

TO BE REVIEWED IF S73 APPLICATION IS TO BE
SUBMITTED



**WOKINGHAM
BOROUGH COUNCIL**

DATED _____ 2026

ELSTREE LAND LIMITED (1)

and

IAN KENNETH ALEXANDER JACKSON (2)

and

WOKINGHAM BOROUGH COUNCIL (3)

Deed of Variation to Provide Planning Obligations
pursuant to Sections 106 and 106A of the Town and Country Planning Act
1990 and Section 111 Local Government Act 1972
in relation to the proposed development of land at Old Forest Road
Wokingham

Planning Reference Number [_____]

Legal Ref:

Legal Services
Wokingham Borough Council
Council Offices
Shute End
Wokingham
Berkshire
RG40 1BN

THIS DEED OF AGREEMENT is made the day of Two Thousand and Twenty-Six

BETWEEN:-

1. **ELSTREE LAND LIMITED** (Company registration number 11567343) of 7 Grena Gardens, Richmond, Surrey TW9 1XP (the "Owner")
2. **IAN KENNETH ALEXANDER JACKSON** of Beehive Cottage, Bull Lane, Riseley, Reading RG7 1SE (the "Mortgagee")
3. **WOKINGHAM BOROUGH COUNCIL** of Council Offices, Shute End, Wokingham RG40 1BN in its capacity as the local planning authority (the "Council") and in its capacity as the freehold owner of the land registered at the Land Registry with title number BK497774 (the "Freeholder")

RECITALS

- A. 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.
- B. The Owner is the freehold owner of the Site registered at HM Land Registry with title absolute subject to a legal charge dated 9 May 2025 in favour of the Mortgagee
- C. On [] the Council granted the planning permission 251421 for the erection of 53 no. dwellings with associated landscaping, parking, drainage, open space and other associated works subject to the Original Agreement
- D. [The Owner has now applied pursuant to section 73 of the Act for [] and the parties have agreed to enter into this Deed to amend the terms of the Original Agreement as set out hereto]

1. DEFINITIONS AND INTERPRETATION

- 1.1 For the purposes of this Deed the words and expressions shall have the same meaning as defined in the Original Agreement and the following words and expressions shall have the following meanings:

"Original Agreement"	means the agreement dated [] 2026 made pursuant to section 106 of the Act between the Owner (1) the Mortgagee (2) and
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the Council (3) in relation to the Planning
Permission

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.

- 2.10 Where the context so admits, words defined in the individual schedules to this Deed apply to the rest of this Deed.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to all powers enabling the parties and in particular Sections 106 and 106A 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, as owner of the Site, 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 shall take effect upon the date hereof

5. AMENDMENTS TO THE ORIGINAL DEED

- 5.1 The parties hereto covenant and agree that the Original Agreement shall be amended as follows:
- 5.1.1 In Schedule 1 (i) "Definitions" the definition of "Affordable Rented Housing" shall be deleted and replaced with the following:
- "Affordable Rented Housing "shall mean housing provided by a Registered Provider at up to 80% of market standard for rental purposes and FOR THE AVOIDANCE OF DOUBT includes social rent and affordable rent as more particularly defined in the National Planning Policy Framework PROVIDED THAT the rents may be increased annually by CPI plus 1% during the tenancy or otherwise in accordance with arrangements made for such rent increases established by Homes England and the Regulator of Social Housing

- 5.1.2 In Schedule 1 (i) "Definitions" a new definition of "CIL" shall be inserted:
"CIL" means Community Infrastructure Levy as governed by the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended)
- 5.1.3 In Schedule 1 (i) "Definitions" the definition of "Nominations Agreement" shall be deleted
- 5.1.4 In Schedule 1 (i) "Definitions" a new definition of "Option A" shall be inserted:
"Option A" means the provision of twenty-one (21) of the Dwellings as Affordable Housing Dwellings in accordance with the Affordable Housing Plan
- 5.1.5 In Schedule 1 (i) "Definitions" a new definition of "Option A Nominations Agreement" shall be inserted:
"Option A Nominations Agreement" means where Option A is elected an agreement substantially in the form of the draft nominations agreement annexed hereto at Annex [2] by which the Council may nominate tenants for the Affordable Housing Dwellings or such other form as may be agreed between the Council and the Preferred Registered Provider or Approved Registered Provider (as the case may be)
- 5.1.6 In Schedule 1 (i) "Definitions" a new definition of "Option B" shall be inserted:
"Option B" means the provision one hundred percent (100%) of the Dwellings as Affordable Housing that provides:

Commented [AN1]: HCR to confirm if this is the form of Nominations Agreement at Annex 2 of the s106 agreement?

(a) twenty-one (21) of the Dwellings as Affordable Housing Dwellings in accordance with the Affordable Housing Plan ; and

(b) thirty-two (32) of the Dwellings being the Open Market Dwellings but used in accordance with the objects contained in the rules of the Preferred Registered Provider or Approved Registered Provider (as the case may be)

- 5.1.7 In Schedule 1 (i) "Definitions" a new definition of "Option B Nominations Agreement" shall be inserted:

"Option B Nominations Agreement" means where Option B is elected an agreement substantially in the form of the draft nominations agreement annexed hereto at **Annex 2** by which the Council may nominate tenants for the Affordable Housing Dwellings but amended to:

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(a) remove all local connection criteria in relation to Shared Ownership Housing;

or such other form as may be agreed between the Council and the Preferred Registered Provider or Approved Registered Provider (as the case may be)

- 5.1.8 In Schedule 1 (i) "Definitions" a new definition of "Social Housing Relief" shall be inserted:

"Social Housing Relief" means relief from the payment of CIL

- 5.1.9 Paragraphs 1 and 2 in Part 1 of Schedule 1 shall be deleted and replaced as follows:

1 Not to Commence the Development until the Owner has notified the Council in writing whether it is electing to deliver the Development in accordance with Option A or Option B and

thereafter to deliver the Affordable Housing Dwellings in line with the elected option as confirmed in writing to the Council.

2. Where the Owner notifies the Council in accordance with Part 1 paragraph 1 that the Development will be provided in accordance with Option B the Open Market Dwellings provided as Affordable Housing under Option B paragraph (b) shall not form part of the Affordable Housing Dwellings bound by the provisions of paragraphs 3 and 4 of Part 1 and paragraphs 1 to 7 of Part 2 of this Schedule 1 AND FOR THE AVOIDANCE OF DOUBT, if Option B is taken forward, then all of the Dwellings that are delivered as Affordable Housing are capable of being 'qualifying dwellings' for the purposes of claiming Social Housing Relief.

- 5.1.10 In paragraphs 3.2.2, 3.3 and 4.6 in Part 1 of Schedule 1 and paragraph 6 in Part 2 of Schedule 1 the words "Nominations Agreement" shall be deleted and replaced with:

"Option A Nominations Agreement or the Option B Nominations Agreement (as the case may be)"

- 5.1.11 Paragraph 2 in Part 2 of Schedule 1 shall be deleted and replaced with:

2. Not used.

- 5.1.12 In Part 2 of Schedule 1 paragraph 7 shall be deleted in its entirety and replaced with:

7. The Affordable Housing provisions in this Deed 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 Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

7.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Dwellings 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 Dwellings 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

7.2 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 Dwellings free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely.

5.1.13 In Part 2 of Schedule 1 a new paragraph 8 shall be inserted as follows:

8. The obligations in this Schedule 1 shall not apply to any 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 including a housing administrator (however so appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Open Market Dwellings provided as additional Affordable Housing under Option B paragraph (b).

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.
- 7.4 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.
- 7.5 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.
- 7.6 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) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.8 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

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 INTEREST

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.

10 VAT

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

11 JURISDICTION

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

12 CHARGEES CONSENT

This Deed shall not be enforceable against any mortgagee or chargee from time to time unless and until it takes possession of the Land or any part of it in which case that mortgagee or chargee will be bound by the obligations herein as it were a person deriving title from the Owner.

13 DELIVERY

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.

EXECUTED as a Deed by **ELSTREE**

LAND LIMITED acting by a director

In the presence of:

.....

Director

Witness name:

Witness signature:

Witness address:

EXECUTED as a Deed by

IAN KENNETH ALEXANDER JACKSON

.....

In the presence of:-

.....

Witness signature

.....

Witness Name

.....

Address

The **COMMON SEAL** of
WOKINGHAM BOROUGH COUNCIL
(in its capacity as the Council)

Was affixed hereto in the presence of:

Authorised signatory

WOKINGHAM BOROUGH COUNCIL
(in its capacity as the Freeholder)

Was affixed hereto in the presence of:

Authorised signatory