

11539

Dated: 25th October 2024

WOKINGHAM BOROUGH COUNCIL

- and -

FRANCES MERCIA EVANS and MADELEINE JOAN EVANS

-and-

ROBERT JOHN MARTIN EVANS

**Deed of Agreement to Provide Planning Obligations
pursuant to Section 106 of the Town and Country Planning Act 1990 and
pursuant to Section 111 of the Local Government Act 1972
in relation to the proposed development on Land at 6 Liddell Close
Finchampstead Wokingham RG40 4NS**

Planning Reference Number: 241990

Wokingham Borough Council
Shute End
Wokingham
Berkshire
RG40 1WH

This Deed is made the 25th day of October

20

BETWEEN

- (1) **WOKINGHAM BOROUGH COUNCIL** of Council Offices Shute End Wokingham Berkshire RG40 1WH ("the Council")
- (2) **FRANCES MERCIA EVANS** of Little Orchard The Village Finchampstead Wokingham Berkshire RG40 4JN and of Haygates Fleet Hill Finchampstead Wokingham Berkshire RG40 4LF and care of Clifton Ingram LLP 22-24 Broad Street Wokingham Berkshire RG40 1BA (ref. DGE) and **MADELEINE JOAN EVANS** of Little Orchard The Village Finchampstead Wokingham Berkshire RG40 4JN and of Haygates Fleet Hill Finchampstead Wokingham Berkshire RG40 4LF and care of Clifton Ingram LLP 22-24 Broad Street Wokingham Berkshire RG40 1BA (ref. DGE) ("the Owner")
- (3) **ROBERT JOHN MARTIN EVANS** of Little Orchard The Village Finchampstead Wokingham Berkshire RG40 4JN ("the Applicant")

WHEREAS

1. The Council is the local planning authority for the purpose of the Act for the area in which the Application Site is situated and by whom the obligations created by this Deed are enforceable.
2. The Owner is the freehold owner of the Application Site registered under HM Land Registry title number BK231598
3. **ROBERT EVANS CONSTRUCTION LIMITED** (Company Registration Number 1299827) (a now liquidated company) is the registered freehold owner of part of the Application Site registered under BK231597.
4. The Planning Application reference number 241990 has been made to the Council by the Applicant for planning permission for the Development on the Application Site.
5. The Application Site lies within 5 kilometres of the Thames Basin Heaths SPA.
6. 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.
7. The Council has not yet determined the Planning Application and the Owner and the Applicant enter into this Deed with the intent that some or all of the objections by the Council to the grant of Planning Permission are overcome.

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

"Application Site" the land at 6 Liddell Close Finchampstead Wokingham
Berkshire RG40 4NS and shown for identification
purposes only edged red on the Plan

"CIL" shall mean the planning charge known as the
community infrastructure levy introduced by the
Community Infrastructure Levy Regulations 2010 (as
amended)

**"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 Development" shall
be construed accordingly

"Development" the proposed change of use from an office to a
residential ground floor flat as set out in the Planning
Application

"Development CIL
Receipt"

shall mean the community infrastructure levy collected by the Council arising from the grant of the Planning Permission pursuant to the Community Infrastructure Levy Regulations 2010 (as amended)

"Dwelling"

any dwelling (including a house flat or maisonette with associated garden garage driveway and parking spaces) to be constructed on the Application Site pursuant to the Planning Permission

"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 in accordance with the following formula:

$\text{Amount Payable} = \text{Relevant Amount} \times (\text{A divided by B})$

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 obligations 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 One Thousand and Twenty Four Pounds (£1,024.00)

"Plan"

the plan attached to this Deed

"Planning Application"

the full planning application made under reference 241990 for the Development

"Planning Permission"

the planning permission granted by the Council (or the Secretary of State or his Inspector on appeal) pursuant to the Planning Application and shall include any subsequent permissions under Section 73 of the Act permitting the carrying out of the Development

**"Rooks Nest Wood
SANGS"**

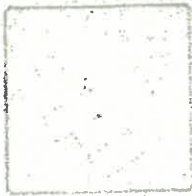
the Council designated 18.5ha Strategic Suitable Alternative Natural Green Space (SANGS) in Barkham

**"Rooks Nest Wood
SANGS Contribution"**

the sum of Two Thousand and Forty Nine Pounds and Fifty Pence (£2,049.59) Index-Linked sum calculated for each Dwelling approved as follows:

"SPA"

Thames Basin Heaths Special Protection Area designated by the Secretary of State for Environment, Food and Rural Affairs on 9 March 2005 pursuant to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds

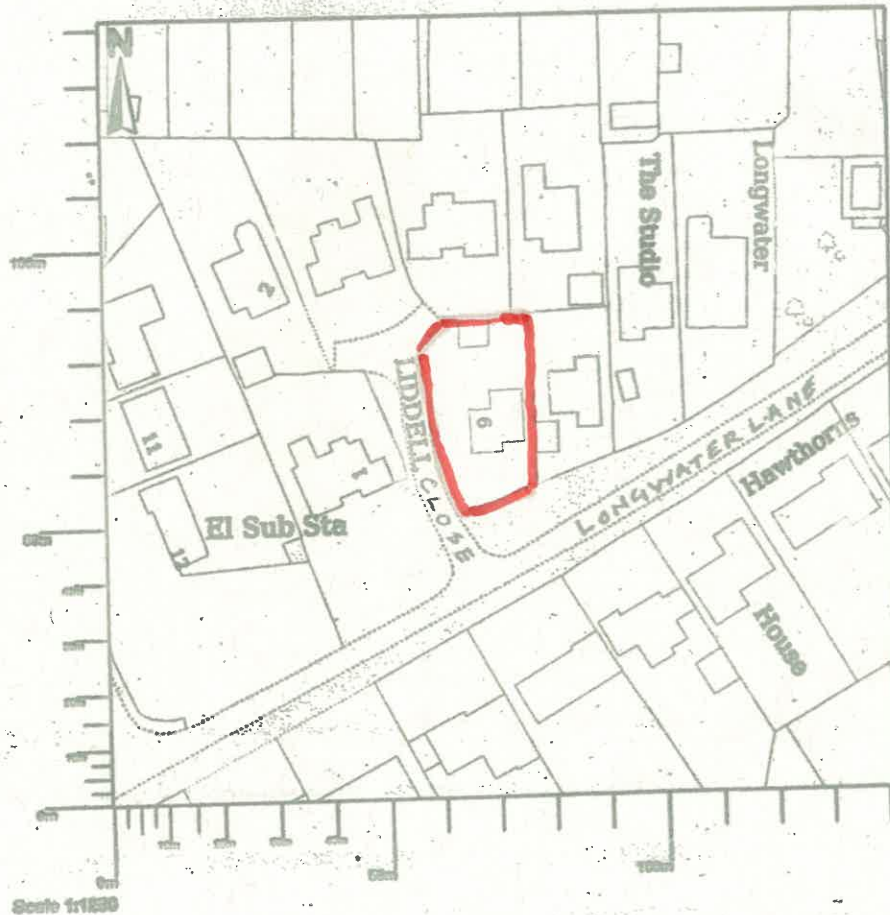


**UK
Planning
Maps**

LOCATION PLAN

(REVISED) APPLICATION NO. 24/1490

6 Liddell Close, Finchampstead, Wokingham, RG40 4NS



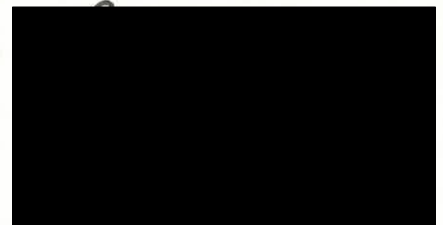
36778



TITLE CHANGE OF USE FROM
GROUND FLOOR OFFICE TO FLAT

ROBERT EVANS CONSTRUCTION
Liddell House 6 Liddell Close
Finchampstead Berkshire RG40 4NS

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479423, 163098. Produced on 08 August 2024 from the OS National Geographic Database. Supplied by
UKPlanningMaps.com. Unique plan reference: p26/uk/1134689/1526541



"Strategic Access Management and Monitoring Contribution"	the sum of seven hundred and eighty four pounds (£784.00) Index-Linked sum towards the management and monitoring of strategic access to the SPA calculated for each Dwelling approved as follows
"Thames Basin Heath 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 Agreement dated 14 th July 2011

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.
- 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 1 of the Localism Act 2011 s33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 62 Berkshire Act 1986 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 and the Applicant 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 the Applicant.

4 CONDITIONALITY

- 4.1 This Deed comes into effect on the date hereof.

5 THE OWNER'S AND THE APPLICANT'S COVENANTS

- 5.1 The Owner and the Applicant covenant with the Council as set out in the First Schedule.

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 and the Applicant 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 and the Monitoring Fee.

- 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.
- 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 and/or the Applicant 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.
- 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 Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner or the Applicant) 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 Application 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 Application Site in accordance with a planning permission (other than the Planning Permission) 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 WAIVER

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

9 CHANGE IN OWNERSHIP

- 9.1 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 Application 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 Application Site or unit of occupation purchased by reference to a plan.

