

**Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act
1990**

relating to the development on the land East of Salisbury Road, Hungerford

16/03061/OUTMAJ

Dated: *30th November* 2017

WEST BERKSHIRE DISTRICT COUNCIL (1)

[REDACTED] (2)

[REDACTED] (3)

[REDACTED] (4)

[REDACTED] (5) AND

[REDACTED] (6)

File Reference: 005166

Dated 30th November 2017

PARTIES

1. The Council
WEST BERKSHIRE DISTRICT COUNCIL of Council Offices
Market Street Newbury Berkshire RG14 5LD
2. The Owners
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
3. The Developers
CALA MANAGEMENT LIMITED (Company Registration Number
SCO 13655) whose registered office is situated at Adam House, 5
Mid New Cultins, Edinburgh, EH11 4DU and WATES
DEVELOPMENTS LIMITED (Company Registration Number
00441484) whose registered office is situated at Wates House,
Station Approach, Leatherhead, Surrey KT22 7SW

RECITALS

- A. The Council is the Local Planning Authority for the purposes of the Act and the Highway Authority for the purposes of the Highways Act 1980 for the area in which the Site is situated
- B. The Owners are registered as Owners with freehold absolute title of the Site under title number
[REDACTED]
- C. The Developer has an option to acquire the Site
- D. The Developer submitted the 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
- E. The Council resolved on 5 April 2017 to grant the Planning Permission subject to the prior completion of this Deed

1. NOW THIS DEED WITNESSES OPERATIVE PART

1.1. Definitions

- 1.1.1. "the Act" the Town and Country Planning Act 1990 as amended
- 1.1.2. "Affordable Dwellings" Social Rented Dwellings and Shared Ownership Dwellings
- 1.1.3. "Affordable Housing" housing that is affordable to those people on the Council's common housing register who cannot afford to rent or buy housing generally available on the open market including Social Rented Dwellings and Shared Ownership Dwellings and any other tenure or combination of tenure approved in writing by the Council
- 1.1.4. "Affordable Housing Land" land or Residential Units to be used for Affordable Dwellings in accordance with the details submitted pursuant to the Second Schedule
- 1.1.5. "the Application" the application for planning permission dated 2 November 2016 submitted to the Council for the Development and allocated reference 16/03061/OUTMAJ
- 1.1.6. "the Developer Contributions Officer" the person from time to time holding the post of Developer Contributions Officer with the Council or the person who is designated as such by the Council for the purposes of this Agreement
- 1.1.6 "the Development" residential development of up to 100 dwellings with matters of appearance, landscaping, layout

and scale to be reserved pursuant to the Planning
Permission

1.1.7. "the Head of Development and Planning" the person from time to time holding the post of
Head of Development and Planning with the
Council or the person who is designated as such
by the Council for the purposes of this Agreement

1.1.8. "Head of Legal Services" the person from time to time holding the post of
Head of Legal Services with the Council or the
person who is designated as such by the Council
for the purposes of this Agreement

1.1.9. "HCA" the independent regulator for affordable housing
in England known as Homes and Communities
Agency who works with social-housing landlords
and tenants to improve the standard of service for
tenants and residents or such other body that
replaces it

1.1.10. "the Index" the All Items Index of Retail Prices published by
the Office of National Statistics or during any
period when no such index exists the index which
replaces the same or is the nearest equivalent
thereto as may reasonably be specified by the
Council

1.1.11. "Occupation" means first beneficial residential occupation of
any Residential Unit which shall be the date upon
which Council Tax becomes payable for that
Residential Unit or when the Owners first transfer
or lease that Residential Unit (whichever is earlier)

	but excluding occupation for the purposes of fitting out or marketing and "Occupy" and "Occupied" shall be construed accordingly
1.1.12. "Open Market Dwellings"	means any of the Residential Units which are not Affordable Dwellings
1.1.13. "the Plan"	the plan attached to this Deed
1.1.14. "the Planning Permission"	outline planning permission for the Development subject to conditions to be granted by the Council pursuant to the Application and subject to written approval by the Council includes any subsequent permissions to vary the conditions therein under Section 73 and Section 73A of the Act
1.1.15. "Registered Provider"	means either a housing association or other body approved by the Council and registered with the HCA as a registered provider
1.1.16. "Shared Ownership Dwellings"	Residential Units with arrangements under a lease which is granted to those persons on the Council's common housing register on payment of a premium calculated by reference to a percentage of either the value of the Shared Ownership Dwelling or the cost of providing it with that percentage of the value or cost being owned by the tenant and which allows upon further payments being made for the tenant to obtain up to 100% of the freehold or leasehold interest of that Shared Ownership Dwelling from the provider of the Affordable Dwellings or arrangements

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 DRAWINGS CAN BE USED FOR PURPOSES OF PLANNING APPLICATION ONLY
 Check all dimensions on site before work proceeds. Report discrepancies to Applicant.
 If in Doubt, Ask!
 Date: 15.11.16. Do not scale notes attached to drawings as they would be provided for planning applications only.



