

DATED:

2025

BDW TRADING LIMITED

AND

NORTH HERFORDSHIRE DISTRICT COUNCIL

DEED OF VARIATION

SECTION 106 and SECTION 106A TOWN AND
COUNTRY PLANNING ACT 1990
(AS AMENDED)

Relating to a Section 106 Agreement dated 28 November 2024 (ref: 18/01154/OP)

RELATING TO: Land at North of Highover farm to Stotfold Road, Highover Way, Hitchin, Herts

THIS DEED is made the

day of

2025

BETWEEN

- (1) **BDW TRADING LIMITED** (Company Registration No 3018173) whose registered office is situated at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Leicestershire, LE67 1UF ("**the Owner**"); and
- (2) **NORTH HERTFORDSHIRE COUNCIL** of Council Offices, Gernon Road, Letchworth Garden City, Hertfordshire, SG6 3JF ("**the Council**")

BACKGROUND

- A The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site (as defined in the Original Agreement) is situated
- B The Owner is registered as the freehold owner of the Site at the Land Registry under title number HD615990.
- C The Parties have agreed to enter into this Deed to vary the provisions of the Original Agreement as set out in Clause 2 of this Deed in respect of the Open Space provisions.
- D This Deed is supplemental to the Original Agreement and incorporates the terms of the Original Agreement as varied by Clause 2 of this Deed
- E The obligations contained in the Original Agreement to which this Deed relates are not enforceable by the County Council and consequently the County Council are not a party to this Deed in accordance with the provisions of Section 106A(1)(A) of the Act.

1 STATUTORY PROVISIONS

- 1.1 This Deed is entered into pursuant to Section 106 and Section 106A of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers and the obligations in this Deed are planning obligations and shall be enforceable by the Council as a local planning authority without limit of time against the Owner (as the case may be) and their successors in title, assigns and persons claiming under or through it an interest Site or any part of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by them
- 1.2 The Original Agreement shall be varied in the manner set out in Clause 2 of this Deed
- 1.3 Words and expressions used in this Deed which are not specifically defined shall have

the same meaning as in definitions contained in the Original Agreement

- 1.4 The definitions, clauses, obligations and provisions of the Original Agreement shall remain in full force and effect except as varied or added to by this Deed and shall continue to be applicable to the Site in respect of the Development defined in the Original Agreement as varied or added to by this Deed and remain to be performed to the extent that they have not already been performed

- 1.5 In this Deed the following words and definitions have the following meanings:-

“the Original Agreement”	the agreement dated 28 November 2024 made pursuant to Section 106 of the Act relating to the Land and made between (1) BDW Trading Limited and (2) North Hertfordshire District Council and (3) Hertfordshire County Council
“the Original Planning Permission”	18/01154/OP for outline planning permission with all matters reserved other than access, comprising residential led development of up to 700 dwellings of use class C3 (dwellings), approximately 500 sqm of neighbourhood-level facilities, a new 2FE primary school, open space, play space, green infrastructure, and associated accesses (vehicular, pedestrian and cycle), including a new primary access off Stotfold Road with limited access off High Dane (as amended)
“the Parties”	the parties to this Deed

- 1.6 A reference to any party to this Deed shall include that party's successors in title and assigns and in the case of the Council successors to their statutory functions
- 1.7 Where an obligation fails 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

1.8 This Deed shall take effect upon the date of this Deed

2 VARIATIONS OF THE ORIGINAL AGREEMENT

2.1 The Owner and the Council agree that the Original Agreement is varied as set out in the Schedule

2.2 Save as varied herein the Original Agreement shall remain in full force and fully effective and the terms of the Original Agreement shall have effect as though the provisions contained in this Deed had been contained in the Original Agreement with effect from the date of this Deed

3 COVENANTS BY THE OWNER

3.1 The Owner covenants with the Council to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed

3.2 This Deed does not release any party from any breaches of the Original Agreement existing at the date of this Deed

4 COSTS

4.1 The Owner shall pay to the Council upon the signing of this Deed their reasonable legal costs incurred in connection with the preparation and completion of this Deed

5 LOCAL LAND CHARGE

5.1 This Deed shall be registered as a local land charge by the Council in the register of local land charges maintained by the Council

6 MISCELLANEOUS

6.1 If any provisions in this Deed are held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

6.2 No waiver whether express or implied by the Council of any breach or default in performing or observing the terms and conditions of this Deed shall constitute a continuing waiver and no waiver shall prevent the Council or the Owner from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default

in respect of them

- 6.3 Save as expressly varied by this Deed the Original Agreement shall remain in full force and effect

7 JURISDICTION

- 7.1 This Deed shall be governed by and interpreted in accordance with the Law of England

IN WITNESS of which the Parties have executed this Deed as a Deed and have delivered it upon dating the day and year first before written

THE SCHEDULE

Variation of Original Agreement

The Original Agreement is varied as follows:

1. Clause 1 (Definitions) of the Original Agreement shall be varied as follows:
 1. The definition of “*Open Space Scheme*” shall be deleted and replaced by the following words

“means an indicative scheme for the Open Space Land as Open Space to be approved by the Council pursuant to paragraph 14 of Part 2 of Schedule Two or such variation thereof as may be agreed by the Owner and the Council, which shall identify the indicative location of the LEAP and NEAP. For the avoidance of doubt, the detailed design and specification of the Open Space for each Phase shall be submitted to and approved by the Council prior to the commencement of the relevant Phase in which that Open Space is to be delivered;”
 2. Paragraphs 14.1 to 14.7 of Schedule 2 shall be deleted from the Original Agreement and shall be replaced by the following wording:

14. Open Space

- 14.1 to submit the Open Space Scheme to the Council for approval prior to the Commencement of any of Phase of the Development provided always that this paragraph shall not apply in respect of Phase 0;
- 14.2 not to Commence Development in respect of any Phase of the Development except Phase 0 until it has submitted to and obtained the Council's written approval of the Open Space Scheme
- 14.3 to submit the Open Space Programme to the Council for approval prior to the Commencement of any Phase of the Development provided always that this paragraph shall not apply in respect of Phase 0;
- 14.4 not to Commence Development in respect of any Phase of the Development except Phase 0 until it has submitted to and obtained the Council's written approval of the Open Space Programme;
- 14.5 to transfer the relevant Open Space as set out in the Open Space Scheme to the

Council for consideration of £1 per Phase or Reserved Matters Approval as the case may be.

14.6 Prior to the Commencement in respect of each Phase or Reserved Matters Application as the case may be the Owner to submit the calculation and amount of Open Space Maintenance Contribution payable in respect of the Open Space Land for that Phase or Reserved Matter Application for approval by the Council provided always that this paragraph should not apply in respect of Phase 0.

14.7 Not to commence Development in respect of any Phase of the Development except Phase 0 until it has submitted to and obtained the Council's written approval to the Open Space Maintenance Contribution calculation.

EXECUTED as a Deed by)
BDW TRADING LIMITED)
)

By

and

two attorneys duly appointed by a Power of Attorney
dated [TBC]

Attorney

SIGNATURE OF WITNESS _____

NAME OF WITNESS _____

ADDRESS _____

OCCUPATION OF WITNESS _____

THE COMMON SEAL of)
NORTH HERTFORDSHIRE DISTRICT)
COUNCIL was affixed to this)
Deed in the presence of:)

Authorised Signatory