

DATED

2024

SWINDON BOROUGH COUNCIL [1]

and

COUNTRYSIDE SOVEREIGN SWINDON LLP [2]

and

ANGELA HELEN GILLIBRAND and JULIAN MARK CULMER COOPER [3]

and

COUNTRYSIDE PROPERTIES (UK) LIMITED [4]

and

SOVEREIGN HOUSING ASSOCIATION LIMITED [5]

PLANNING OBLIGATION

pursuant to Section 106 of the Town
and Country Planning Act 1990

relating to land at Lotmead Farm, Stratton Road, Wanborough, Swindon

DIRECTORATE OF LAW
SWINDON BOROUGH COUNCIL
CIVIC OFFICES
EUCLID STREET
SWINDON

THIS DEED is made the

2024

BETWEEN

- (1) **SWINDON BOROUGH COUNCIL** of Civic Offices, Euclid Street, Swindon (the "**Council**");
- (2) **COUNTRYSIDE SOVEREIGN SWINDON LLP** (registration number OC439649) whose registered office is at Countryside House, The Drive, Brentwood, Essex CM13 3AT (the "**First Owner**");
- (3) **ANGELA HELEN GILLIBRAND** of Salthrop House, Basset Down, Swindon, SN4 9QP and **JULIAN MARK CULMER COOPER** of Adbury Holt House, Burghclere, Newbury, RG20 9BW (the "**Second Owners**");
- (4) **COUNTRYSIDE PROPERTIES (UK) LIMITED** (Company Registration Number 614864) of Countryside House, The Drive, Brentwood, Essex CM13 3AT (the "**First Chargee**"); and
- (5) **SOVEREIGN HOUSING ASSOCIATION LIMITED** (a charitable registered society under the Co-operative and Community Benefits Societies Act 2014 with FCA registration number 7448 and registered with the Regulator of Social Housing registration number 4837) whose registered office is at Sovereign House, Basing View, Basingstoke, RG21 4FA (the "**Second Chargee**")

collectively referred to as "the parties" in this Deed

BACKGROUND

- A. The Council is the local planning authority and local highways authority for the purposes of the Act and also the local highways authority for the area within which the Application Site is situated.
- B. The First Owner is the freehold owner of the part of the Site registered at the Land Registry under title number WT465176 which is subject to the following registered charges:
 - (i) a registered charge dated 22 November 2021 in favour of the Second Owners;
 - (ii) a registered charge dated 22 November 2021 in favour of the First Chargee; and
 - (iii) a registered charge contained in a debenture dated 22 November 2021 and a second registered charge also dated 22 November 2021 both in favour of the Second Chargee.
- C. The Second Owners are the freehold owner of the part of the Site registered at the Land Registry under title numbers WT222415 and WT222431.
- D. The Council granted the First Outline Permission 30 March 2021 and the First S106 Deed was entered into in connection therewith.
- E. The parties entered into the Deed of Variation in connection with the First Outline Permission.
- F. The First Owner submitted the S73 Application to the Council 11 May 2023.
- G. The First Owner has appealed the S73 Application to the Planning Inspectorate for non-determination of the application by the Council.
- H. The First Owner has submitted as part of their appeal of the S73 Application to the Planning Inspectorate that it will only provide a maximum of 2,109 Dwellings on the Site, the parties agree that some of the planning obligation triggers set by Dwelling numbers in the First Section 106 Deed need

lowering as a consequence.

- I. The Owner and Mortgagees enter into this Deed as a pre-requisite should the Planning Inspectorate be minded to grant the Appeal Permission.
- J. Each obligation undertaken in this deed by the Owner is a planning obligation for the purposes of Section 106 of the Act.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Appeal Permission: the planning permission granted by the Planning Inspectorate pursuant to the S73 Application and Section 78 of the Act.

Deed of Variation: the deed made under section 106 and 106A of the Act dated 21 July 2023 between the First Owner, the Second Owners, the First Chargee and the Second Chargee.