Location Plan Land off Salisbury Road, Hungerford

Authorised Signatory

Scott Worsfold Associates
HMBA Chartered Architects
 The Studio, 22 Ringwood Road, Farnham, Dorset, BH12 9AY
 Telephone: 01202 585900 e-mail: info@swa-arch.com

Date: JUN/16 Scale: 1:2500 @ A2
 Dwg No. 15-917-LOC-D

Scale: 1:2500 @ A2

under which the owner of a freehold or leasehold interest in a Shared Ownership Dwelling conveys that interest to the buyer where the buyer pays an initial payment expressed as a percentage of the value of the interest in that Shared Ownership Dwelling at that time and agrees to pay other sums calculated by reference to a percentage value of the interest in that Shared Ownership Dwelling at the time when each sum is due to be paid with those payments being secured by a charge or mortgage over the Shared Ownership Dwelling in both cases in accordance with any requirements of the HCA

1.1.17. "Social Rented Dwellings"

Residential Units to be transferred to and managed by a Registered Provider and available for rent at or below the social target rent as may from time to time be set by the HCA or by any successor charged with providing housing to those not adequately served by the commercial housing market

1.1.18. "Residential Unit"

means any single dwelling unit (including amenity space and car parking associated with that dwelling unit) constructed on the Site pursuant to the Planning Permission to be used for residential purposes

1.1.19. "the Site"

the land shown edged red on the Plan and known
as the land on the east side of Salisbury Road,
Hungerford

1.2. Interpretation

- 1.2.1. Save where this Deed specifies otherwise or where the context so requires the singular includes the plural and vice versa and references in this Deed to any part shall include the successors in title to that party's interest in the Site or part thereof
- 1.2.2. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and unincorporated bodies and all such words shall be construed interchangeably in that manner
- 1.2.3. Whenever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 1.2.4. Where in this Deed reference is made to any clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule plan or recital in this Deed or (in the case of a plan) attached to this Deed
- 1.2.5. The titles and headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed
- 1.2.6. Where in this Deed any party covenants not to act such covenant shall include an obligation not to permit or suffer such an act by another person
- 1.2.7. All references in this Deed to statutes statutory instruments regulations and other legislation shall include their successor amended or replacement provision
- 1.2.8. For the purposes of this Agreement the Development shall be deemed to be commenced on the earliest date on which any material operation (as defined in section 56(4) of the Act) comprised in the Development is begun to be carried out and the words "Commence"

"Commenced" and "Commencement" shall in such clause and the Schedule be construed accordingly

1.2.9. All references in this Deed to a particular title of officer or post at the Council shall include successor or replacement officers or posts

1.2.10. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms

2. LEGAL BASIS

2.1. This Deed is made pursuant to Section 106 of the Act [and to the extent that any obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and any other enabling powers]

2.2. Clauses 4 and 8 and each and every covenant set out in the First Schedule and the Second Schedule are planning obligations for the purposes of Section 106 of the Act and shall be enforceable by the Council

3. CONDITIONALITY

3.1. With the exception of clauses 5.1, 10.2, 15 and 16 which shall come into effect immediately upon completion of this Deed this Deed is conditional upon the grant of the Planning Permission

4. THE OWNER'S AND DEVELOPER'S COVENANTS

4.1. The Owners covenant with the Council as set out in the First Schedule and the Second Schedule

4.2. The Developers subject to obtaining a freehold or leasehold interest in the Site covenant with the Council as set out in the First Schedule and the Second Schedule

5. MISCELLANEOUS

- 5.1. The Developers shall pay to the Council on or before the completion of this Deed the reasonable costs of the Council incurred in the review negotiation preparation and execution of this Deed
- 5.2. Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the Council no provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 5.3. This Deed shall be registered on the Register of Local Land Charges and any other register as the Council shall determine
- 5.4. Insofar as any 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 legality or enforceability of the remaining provisions of this Deed
- 5.5. 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 Owners) it is modified by any statutory procedure or expires prior to Commencement of the Development
- 5.6. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they shall have parted with their entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 5.7. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission) granted after the date of the Planning Permission

