10.1 The Owner agrees with the Council 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 or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

Commented [CM13]: Can this be amended to 21 days notice?

11 INTEREST

- 11.1 Any payment which is due to the Council under the terms of this Deed that is paid after the date the payment is due shall attract interest at the rate of 4% above the National Westminster Bank PLC base rate from time to time being charged from the date payment was due to the date payment is received by the Council.

12 VAT

- 12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

13 JURISDICTION

- 13.1 This Deed is governed by and interpreted in accordance with the law of England and Wales.

14 DELIVERY

- 14.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

FIRST SCHEDULE

SPA CONTRIBUTIONS

1. STRATEGIC ACCESS MANAGEMENT AND MONITORING CONTRIBUTION

- 1.1 The Owner covenants with the Council to pay the Strategic Access Management and Monitoring Contribution on or before Commencement of Development.
- 1.2 The Owner covenants with the Council not to Commence Development until the Strategic Access Management and Monitoring Contribution has been paid to and received by the Council.

2. ROOKS NEST WOOD SANG

- 2.1 The Owner covenants with the Council to pay the Rooks Nest Wood SANG Contribution to the Council on or before Commencement of Development; and
- 2.2 The Owner covenants with the Council not to Commence Development until the Rooks Nest Wood SANG Contribution has been paid to and received by the Council.

SCHEDULE 2

COUNCIL'S COVENANTS

1. **STRATEGIC ACCESS MANAGEMENT AND MONITORING CONTRIBUTION**
The Council covenants that it will transfer the Strategic Access Management and Monitoring Contribution to the Co-ordinating Authority.
2. **SANG PROVISION**
The Council covenants that upon receipt of the Rooks Nest Wood SANG Contribution it will allocate the SANG Capacity within the Rooks Nest Wood SANG to the Development.
3. **REPAYMENT OF CONTRIBUTIONS**
The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

THE COMMON SEAL OF)
WOKINGHAM BOROUGH COUNCIL)
was hereunto affixed in the presence of:)

Authorised Signatory/ Solicitor

SIGNED AS A DEED)
by the said)
In the presence of:-)

Witness Signature:

Witness Name and Address:

Witness Occupation

EXECUTED AS A DEED BY)
)
acting by its Attorneys
and

Private: Information that contains a small amount of sensitive data which is essential to communicate with an individual but doesn't require to be sent via secure methods.

in the presence of

)

Private: Information that contains a small amount of sensitive data which is essential to communicate with an individual but doesn't require to be sent via secure methods.