10 INTEREST

- 10.1 Any payment which is due to the Council under the terms of this Deed that is paid late 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.

11 VAT

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

12 JURISDICTION

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

13 DELIVERY

- 13.1 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.

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

FIRST SCHEDULE
THE OWNER'S AND THE APPLICANT'S COVENANTS

1. Strategic Access Management and Monitoring Contribution

- 1.1 The Owner and the Applicant covenant with the Council to pay the Strategic Access Management and Monitoring Contribution on or before completion of this Deed.
- 1.2 The Owner and the Applicant covenant 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 SANGS

- 2.1 The Owner and the Applicant covenant with the Council to pay the Rooks Nest Wood SANGS Contribution on or completion of this Deed.
- 2.2 The Owner and the Applicant covenant with the Council not to Commence Development until the Rooks Nest Wood SANGS Contribution has been paid to and received by the Council.

3 Notification of Commencement of Development

- 3.1 The Owner and the Applicant agree with the Council that it will give not less than seven (7) days prior notice in writing to the Council of the date of Commencement of Development.

SECOND SCHEDULE THE COUNCIL'S COVENANTS

1. Strategic Access Management and Monitoring Contribution

The Council covenants that it will apply the Strategic Access Management and Monitoring Contribution on managing and monitoring of SPA sites which may include some or all of the following:

- i. Finalising and securing implementation of mechanisms of collecting developer contributions from Local Authorities and redistributing them to the Thames Basin Heaths SPA Access Management and Monitoring Project
- ii. Promotion of new access opportunities for local people
- iii. Monitoring of planning permissions granted which will affect SPA sites
- iv. Monitoring of visitor use of SANGS and SPA sites
- v. Monitoring of SPA sites for birds which are contained within annexe 1 of the EU Birds Directive
- vi. Analysis and reporting on monitoring data acquired by the Thames Basin Heaths SPA Access Management and Monitoring Project
- vii. Provision of an SPA wide on-the-ground wardening service to support and supplement existing management mechanisms
- viii. Provision of education programmes
- ix. Appropriate branding of SANGS and SPA sites
- x. Creation of new volunteering opportunities (within the monitoring process)
- xi. Demonstration of best practice for strategic access management of visitors and visitor infrastructure; particularly where the supply of open space within the vicinity of the Development is heavily dependent on protected areas.

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



)
)
) ERIKA HOUGHTON

Authorised Signatory/ Solicitor

36778

SIGNED AS A DEED
by the said **FRANCES MERCIA EVANS**
In the presence of:-

Witness Signature:

Witness Name and Address:

Witness Occupation

)
) F.M. EVANS.
)

[Redacted]
MR THOMAS MAYNARD
31, STEPHENS CLOSE, MORTIMER, READING
RG7 3TY
GARDENER.

SIGNED AS A DEED
by the said **MADELEINE JOAN EVANS**

In the presence of:-

Witness Signature:

Witness Name and Address:

Witness Occupation

)
) [Redacted]
)
[Redacted]
MR THOMAS MAYNARD
31, STEPHENS CLOSE, MORTIMER, READING
RG7 3TY
GARDENER.

SIGNED AS A DEED
BY THE SAID **ROBERT JOHN MARTIN EVANS**
IN THE PRESENCE OF:-

Witness Signature:

Witness Name and Address:

Witness Occupation

)
) [Redacted]
)
[Redacted]
31, STEPHENS CLOSE, MORTIMER, READING
RG7 3TY
GARDENER.

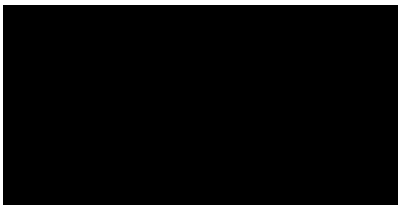


**WOKINGHAM
BOROUGH COUNCIL**

Head of Legal delegation to named employees of Wokingham Borough Council for authority to seal any Wokingham Borough document

I authorise the following employees of Wokingham Borough Council to carry out the functions of the Head of Legal as set out in paragraph 1.6.5 of Wokingham Borough Council's Constitution, copied below.

Solicitor
Barrister
Chartered Legal Executive
Paralegal
Legal Assistant



Head of Legal

Date: 9 February 2023

1.6.5 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Head of Legal should be sealed. The affixing of the Common Seal will be attested by the Head of Legal, or some other person authorised by him/her.