6. WAIVER

- 6.1. No waiver (whether express 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 acting upon any subsequent breach or default

7. FETTER OF DISCRETION

The parties agree that:-

- 7.1. Nothing in this Deed constitutes a planning permission or an obligation to grant planning permission
- 7.2. Nothing in this Deed shall prejudice the exercise of any statutory power duty or discretion by the Council

8. INDEXATION

- 8.1. In addition to any sum stated as being payable in this Deed a further sum ("the Additional Sum") shall be paid and any obligation in this Deed to pay this further sum which shall be calculated by multiplying the relevant sum by the percentage by which the Index has increased from the date of this Deed to the date that payment of the relevant sum is made

9. APPLICATION OF CONTRIBUTIONS

- 9.1. The Council may either spend a contribution or sum it has received under this Deed itself for the purposes for which it was paid or pass it to a third party to spend on its behalf provided that such contribution or sum may only be applied by the third party for the purpose for which it was paid to the Council and the Council shall procure that the third party complies with the relevant terms of this Deed in relation to such sum or contribution
- 9.2. In the event of any of the relevant contributions required under this Deed not being expended or contractually committed to be expended within a period of ten years starting on the date of receipt by the Council of the relevant contribution or the date of the Commencement of the Development whichever is the later then the Council shall within 28 days of receiving a written request to do so repay the unexpended part of that relevant contribution or the part of that relevant contribution which has not been contractually committed to the person from whom it was received along with the interest accrued from time to time at the Bank of England base rate thereon following the expiry of the said ten year period

10. OWNERSHIP

- 10.1. The Owners agree 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 transferees full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan

11. NOTICES

Unless otherwise agreed in writing:-

- 11.1. Notices shall be in writing and delivered by hand or first class post to the Owners at such address and for the attention of such person as may be specified from time to time or in the absence of a specified address to (in the case of a company) its registered address marked for the attention of the Company Secretary or (in the case of an individual) to their usual or last known address and to the Council at West Berkshire District Council Council Offices Market Street Newbury Berkshire RG14 5LD addressed to the Developer Contributions Officer
- 11.2. Notices served by the Council are deemed to be valid if signed by the Head of Planning and Countryside or his authorised officer or by the Head of Legal Services
- 11.3. Notices and representations served by the Owners are deemed valid if signed by the relevant person referred to in clause 11.1

12. NO COMPENSATION PAYABLE

- 12.1. No compensation shall be payable by the Council as a result of the obligations contained in this Deed

13. INTEREST

- 13.1. If any payment due under this Deed to the Council is paid late interest will be payable from the date payment is due to the date of payment at the rate of 4% above the Bank of England's base rate

14. VAT

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

15. JURISDICTION

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

16. DELIVERY

16.1. 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

17. TRUSTEE LIABILITY

17.1 The Owners have entered into this deed as trustees of the Lady Marion Rootes Childrens Settlement and not in any personal capacity or other capacity and accordingly no liability shall attach to the Owners in excess of an amount equal to the net assets held by the Owners for the account of the aforementioned settlement

17.2 Clause 17.1 will not apply to any liabilities resulting from any wilful or reckless breach of duty or trust by the Owners.

IN WITNESS WHEREOF the Parties have executed this Agreement as a Deed the day and year before
written

EXECUTED AS A DEED by affixing the Common
Seal of WEST BERKSHIRE DISTRICT COUNCIL
and authenticated by:

)
)
)
[Redacted]
Authorised Signatory



SIGNED AS A DEED by
THE RIGHT HONOURABLE NICHOLAS
GEOFFREY THIRD BARON ROOTES
in the presence of:

)
)
)
[Redacted]

Witness NAME
SIGNATURE
ADDRESS
OCCUPATION

[Redacted]

SIGNED AS A DEED by
THE HONOURABLE SALLY HAYTER ST JOHN
in the presence of:

)
)
)
[Redacted]

Witness NAME
SIGNATURE
ADDRESS
OCCUPATION

[Redacted]

SIGNED AS A DEED by
ROGER MAY PETERS
in the presence of:

)
)
)
[Redacted]

Witness NAME
SIGNATURE
ADDRESS
OCCUPATION

[Redacted]

EXECUTED as a DEED by)
CALA MANAGEMENT LIMITED)
acting by)
and by)
as Attorney of CALA Management)
Limited)

Attorney: [REDACTED]

Attorney: [REDACTED]

In the presence of:

Witness signature: [REDACTED]

Witness Name: [REDACTED]

Witness Address: [REDACTED]

Witness Occupation: [REDACTED]

EXECUTED as a DEED by)
WATES DEVELOPMENTS LIMITED)
acting by)

Director [REDACTED]

Director/Secretary [REDACTED]

FIRST SCHEDULE

THE Owners and the Developers covenant with the Council/ as follows:

Notification of Commencement of Development

1. To serve written notice of intended Commencement of Development upon the Developer Contributions Officer not less than fourteen (14) days before the intended Commencement of Development
2. Not to Commence Development unless at least 14 days has expired from the date upon which a written notice referred to in paragraph 1 has been served upon the Developer Contributions Officer

Impact Mitigation Contributions

Public Open Space

3. Not to Occupy the Development without first paying to the Council the sum of £68,200 (sixty eight thousand and two hundred pounds) and the Additional Sum towards the future maintenance of the public open space comprised in the Development

SECOND SCHEDULE

The Owners covenants with the Council as follows:

- a. Not to Occupy or cause suffer or permit to be Occupied the Development unless and until not less than 14 days notice in writing has been given to the Head of Development and Planning of the date on which it is intended that any part of the Development will be Occupied
- b. That the Development shall include 40 (forty) Affordable Dwellings
- c. That 28 (Twenty Eight) of the Affordable Dwellings shall be Social Rented Dwellings and for the avoidance of doubt the unit mix of the Social Rented Dwellings shall be determined at reserved matters stage
- d. That 12 (Twelve) of the Affordable Dwellings shall be Shared Ownership Dwellings shall be determined at reserved matters stage
- e. Not to Commence the Development without first agreeing in writing with the Council the location and mix of all the Affordable Dwellings
- f. Not to erect or cause suffer or permit to be erected the Affordable Dwellings or any of them otherwise than on the Affordable Housing Land. Not to use or cause suffer or permit to be

used the Affordable Housing Land or any part or parts thereof for any purpose other than the provision of the Affordable Dwellings in accordance with the terms of this Schedule.

- g. Not to cause suffer or permit Occupation of any of the Open Market Dwellings until the freehold interest or long leasehold interest (of not less than 125 years) in the Affordable Housing Land has been transferred or completed and such agreement will include an agreement to include in the transfer or the lease (as the case maybe) to a Registered Provider with the benefit of the following:

- A. Full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land; and
- B. Full and free rights to the passage of water soil electricity gas and other services through the pipes drains channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Land all such services to be connected to the mains

and reserving such rights as the transferors or lessors (as the case may be) may reasonably require

- h. Not to cause suffer or permit Occupation of more than Eighty Percent (80%) of the Open Market Dwellings comprising the Development unless all of the Affordable Dwellings have been constructed and completed and are capable of being Occupied as such
- i. That the method of construction of the Affordable Dwellings shall in all cases comply with the Homes and Communities Agency's Design and Quality Standards (D&QS) which for the avoidance of doubt should include Lifetime Homes Standards and Housing Quality Indicator HQI standards or such other version for the time being in force or such other standards as shall be issued by the HCA by way of replacement standards
- j. Subject to the provisos hereinafter set out not to sell lease licence let or otherwise dispose of the Affordable Housing Land or any part thereof in any manner whatsoever (except by way of legal charge or mortgage) or dispose of the Social Rented Dwellings on assured tenancies above social target rents without first obtaining the written consent of the Council given under

the hand of its Head of Legal Services (such consent not to be unreasonably withheld or delayed) PROVIDED THAT