First Outline Permission: the planning permission granted on 30 March 2021 pursuant to the application for outline planning permission registered with the Council on 9 April 2019 with application reference number S/OUT/19/0582 for demolition and/or conversion of existing buildings and redevelopment to provide up to 2,500 homes (Use Class C3); up to 1,780 sqm of community/retail uses (Use Class D1/D2/A1/A3/A4); up to 2,500 sqm of employment use (Use Class B1); sports hub; playing pitches; 2no. 2 Form Entry primary schools; green infrastructure; indicative primary access road corridors to A420; improvements to Wanborough Road and associated works.

First S106 Deed: the deed made under section 106 of the Act dated 29 March 2021 between the Council, Angela Helen Gillibrand, Arthur Guy Parry and Julian Mark Culmer Cooper and Ainscough Strategic Land Limited as varied by the Deed of Variation.

Monitoring Contribution: the sum calculated as 5% of the total of the Total Blended Contribution towards the monitoring of this deed.

Mortgagees: the First Chargee and the Second Chargee.

Owner: the First Owner and the Second Owner.

Planning Inspectorate: an executive agency for the Department for Levelling Up, Housing and Communities (or equivalent at the time).

S73 Application: the application for Outline Planning Application (means of access off Wanborough Road not reserved) for demolition and/or conversion of existing buildings and redevelopment to provide up to 2,500 homes (Use Class C3); up to 1,780 sqm of community/retail uses (Use Class

D1/D2/A1/A3/A4); up to 2,500 sqm of employment use (Use Class B1); sports hub; playing pitches; 2no. 2 Form Entry primary schools; green infrastructure; indicative primary access road corridors to A420; improvements to Wanborough Road and associated works, with different conditions 9, 10, 41, 42, 43, 46 and 47 from the First Outline Permission validated by the Council 11 May 2023.

Site: the part of the Application Site which is registered at the Land Registry under title numbers WT222415, WT222431 and WT465176

- 1.2 Unless the context otherwise requires, all words and phrases defined in the First S106 Deed shall have the same meaning in this deed.
- 1.3 Clause headings shall not affect the interpretation of this deed.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council or the Planning Inspectorate the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this deed.
- 1.11 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 Where 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 of them individually.

2. STATUTORY PROVISION

- 2.1 This deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner and Mortgagees with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the Act.

3. CONDITIONALITY

- 3.1 Save for clause 4, which shall only become effective on the grant of any Appeal Permission, this Deed takes effect immediately.

4. COVENANTS TO THE COUNCIL

- 4.1 The Owner and the Mortgagees covenant to observe and perform the covenants, restrictions and obligations contained in the First S106 Deed as amended by this deed and including the definitions in this Clause 1.1 of this Deed.
- 4.2 The definition of 'Dwellings' contained in Clause 1.1 of the First S106 Deed shall be amended by adding to the definition after the words 'Planning Permission' the words "*and/or Appeal Permission or any combination thereof*".
- 4.3 The definition of 'Planning Permission' contained in Clause 1.1 of the First S106 Deed shall be amended by adding to the end of the definition the words "*and/or the Appeal Permission issued by the Planning Inspectorate or any combination thereof.*"
- 4.4 Paragraph 7.15 of Schedule 1 in the First S106 Deed shall be amended by substituting the number "2,000" with the number "1,500".
- 4.5 Paragraph 7.16 of Schedule 1 in the First S106 Deed shall be amended by substituting the number "1,500" with the number "1,300".
- 4.6 Paragraph 8.1 of Schedule 1 in the First S106 Deed shall be deleted and replaced with the following:

