

320190754P

Bevan Brittan 

Dated _____ **2019**

Ribble Valley Borough Council

and

Kier Community Living LLP

**Deed of variation of a Section 106 Agreement
Relating to land situate at Land Lying to the West of
Preston Road Longridge**

© Bevan Brittan LLP

Fleet Place House | 2 Fleet Place | Holborn Viaduct | London EC4M 7RF
T 0870 194 1000 F 0870 194 7800

Kings Orchard | 1 Queen Street | Bristol BS2 0HQ
T 0870 194 1000 F 0870 194 1001

Interchange Place | Edmund Street | Birmingham B3 2TA
T 0870 194 1000 F 0870 194 5001

www.bevanbrittan.com

Contents

| Item | Page |
|---|----------|
| PARTIES | 1 |
| AGREED TERMS | 1 |
| 1 INTERPRETATION | 1 |
| 2 BACKGROUND | 1 |
| 3 CONSTRUCTION OF THIS DEED | 2 |
| 4 LEGAL BASIS | 2 |
| 5 VARIATION | 3 |
| 6 CONTINUING EFFECT | 4 |
| 7 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 | 4 |

THIS DEED is dated

2019

PARTIES

- (1) **Ribble Valley Borough Council** of Council Offices Church Walk Clitheroe Lancashire BB7 2RA ("the Council")
- (2) **Kier Community Living LLP** a limited liability partnership incorporated in England and Wales with registration number OC421602 whose registered office is at Tempsford Hall, Sandy, Bedfordshire SG19 2BN ("the Owner")

AGREED TERMS

1 INTERPRETATION

- 1.1 The definitions and rules of interpretation set out in this clause apply to this Deed.

Act means the Town & Country Planning Act 1990 as amended.

106 Agreement means the agreement dated 15 September 2017 between (1) Lancashire County Council (2) Ribble Valley Borough Council (3) William Monks, Michael Monks, Kathleen Kinghorn, and Diane McDonald (4) Neil Anthony Forshaw and Stephen Edward Joseph Forshaw and (5) William Monks Longridge Limited

Property means the property lying to the West of Preston Road Longridge referred to in title number LAN208122 and shown edged red on the Plan

Planning Permission means planning permission [] and any supplemental or variations to it.

Plan means the plan attached to the deed.

- 1.2 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause or, or Schedule to, this Deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.
- 1.3 Clause, schedule and paragraph headings do not affect the interpretation of this Deed.
- 1.4 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.5 A reference to a "person" includes an individual, corporate or unincorporated body.
- 1.6 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

2 BACKGROUND

- 2.1 The Owner owns the Property and is developing the Property in accordance with the Planning Permission.
- 2.2 The Council is the local planning authority for the Property by whom the obligations in this Deed are enforceable.
- 2.3 The obligations contained in the Original Deed (as amended by this Deed) are planning obligations for the purposes of Section 106 of the Act.

2.4 The parties to this agreement have agreed to vary the 106 Agreement in the terms referred to in Clause 5 of this Agreement.

3 CONSTRUCTION OF THIS DEED

3.1 Any covenant by the Parties not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.

3.2 Any reference to any particular statute includes any statutory extension, modification, amendment, consolidation or re-enactment of such statute and also includes any subordinate instruments, regulations or orders made in pursuance of it.

3.3 Where under this Deed any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction is required to be given or reached or taken by any party or any response is requested any such notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or response shall be made in writing and shall not be unreasonable or unreasonably withheld or delayed (save where the contrary intention is indicated).

3.4 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.

3.5 Where reference is made to a Clause, Part, Plan, Paragraph, Recital, Schedule or Appendix such reference (unless the context requires otherwise) is a reference to a clause, part, paragraph, recital, schedule or appendix of (or in the case of plan attached to) this Deed.

3.6 Words importing the singular meaning include the plural meaning and vice versa.

3.7 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies other corporate bodies, firms or legal entities and all such words shall be construed interchangeably in that manner.

3.8 Wherever 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 individually unless there is an express provision otherwise.

3.9 Subject to the provisions of this Deed, references in this Deed to the Owner shall include reference to any successors in title and assigns and persons claiming through or under such party and references to the Council shall include reference to its successors in function.

3.10 This Deed may be executed in any number of counterparts each of which when executed and delivered shall constitute a duplicate original but all the counterparts shall together constitute one agreement.

4 LEGAL BASIS

4.1 This Deed is made pursuant to the Act and Section 106A of the Act.

4.2 The obligations, covenants and undertakings on the part of the Owner in this Deed are planning obligations for the purposes of the Act and are entered into with the intent that they shall bind the Owner's interest in the Site and be enforceable without limit of time against the Owner but also against its successors in title and assigns and any person corporate or otherwise claiming through or under the Owner an interest or estate created hereafter in the Site (or any part or parts thereof) 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.

4.3 Insofar as any obligations, covenants and undertakings in this Deed are not capable of falling within section 106 of the 1990 Act they are entered into in pursuance of the relevant powers under the Acts.

4.4 Insofar as the obligations, covenants and undertakings in this Deed are given by or to the Council they are entered into under the relevant powers under the Acts and those obligations, covenants and undertakings are enforceable by or against the Council.

4.5 Nothing in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise by it of its statutory functions and the rights, powers, duties and obligations of the Council under private or public statutes, bye-laws, orders and regulations may be as fully and effectively exercised as if it were not a party to this Deed.

5 VARIATION

The 106 Agreement is to be modified in the following way:

5.1 Definitions

In this deed, unless the context otherwise requires, the following additional definitions apply: (in addition to the definitions in the Section 106 agreement)

5.1.1 the definition of "Affordable Rent" shall be deleted.

5.1.2 the definition of "Mortgagee" shall be amended by adding the letter "e" at the end of charge in the top line of the definition and also deleting the words "exercising a power of sale" in the last line of the clause.

5.1.3 the definition of Priority Order shall be amended as follows:

The sub-clauses shall be numbered (i) to (vi) and at the end of the definition of Priority Order to include the following:

(vii) where there are no persons who fit the criteria of (i) to (vi) then a person who is in housing need in accordance with the definition in Annex 2 of the NPPF.

5.1.4 The definition head of "Affordable Ownership Housing" shall be amended to read "Affordable Home Ownership".

5.1.5 The definition of "Protected Tenant" shall be included in the agreement as a new definition as follows:

"Protected Tenant" means a tenant who

(a) Has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in relation of a particular Affordable Housing Unit; or

(b) Has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or

(c) Has been granted a Affordable Home Ownership Affordable Housing Unit and acquired 100% equity in the Affordable Housing Unit.

And any successor in title to any of (a) (b) or (c).

5.1.6 A new definition of Proceeds shall be included as follows:

"Proceeds" means the money received on a sale of an Affordable Housing Unit exclusive of sums in settlement of any mortgage charge or loan outstanding on the relevant Affordable Housing Unit and excluding all sum derived from the sale of a "

5.2 Clause 2.4 of the 106 Agreement shall deleted and replaced with the following:

"2.4 Save in respect of the provisions of Schedule 2 to this Deed (where relevant to the occupation of the Affordable Housing Units and subject to clause 1.10 of Schedule 2) this Deed shall not be enforceable against any Affordable Housing Provider or its Mortgagee nor against any owners, occupiers or tenants (or their mortgagees) of individual Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them."

5.3 Clause 10 shall be deleted in its entirety.

5.4 Schedule 2 shall be amended as follows:

5.4.1 Clause 1.10 shall be amended by deleting the word "this obligation" in the fifth line and replacing it with "the Obligations in this Schedule 2 and affordable obligations in the Section 106 Agreement"

5.4.2 Clause 1.10.1 of Schedule 2 shall be amended by deleting the word "Chargee" and replacing it with the word "Mortgagee".

5.4.3 Clause 1.11 shall be deleted

5.4.4 Clause 1.12 shall be renumbered to clause 1.10.3

5.4.5 Clause 1.13 shall be renumbered to clause 1.10.4

5.4.6 Clause 1.14 shall be deleted.

5.4.7 Clause 1.15 shall be renumbered to clause 1.11

5.4.8 Clause 1.16 shall be renumbered to clause 1.12

5.4.9 Clause 1.17 shall be renumbered to clause 1.13 and in the second line clause 1.16.2 shall be changed to clause 1.12.2. In clause 1.17.1 renumbered to clause 1.13.1 the words "paragraph 1.15" shall be replaced with paragraph 1.13.

5.4.10 Clause 1.18 shall be renumbered to clause 1.14 and the words "paragraph 1.18" shall be renumbered to "Paragraph 1.14"

5.5 A new clause 1.15 shall be included in schedule 2 as follows:

"1.15.1 In the event that an individual occupier of an Affordable Housing Unit acquires ownership pursuant to the right to acquire and or staircasing of an Affordable Home Ownership the Proceeds received by the Affordable Housing Provider in relation to that transaction will be used by the Affordable Housing Provider where reasonably possible for the provision of Affordable Housing within the Borough of Ribble Valley"

6 CONTINUING EFFECT

All definitions and terms of the Section 106 Agreement, except as varied by this agreement are confirmed as if they were set out in full in this Agreement and those terms, as so varied, are treated as incorporated in this Deed for all purposes. Except as varied by clause 4 the 106 Agreement shall remain in full force and effect.

7 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Any person who is not a party to this Deed may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

This document has been executed as a Deed and is delivered and takes effect at the date stated at the beginning of it.

The Common Seal of
Ribble Valley Borough Council
Was hereunto affixed in the presence of:

Executed as a deed by
Kier Community Living Limited
by two directors
or a director and secretary: