

Dated:

2017

**TEIGNBRIDGE DISTRICT COUNCIL** (1)

**ADH KING** (2)

**WADDETON PARK LIMITED** (3)

**PLANNING OBLIGATION BY DEED OF AGREEMENT**  
made pursuant to  
**SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990**  
**(AS AMENDED)**

Land situated at  
Matford Home Park, South of A379, Exeter, Devon

Legal Services reference TCP21.603



DATE

2017

**PARTIES**

- (1) **TEIGNBRIDGE DISTRICT COUNCIL** of Forde House Brunel Road Newton Abbot Devon TQ12 4XX ("Council")
- (2) **ALAN DAVID HENRY KING** of Matford Park Farm, Exminster, Devon EX6 8AT ("Owner")
- (3) **WADDETON PARK LIMITED** (Company No. 05827399) or Greendale Court, Clyst St Mary, Exeter, Devon EX5 1AW ("Developer")

**INTRODUCTION**

1. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
2. The Owner is the freehold owner of the Site as set out in the First Schedule.
3. The Developer has an interest in the Site by virtue of a Promotion Agreement dated 23 May 2012.
4. The Developer has 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.
5. The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**OPERATIVE PART**

**1 DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

- |                   |  |
|-------------------|--|
| "2014 Agreement"  | means the s.106 Agreement dated 25 September 2014 entered into by the parties hereto in connection with the 2014 Permission (including any variations thereto) |
| "2014 Permission" | means the planning permission granted by the Council on 2 October 2014 pursuant to   |

application reference 13/02729/MAJ  
(including any variations thereto)

- “Act” means the Town and Country Planning Act 1990 (as amended).
- “Active Recreation Space” means active recreation space which shall include those areas which are formally used for a variety of organised and competitive sports. They can either be fixed sports space (tennis courts/bowling greens etc.) or seasonal sports space (football/cricket).
- “Active Recreation Contribution” means a contribution in the sum of £1,040 per Dwelling towards the cost to the Council (or, if appropriate, the County Council) of providing Active Recreation Space
- “Affordable Dwelling” means each unit of Affordable Rented Housing and Intermediate Affordable Housing to be delivered on the Site pursuant to the Second Schedule
- “Affordable Housing” means (subject to the provisions of the Second Schedule) housing which is defined in the NPPF at Annex 2 as housing which includes “social rented affordable rented and intermediate housing provided to eligible households whose needs are not met by the market” including provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision and in relation to which eligibility is determined with regard to local incomes and local house prices.
- “AHP” means a registered social landlord or a local or similar authority or a housing association or similar organisation or a social landlord or such other body or organisation whose main object is the provision of Affordable Housing.
- “Affordable Housing Units Layout and Mix Plan” means the plan to be submitted by the Owner and approved by the Council which identifies the size distribution and mix of the Affordable Dwellings in accordance with the Second Schedule.

“Affordable Rented Housing”	means rented housing let by an AHP to households who are eligible for social rented housing at an affordable rent which is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80% of the local market rent.
“Allotments”	means an area or areas of space, not publicly accessible, set aside for growing crops and let to residents on an annual basis having a total area of no less than 5.725m <sup>2</sup> per Dwelling
“Application”	means the application for mixed use development comprising circa 230 residential dwellings (C3), one single form entry primary school (D1), retail floorspace (A1) together with associated public open space and highway infrastructure submitted to the Council on 12 November 2014 and allocated reference number 14/03400/MAJ.
“Appropriately Marketed”	means marketing the Self Build and Custom Build Plots in accordance with a marketing strategy to be agreed in writing with the Council prior to such marketing taking place
“Authority’s Bank”	means the current bank used by the Council (currently Lloyds Bank PLC)
“Children and Young People’s Space”	means spaces where children and young people have the opportunity to play or meet safely within equipped and unequipped environments. (Unequipped environments will include areas set aside for informal kick-about, Multi-use play areas and areas provided with seats or shelters for young people to gather to talk and socialise). Sub-types include wheels parks, games areas, and children’s play space.
“Children and Young People’s Space Contribution”	means a contribution in the sum of £1,196 per Dwelling towards the cost to the Council of providing Children and Young People’s Space
“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 other than (for the purposes

## SECOND SCHEDULE

### The Owner's covenants with the Council

The Owner covenants with the Council as follows:

#### 1 Affordable Housing

- 1.1 25% of the Dwellings shall be provided as Affordable Dwellings and shall be constructed to the HCA Scheme Development Standard and as a minimum level 3 of the Code for Sustainable Homes. Where the total number of Affordable Dwellings to be provided includes part of a whole number then the number of Affordable Dwellings shall be rounded up where the part of the whole number is 0.5 or more and shall be rounded down where the part of the whole number is less than 0.5.
- 1.2 The Owner shall not Commence Development on any part of the Site until it has submitted to the Council for approval the Affordable Housing Units Layout and Mix Plan and once approved in writing by the Council the Affordable Dwellings shall be provided in accordance with the Affordable Housing Units Layout and Mix Plan.
- 1.3 75% of the Affordable Dwellings shall be provided as Affordable Rented Housing and 25% of the Affordable Dwellings shall be provided as Intermediate Affordable Housing. Where the total number of Affordable Dwellings to be provided as Affordable Rented Housing and/or Intermediate Affordable Housing (as the case may be) includes part of a whole number then the number of Affordable Dwellings to be provided as Affordable Rented Housing and/or Intermediate Affordable Housing (as the case may be) shall be rounded up where the part of the whole number is 0.5 or more and shall be rounded down where the part of the whole number is less than 0.5.
- 1.4 Not to Occupy more than 50% of the Open Market Dwellings without completing and transferring to an AHP 50% of the Affordable Dwellings on such terms and subject to existing encumbrances reservations and the imposition of such covenants as may be agreed between the Owner and the AHP with the intention that the Affordable Dwellings shall at all times be occupied and managed by and in accordance with the aims and objects of the AHP.
- 1.5 Not to Occupy more than 75% of the Open Market Dwellings without completing and transferring to an AHP all the Affordable Dwellings on such terms and subject to existing encumbrances reservations and the imposition of such covenants as may be agreed between the Owner and the AHP with the intention that the Affordable Dwellings shall at all times be occupied and managed by and in accordance with the aims and objects of the AHP.
- 1.6 Once the Owner has transferred any interest in the Affordable Dwellings to the AHP the Owner shall bear no liability for ensuring that the AHP complies with the following obligations

1.7 The AHP shall upon completion of the transfer of the Affordable Dwellings and at all times subsequently allocate each Affordable Dwelling to a person who is considered by the AHP to be in need of such accommodation and who in the opinion of the AHP is unable to afford other accommodation in the locality suitable to the needs of himself and his household and who:

1.7.1 has immediately prior to such allocation been resident within the parish of Exminster or

1.7.2 has a strong local connection with the parish of Exminster

and in seeking to allocate the Affordable Dwellings under this paragraph 1.7 the AHP shall (but without limiting its wider discretion in this regard) consider:

1.7.3 family associations of such person or persons in the parish of Exminster;

1.7.4 any periods of ordinary residence of such person or persons in the parish of Exminster not immediately before the date upon which any Affordable Dwelling becomes vacant; and/or

1.7.5 whether such person or persons has to have permanent employment in the parish of Exminster;

1.8 If the AHP is unable to allocate any of the Affordable Dwellings in the manner referred to in paragraph 1.7 above within 20 Working Days then the AHP shall allocate any such Affordable Dwelling by applying the procedures contained in paragraph 1.7 above but in lieu of the reference therein to the parish of Exminster there shall be substituted references to the surrounding parishes and/or towns.

1.9 If the AHP is unable to allocate any of the Affordable Dwellings in the manner referred to in paragraphs 1.7 and 1.8 above within a further period of 20 Working Days then the AHP shall subject to the provisions of paragraphs 1.10 and 1.11 below allocate any such Affordable Dwelling to a person or persons ("nominee") nominated by the Manager for Housing for the time being of the Council from the Council's list of persons of priority housing need within its administrative area provided that the AHP shall have the right to reject such nominee if one of the following criteria is met:

1.9.1 the nominee has no housing need as defined within the criteria for preference within the Housing Act 1996 (as amended by the Homelessness Act 2002)

1.9.2 the nominee is not a suitable tenant as defined within the criteria of the AHP's allocations and lettings policy

1.9.3 in the case of an Affordable Dwelling to be let on a shared ownership lease the nominee does not have sufficient cash or income to purchase the required equity share

and the AHP has the right (whilst acting reasonably at all times in respect of each nomination) to reject the nominee by giving notice to the Council and such notice shall state reasons for the rejection and the Council shall have the right to nominate an alternative person.

1.10 In the circumstances set out in paragraph 1.11 below the AHP shall be released from the obligation under paragraph 1.9 above and shall be entitled to allocate any vacant Affordable Dwelling to any person who is considered by the AHP to be in need of such accommodation and who is resident in the district of Teignbridge or has a strong local connection with the district of Teignbridge or failing that within the county of Devon.

1.11 The circumstances referred to in paragraph 1.10 above are the following:

1.11.1 if no nomination is made by the Manager for Housing within 10 Working Days of notification by the AHP of a vacancy

1.11.2 if a nomination has been made by the Manager for Housing and the nominee has failed either:

(a) if the Dwelling is being made available on a shared ownership lease to exchange contracts for the grant of the shared ownership lease within a 6 week period or

(b) in any other case to complete a tenancy agreement or lease within a 7 day period

and it is agreed that in these circumstances the Manager for Housing may not make a second nomination.

1.12 Upon any disposal by the AHP of the freehold reversion of any Affordable Dwelling in respect of which a shared ownership lease has been granted there shall be included in the transfer a covenant on the part of the purchaser in favour of the AHP that the said purchaser will not dispose of the said Affordable Dwelling (other than by way of mortgage or charge) without first offering to convey the Affordable Dwelling to the AHP at open market value.

1.13 The planning obligations and other provisions contained in paragraph 1 of this Schedule shall not apply:

1.13.1 to any Mortgagee of the Affordable Dwellings to the intent that any such Mortgagee may deal with or dispose of any dwelling or dwellings comprising the Affordable Dwellings free from the said obligations and on the basis that any person deriving title through or under such Mortgagee shall not be bound by any of the said obligations PROVIDED that the Mortgagee shall have first complied with its duties in para 1.14 below;

1.13.2 to any tenant of any rented dwelling comprised in the Affordable Dwellings who exercises any right to acquire or right to buy his dwelling (or any interest in it) or acquires the said rented dwelling

pursuant to any voluntary sales policy of his landlord and nor to any person deriving title through or under such tenant; or

- 1.13.3 to any person holding a shared ownership lease of any dwelling comprised in the Affordable Dwellings from time to time in the event that such person exercises any right to staircase which may be included in such shared ownership lease and such leaseholder acquires a 100% leasehold or freehold interest in the relevant dwelling and nor to any person deriving title through or under such leaseholder.
- 1.14 The Mortgagee shall prior to seeking to dispose of the Affordable Dwellings pursuant to any default under the terms of its mortgage or charge give prior written notice ("Chargee's Notice") to the Council of its intention to dispose and:
- 1.14.1 in the event that the Council responds within 2 months from receipt of the Chargee's Notice indicating that arrangements for the transfer of the Affordable Dwellings can be made in such a way as to safeguard them as Affordable Housing and to secure repayment of all sums outstanding under the Mortgage (including all accrued principal monies, interest and reasonable and proper costs and expenses in connection with the mortgage or charge) then the Mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer
  - 1.14.2 if the Council does not serve its response to the Chargee's Notice within the 2 months then the Mortgagee shall be entitled to dispose of the Affordable Dwelling free of the restrictions set out in paragraph 1 of this Schedule
  - 1.14.3 if the Council or any other person cannot within 3 months of the date of the Chargee's Notice complete such transfer then provided that the Mortgagee shall have complied with its obligations under this paragraph 1.14 the Mortgagee shall be entitled to dispose of the Affordable Dwelling free of the restrictions set out in paragraph 1 of this Schedule.
- 1.15 Any Grant Funding element of any capital receipts generated by the exercise of a right referred to in paragraph 1.13 above shall be recycled in accordance with the procedure set out in the Housing Corporation Capital Funding Guide (or such similar guide as may exist from time to time) and the AHP making such provision shall furnish the Council with such evidence as the Council shall reasonably require to show how that receipt has been spent.