- "(a) Not to Occupy or permit or otherwise allow the Occupation of more than 50 Dwellings until £1,000,000 of the Total Blended Contribution has been paid to the Council;*
- (b) Not to Occupy or permit or otherwise allow the Occupation of more than 100 Dwellings until £1,000,000 of the Total Blended Contribution has been paid to the Council;*
- (c) Not to Occupy or permit or otherwise allow the Occupation of more than 150 Dwellings until £1,000,000 of the Total Blended Contribution has been paid to the Council;*
- (d) Not to Occupy or permit or otherwise allow the Occupation of more than 200 Dwellings until £1,000,000 of the Total Blended Contribution has been paid to the Council;*
- (e) Not to Occupy or permit or otherwise allow the Occupation of more than 250 Dwellings until £574,999 of the Total Blended Contribution has been paid to the Council;*
- (f) Not to Occupy or permit or otherwise allow the Occupation of more than 400 Dwellings until £1,725,000 of the Total Blended Contribution has been paid to the Council;*
- (g) Not to Occupy or permit or otherwise allow the Occupation of more than 550 Dwellings until £1,725,000 of the Total Blended Contribution has been paid to the Council;*
- (h) Not to Occupy or permit or otherwise allow the Occupation of more than 700 Dwellings until £1,725,000 of the Total Blended Contribution has been paid to the Council;*

- (i) *Not to Occupy or permit or otherwise allow the Occupation of more than 850 Dwellings until £1,725,000 of the Total Blended Contribution has been paid to the Council;*
- (j) *Not to Occupy or permit or otherwise allow the Occupation of more than 1,000 Dwellings until £1,725,000 of the Total Blended Contribution has been paid to the Council;*
- (k) *Not to Occupy or permit or otherwise allow the Occupation of more than 1,150 Dwellings until £3,863,503 of the Total Blended Contribution has been paid to the Council;*
- (l) *Not to Occupy or permit or otherwise allow the Occupation of more than 1,300 Dwellings until £3,863,503 of the Total Blended Contribution has been paid to the Council;*
- (m) *Not to Occupy or permit or otherwise allow the Occupation of more than 1,450 Dwellings until £3,863,503 of the Total Blended Contribution has been paid to the Council;*
- (n) *Not to Occupy or permit or otherwise allow the Occupation of more than 1,525 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*
- (o) *Not to Occupy or permit or otherwise allow the Occupation of more than 1,600 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*
- (p) *Not to Occupy or permit or otherwise allow the Occupation of more than 1,675 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*
- (q) *Not to Occupy or permit or otherwise allow the Occupation of more than 1,750 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*
- (r) *Not to Occupy or permit or otherwise allow the Occupation of more than 1,825 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*
- (s) *Not to Occupy or permit or otherwise allow the Occupation of more than 1,900 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*
- (t) *Not to Occupy or permit or otherwise allow the Occupation of more than 1,975 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*
- (u) *Not to Occupy or permit or otherwise allow the Occupation of more than 2,050 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*
- (v) *Not to Occupy or permit or otherwise allow the Occupation of more than 2,125 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*
- (w) *Not to Occupy or permit or otherwise allow the Occupation of more than 2,200 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*
- (x) *Not to Occupy or permit or otherwise allow the Occupation of more than 2,275 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*
- (y) *Not to Occupy or permit or otherwise allow the Occupation of more than 2,350 Dwellings until £1,931,752 of the Total Blended Contribution has been paid to the Council;*

- (z) *Not to Occupy or permit or otherwise allow the Occupation of more than 2,450 Dwellings or more than 75% of Dwellings to be constructed in the final phase of the Development, whichever occurs first, until the Final Balancing Payment has been paid to the Council; and,*
- (aa) *Not to Commence the Development or permit or otherwise allow Commencement of Development until the Monitoring Contribution has been paid to the Council.”*

4.7 Appendix 11 in the First S106 Deed shall be amended by adding to the end of the table the following additional row:

“

Waste Provision - Kerbside Collection Contribution	£360,921	£0	££360,921
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“

4.8 Clause 1.1 of the First S106 Deed shall be amended by adding at the end of the clause the following definitions:

“Allocation Policy: means the Council’s policy for allocating Affordable Housing of all tenures (in the Borough of Swindon) as amended from time to time.

Nominations Rights: means the right of the Council to nominate the initial and subsequent allocation of each and every Affordable Housing Unit.

Person in Housing Need: means a person whose housing needs are not met by the market and is unable to compete in the local housing market as a result of the relationship between his or her income level and the rents or prices of such housing

Qualifying Persons: means a person on the Council’s Housing Register and accepted by the Council as a Person in Housing Need who would qualify for Affordable Housing in accordance with the policies of the Council current at the relevant time”

4.9 The definition ‘Nominations Agreement’ contained in Clause 1.1 of the First S106 Deed shall be deleted and not replaced.

4.10 Part 3 in Schedule 3 of the First S106 Deed entitled ‘Nominations Agreement’ shall be deleted and not replaced.

4.11 Paragraph 1.9 of Part 1 of Schedule 3 entitled ‘Provision of Affordable Housing Units’ shall be deleted and replaced with the following:

“1.9 Following the transfer of the Affordable Housing Units, the Owner shall operate in accordance with the Allocations Policy and the Nomination Rights unless otherwise agreed in writing with the Council.

1.9A *The following provisions shall govern the nomination and/or allocation of who may Occupy the Affordable Housing Units in line with the Allocations Policy, Nomination Rights and the nominations procedures for each type of tenure:*

- (i) *The Owner shall give the Council immediate written notice of any Affordable Housing Unit(s) that shall be vacant and available for Occupation;*
- (ii) *The Owner shall liaise with the Council as necessary with regard to local housing need generally and the list of Qualifying Persons PROVIDED THAT the Council shall have Nomination Rights over each and every Affordable Housing Unit.”*

4.12 Paragraph 5 in Schedule 2 entitled ‘Southern Connector Road’ shall be deleted and not replaced.

4.13 Appendix 10 shall be deleted and not replaced.

4.14 Paragraph 4 in Schedule 2 entitled ‘Accesses’ shall be amended by deleting and not replacing the words “(as set out in the Statement of Intent at Appendix 10)”.

5. MORTGAGEE’S CONSENT

The Mortgagee consents to the completion of this deed and acknowledges that from the date of this deed the Site shall be bound by the terms of this deed, as if it had been executed and registered as a land charge prior to the creation of the Mortgagee’s interest in the Site.

6. LOCAL LAND CHARGE

This Deed shall be registered as a local land charge and shall be registered by the Council and if the Council so requires at the Land Registry

8. COUNCIL’S COSTS

The First Owner covenants to pay the Council’s reasonable legal costs in the sum of £3,000 incurred in connection with the negotiation, preparation, and execution of this Deed.

9. VALUE ADDED TAX

9.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

9.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

10. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties)

Act 1999 to enforce any term of this deed.

11. OWNERSHIP

The Owner warrants that no person other than the Owner and Mortgagees have any legal or equitable interest in the Site other than what is stated at the beginning of this Deed.

11. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

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

The **COMMON SEAL** of)
SWINDON BOROUGH COUNCIL)
was hereunto affixed in the presence of:)

.....

EXECUTED as a **DEED** by)
COUNTRYSIDE SOVEREIGN SWINDON LLP)
acting by two members:)

.....

SIGNED as a DEED by)
ANGELA HELEN GILLIBRAND)
in the presence of:)

Signature of Witness:
Name of Witness:
Address of Witness:
.....
Occupation of Witness:

SIGNED as a DEED by)
JULIAN MARK CULMER COOPER)
in the presence of:)

Signature of Witness:
Name of Witness:
Address of Witness:
.....
Occupation of Witness:

EXECUTED as a **DEED** by)
COUNTRYSIDE PROPERTIES (UK) LIMITED)
acting by)
and)
as attorneys for)
Countryside Properties (UK) Limited)
under a power of attorney dated) **Attorney**
11 November 2022)

In the presence of:

Signature of Witness:
Name of Witness:
Address of Witness:
.....
Occupation of Witness:

.....
Attorney

In the presence of:

Signature of Witness:
Name of Witness:
Address of Witness:
.....
Occupation of Witness:

EXECUTED as a DEED by
AFFIXING THE COMMON SEAL of
SOVEREIGN HOUSING ASSOCIATION LIMITED
in the presence of:

.....

Authorised Signatory