- A Subject to paragraphs o p and q of this Schedule no consent is required for the first disposal of the Affordable Housing Land to a Registered Provider
 - B No consent will be required for the disposal of the Social Rented Dwellings or any of them on assured tenancies at or below social target rents to be assessed by a Registered Provider in accordance with the performance standards set out in "The Regulatory Framework for Social Housing in England" dated April 2012 by the HCA or such other HCA Guidance as shall be available from time to time to a Registered Provider
 - C No consent will be required for the disposal of the Shared Ownership Dwellings or any of them if such disposal is by way of lease by shared equity in a form which is based on forms published from time to time by the HCA (or its successors) and has first been approved in writing by the Council (such approval not to be unreasonably withheld or delayed) or with such minor variations as the parties shall agree ("Approved Lease") PROVIDED THAT for the avoidance of doubt assignment surrender or other disposal of the Approved Lease shall not constitute a disposal for the purposes of this paragraph (j)
- k. On the first disposal of each of the Shared Ownership Dwellings (for the avoidance of doubt this does not include the first disposal of the Affordable Housing Land to a Registered Provider) not to sell lease or otherwise dispose of a share of the same for a consideration in excess of SEVENTY FIVE PERCENT (75%) of the open market value at the date of such first sale lease or other disposal
- l. In the event that a mortgagee or chargee of a Registered Provider of the Affordable Dwellings is bound by the terms of this Agreement as mortgagee or chargee in exercise of its power of sale of the Affordable Dwellings or any of them none of the Affordable Dwellings shall be sold or otherwise disposed of by the mortgagee or chargee (or by any receiver administrators or

administrative receivers appointed by such mortgagee or chargee) unless the following procedure has been followed in respect of each of the Affordable Dwellings

- A. The said mortgagee or chargee shall on each sale have first offered in writing to transfer each of the Affordable Dwellings at the price hereinafter defined for the purposes of social housing to the Council or to a Registered Provider nominated by the Council whose objects or functions include the provision of low cost rented housing (the deed of transfer relating to such transfer to be in such form as the Council shall reasonably require) or in the case of Shared Ownership Dwellings or any of them to a person nominated by the Council; and
- B. The Council has refused the offer or has failed to accept such offer or is unable to nominate a Registered Provider or in the case of the Shared Ownership Dwellings is unable to nominate a person for such dwelling(s) within a period of six weeks from the date of service by the Council of the offer in writing by the said mortgagee or chargee OR has accepted such offer or made such nomination and has failed to complete the disposal arising from such offer or nomination within a period of six weeks from the date of such offer or nomination (whichever is the later) AND the said mortgagee or chargee shall then be at liberty to dispose of the Affordable Dwellings or any of them free from the restrictions contained in this Schedule
- C. The price referred to in paragraph (A) above shall be a sum equal to the open market value PROVIDED THAT notwithstanding the terms of this paragraph (C) the said mortgagee or chargee shall be permitted to recover all interest on the outstanding mortgage or charge together with the mortgagee's or chargee's costs and expenses relating thereto subject to having complied with the provisions in clause (I) of this Second Schedule

- m. In the event that any of the Affordable Dwellings is sold pursuant to the right to buy or the right to acquire provisions of the Housing Act 1985 or the Housing Act 1996 or any amendment or re-enactment thereof such sale and all subsequent dealings in relation to such an Affordable Dwelling shall be free from the restrictions relating to the Affordable Dwellings contained in this Schedule
- n. For the avoidance of doubt in the event that a leaseholder of a lease of one of the Shared Ownership Dwellings has completed the purchase of the freehold reversion pursuant to its right to staircase up to 100% under the said lease the restrictions relating to the Affordable Dwellings contained in this Schedule shall with effect from the date of completion of such purchase(s) cease to apply to the relevant Shared Ownership Dwelling(s);
- o. On the first disposal of the Affordable Housing Land to a Registered Provider the consideration for the Affordable Housing Land on which all of the Social Rented Dwellings and all of the Shared Ownership Dwellings (for the avoidance of doubt all of the Affordable Dwellings are to be transferred at nil grant) are to be constructed pursuant to paragraph (i) of this schedule shall be a sum calculated per dwelling plot (which for the avoidance of doubt shall include the consideration for the plot of land and the infrastructure and utilities to the boundary of the plot)
- p. Not to appoint a Registered Provider to deliver the Affordable Dwellings or transfer the Affordable Housing Land to a Registered Provider without the prior written approval of the Council (such approval not be unreasonably withheld) unless that Registered Provider is one or any of the following:

Sovereign Housing

A2 Dominion Housing Group

Aster Group

Home Group and

Radian Group

and in the event that the Council receives an application for approval to sell the Affordable Housing Land or any part thereof to a Registered Provider the Council shall (subject to the

proviso hereafter contained and subject to paragraph q of this Schedule) grant consent to such sale with such reasonable conditions as are appropriate

- q. Any person who applies to the Council for consent to sell the Affordable Housing Land or any part thereof under this Agreement shall if so requested by the Council provide such reasonable information as the Council shall demand in connection with such application.

Registered as a Local Land Charge

Date: 3/1/18

St. 3d