

DATED

2024

between

WILTSHIRE COUNCIL

and

BERESFORD ORAM

MICHAEL WILLIAM GIBBONS

WILLIAM HOPKINS

**Deed under Section 106 of the Town and Country Planning Act 1990
and all other enabling powers
relating to Land on the south west side of The Street Latton Swindon**

Wiltshire Council

The logo for Wiltshire Council, featuring the text "Wiltshire Council" in a green, sans-serif font. Below the text is a green, wavy horizontal line that spans the width of the text.

**Solicitor to the Council
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN
Ref: Iken 145625**

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THIS DEED is dated

2024

- (1) **WILTSHIRE COUNCIL** of County Hall Bythesea Road Trowbridge Wiltshire BA14 8JN
(**Council**).
- (2) (**Owner**).

BACKGROUND

- (A) The Owner is the freehold owner of the Land registered at the Land Registry under title number WT189238 shown for the purposes of identification only edged blue on the Plan
- (B) The Council is the local planning authority for the purposes of the Act, the highway authority, the education authority and the housing authority for the area in which the Land is situated
- (C) The Owner has submitted the Planning Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed without which the Planning Permission would not be granted

NOW THIS DEED WITNESSES AS FOLLOWS:

1. Definitions

The definitions and rules of interpretation in this clause apply in this deed:

“the Act”

The Town and Country Planning Act 1990 as amended

“CIL Regulations”

means 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 with the exception of investigation of ground conditions and remedial work archaeological work demolition and erection of hoardings and

in the context of a Residential Unit or Residential Units the material building operation or development in accordance with Section 56 of the Act shall refer to that Residential Unit or Residential Units and Commence and Commenced shall be construed accordingly

“Contribution” each financial contribution payable under this Deed

“Council’s Nominee” Means the Latton Parish Community Trust registered charity number 1200388 of Poppy Cottage, 39 Upcott, Latton SN6 6DS

“Development” any development permitted by the Planning Permission

“Director” the Corporate Director, Growth, Investment and Place or his appointed representative for the time being of the Council

“Highway Works” means all works required as a result of the Development to construct the access road, utility service, drainage infrastructure for the village recreation hall, tennis courts and car park and which details will be provided at Reserved Matters Application

"Interest" interest at the rate of 4% above the base lending rate of the HSBC Bank Plc from time to time

“Land” the land on the south west side of the Street Latton Swindon shown edged blue on the Plan

“Land Compensation Act”

in relation to clause 16 means the Land Clauses Consolidation Act 1845 the Land Compensation Act 1961 the Compulsory Purchase Act 1965 the Land Compensation Act 1973 and the Planning and Compensation Act 1991 and includes the Human Rights Act 1998 and any variation or enactment of the Land Compensation Acts on a date on or after the date of execution of this Deed which confers a right of compensation for the compulsory acquisition of land and/or the diminution in value of land as a result of the carrying out of or the use of public works

“Monitoring Fee”

means the sum of one thousand and nine hundred pounds (£1,900.00) as a contribution towards the Council's costs of monitoring the implementation of this Deed

“Occupation” and “Occupied”

occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction and “Occupy” shall be construed accordingly

“Plan”

the plan or drawing attached to this Deed and referenced Site Location Plan (Revised) which plan is for the purposes of identification only

“Planning Application”

the planning application for outline (with all matters reserved) planning permission for village recreation hall, all

weather tennis court, parking, access and erection of six houses registered by the Council on 16th January 2021 and allocated reference number 20/11236/OUT

“Planning Permission” the planning permission for the Development that may be granted pursuant to the Planning Application

“Reserved Matters Application” means any reserved matters application submitted for the Development pursuant to the Planning Permission

“Residential Unit” Means all residential units forming part of the Development

“Section 73 Permission” means a planning permission granted by the Council pursuant to an application made under section 73 of the 1990 Act to vary the Planning Permission

“Transfer Period” means within 6 months from the Commencement of Development

“Village Recreation Hall Land” means the land edged red on the Plan

“Village Recreation Hall Transfer” means the transfer of the Village Recreation Hall Land to the Council’s Nominee in accordance with Schedule 4 using the transfer in substantially the same form as indicated at Annex B

“Working Day(s)” days on which clearing banks in the City of London are open to the public and for the avoidance of doubt such days shall not include any Saturday or Sunday New

Year's Day Good Friday Easter Monday
May Day Christmas Day and Boxing Day

2. Construction of this Deed

- 2.1. Words importing the masculine include the feminine and neuter gender and vice versa
- 2.2. Words importing the singular include the plural and vice versa
- 2.3. Words importing persons include companies corporations and vice versa and all such words shall be construed interchangeable in that manner
- 2.4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation (including by becoming a successor in title) all their obligations can be enforced against all of them jointly and against each individually
- 2.5. Insofar as different parts of or interests in the Land are owned by different persons each person Covenants with the Council and with one another to co-operate insofar as they are able to ensure that the Covenants herein on behalf of "the Owner" are fulfilled as expeditiously as possible
- 2.6. The headings throughout this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed
- 2.7. Any reference to a clause paragraph schedule or plan is to one in to or attached to this Deed and any reference to this Deed includes any schedule, plan, annexure or other attachment to this Deed
- 2.8. In the absence of contrary provision any reference to a Council document to be completed which is annexed or referred to in this Deed shall be the Council document which is current and in force at the date of its completion
- 2.9. In the absence of contrary provision any reference to a statute or statutory instrument includes any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference to a statute includes any statutory instrument direction or specification made or issued under the statute or deriving validity from it

- 2.10. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and successors to any statutory functions of the Council
- 2.11. Covenants to do or not to do an action shall include respectively a covenant to permit or not to permit that action to be done

3. Statutory provisions

- 3.1. This Deed is made pursuant to the following:
Section 106 of the Act
Section 111 of the Local Government Act 1972
Section 93 Local Government Act 2003
Section 1 Localism Act 2011
and all other enabling powers
and has been entered into by the Council pursuant to those powers
- 3.2. The covenants restrictions and requirements created by this Deed are planning obligations for the purposes of Section 106 of the Act to the intent that it shall bind the parties and their respective successors in title to each and every part of the Land and are enforceable by the Council as local planning authority
- 3.3. It is acknowledged that the obligations contained in this Deed are:
- 3.3.1. necessary to make the Development acceptable in planning terms;
- 3.3.2. directly related to the Development; and
- 3.3.3. fairly and reasonably related in scale and kind to the Development
in accordance with the requirements of Regulation 122 of the CIL Regulations

4. Commencement

- 4.1. This Deed takes effect on the grant of the Planning Permission
- 4.2. The Owner shall notify the Council of the Commencement of Development and the Owner agrees that no time shall run to the detriment of the Council if and so long as the Owner has failed to serve notice

- 4.3. If the Owner has not provided the information referred to in clause 4.2 above within 20 Working Days of its becoming available the Council shall have the right to obtain this information by other reasonable means and to charge the Owner its costs in obtaining this information subject to a maximum of one thousand pounds (£1,000) per time **PROVIDED THAT** the information is in fact obtained as aforesaid and reasonable evidence of this is provided by the Council to the Owner

5. The Owner's Covenants

The Owner will observe and perform the obligations set out in this Deed and in Schedule 1 Schedule 2 Schedule 4

6. The Council's Covenants

The Council covenants with the Owner as set out in Schedule 3

7. General

The parties agree that:

- 7.1. Nothing in this Deed constitutes an obligation to grant planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function and nothing in this Deed constitutes and such approval, consent or permission.
- 7.2. In the event the Council grants a subsequent Section 73 Permission or if a Section 73 Permission is granted following an appeal under Section 78 of the 1990 Act, any such Section 73 Permission shall be deemed to be granted subject to the covenants and provisions of this Deed and to apply in equal terms to it save that where the Council in its determination of the application for a Section 73 Permission requires consequential amendments to this Deed to reflect the impact of the application for a Section 73 Permission in such circumstances a separate deed pursuant to section 106 of the 1990 Act will be required to secure relevant planning obligations relating to the Section 73 Permission
- 7.3. This Deed does not and is not intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999 (other than any replacement body of the Council)

- 7.4. 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 Land or that part of the Land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 7.5. Insofar as any clause or clauses or any part thereof 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. If before Commencement of Development the Planning Permission:
- a) expires within the meaning of Sections 91 92 or 93 of the Act; or
 - b) is revoked, quashed or modified without the consent of the Developer;
- this Deed shall cease to have effect
- 7.7. The Owner shall pay to the Council:
- 7.7.1. its proper and reasonable legal costs incurred in negotiating preparing and entering into this Deed upon completion of this Deed and in relation to any transaction arising therefrom upon completion of the same
 - 7.7.2. the Monitoring Fee prior to Commencement of Development
- 7.8. The Owner shall pay to the Council its proper and reasonable legal costs incurred in respect of the transfer or other disposal of any land or facility as required by this Deed.
- 7.9. This Deed shall be registerable as a local land charge by the Council
- 7.10. If required by the Council the Owner shall secure registration of this Deed in the Charges Register of the Registered Title to the Land at the Land Registry
- 7.11. Where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of 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 shall be given in writing on behalf of the Council by the Engineer or Director as appropriate

- 7.12. Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 7.13. Nothing contained or implied in this Deed shall prejudice affect fetter or restrict the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority or any other statutory function rights duties powers and obligations under all public and private statutes byelaws and regulations
- 7.14. This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the Courts of England and Wales.

8. Notices

Any notice or other communication given or made under this Deed shall be in writing and (unless otherwise herein provided) shall be deemed to be sufficiently served if sent by pre-paid first class post or other next working day delivery service to the address of the party specified in this Deed or to such other address (in substitution thereof) as may be notified in writing by that party from time to time for this purpose and in the case of the Council shall be addressed to the Head of Legal Services and quote reference Iken 145625 and copied to the Section 106 and Community Infrastructure Levy Officer

9. 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

10. Change in Ownership

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 Land occurring before all the obligations under this Deed have been discharged. Such notice to give details of the transferee's name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation transferred by reference to a plan

PROVIDED THAT this clause shall not apply to the disposal of an individual Residential Unit

11. Interest

If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of actual payment compounded annually.

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 in respect thereof
- 12.2. If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

13. Indemnity

- 13.1. The Owner hereby undertakes and agrees with the Council that in the event of any claim or claims being made against the Council for any one or more of the following payments:

- a) Compensation (including any claim arising under the Land Compensation Acts)
- b) Damages
- c) Costs
- d) Charges
- e) any other payment

such claim arising in connection with or incidental to or in consequence of any failure on the part of the Owner to comply with its obligations under this Deed the Owner will hold the Council fully indemnified from and against each and every said claim

- 13.2. The Owner shall not be liable under this clause to indemnify the Council in respect of any claim only insofar as and to the extent that the said claim is found to have resulted from the negligent act or omission of the Council or its servants or agents save that for the purpose of this clause the Owner or persons acting on behalf of the Owner shall not be regarded as servants or agents of the Council

14. The provision of this Deed shall not bind any statutory undertakers in respect of land held for their operational purposes and as a consequence of the release given in this clause this Deed may be modified varied or released without the consent or approval of any such person without them being a party to any document or deed required to effect such modification variation or release but such document or deed shall take effect as if they had been a party to such document or deed.

15. 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.

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

SCHEDULE 1 - Village Recreation Hall Transfer – COUNCIL'S NOMINEE

The Owner covenants to:-

- 1 transfer, in accordance with the Village Hall Transfer, the Village Recreation Hall Land to the Council's Nominee within the Transfer Period
- 2 ensure that prior to the transfer of the Village Recreation Hall Land to the Council's Nominee in accordance with the Village Recreation Hall Transfer the infrastructure for water, electricity, telephone and drainage are provided at the locations on the boundaries of the Village Recreation Hall Land
- 3 ensure that the Village Recreation Hall Land is generally level, free from contamination, of low flood risk and unencumbered so as to be suitable for and to allow its use for a Village Recreation Hall
- 4 to transfer the Village Recreation Hall Land to the Council's Nominee for consideration not in excess of one pound (£1.00)
- 5 provide to the Council's Nominee a statutory declaration in respect of the ownership of the unregistered land shown shaded orange on the Plan and to use reasonable endeavours to promptly deal with any Land Registry requisitions relating to the registration of the Village Recreation Hall Land to the Council's Nominee

SCHEDULE 2 – Contributions

DRAFT

SCHEDULE 3 - Covenants by the Council

Repayment of Contributions

The Council covenants with the Owner:

1. to pay to the Council's Nominee the Village Hall Contribution in accordance with this Deed

DRAFT

Annex A. Appendix 1: Plan

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Executed as a deed by affixing The
common seal of WILTSHIRE COUNCIL
in the presence of:

Authorised signatory

Signed as a deed by **BERESFORD
ORAM** in the presence of:

.....

SIGNATURE OF OWNER

.....
SIGNATURE OF WITNESS:
NAME OF WITNESS:
ADDRESS OF WITNESS:
OCCUPATION OF WITNESS:

Signed as a deed by **MICHAEL
WILLIAM GIBBONS** in the
presence of:

.....

SIGNATURE OF OWNER

.....
SIGNATURE OF WITNESS:
NAME OF WITNESS:
ADDRESS OF WITNESS:
OCCUPATION OF WITNESS:

Signed as a deed by **WILLIAM
HOPKINS** in the presence of:

.....

SIGNATURE OF OWNER

.....
SIGNATURE OF WITNESS:
NAME OF WITNESS:
ADDRESS OF WITNESS:
OCCUPATION OF WITNESS: