

Dated

2018

**STEPHEN AND RUTH KERSHAW  
TO  
WILTSHIRE COUNCIL**

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**Planning obligation by deed of undertaking under Section 106  
of the Town and Country Planning Act 1990  
relating to  
land to the South of Church Place,  
Lydiard Millicent, Wiltshire SN5 3NE**

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**THIS PLANNING OBLIGATION** is made the \_\_\_\_\_ day \_\_\_\_\_ 2018 in the form of a Unilateral Obligation **GIVEN BY:**

1. **Steven and Ruth Kershaw** of 7 Elm Grove, Nine Elms, Swindon, SN5 5PG (together “**the Owner**”);

**TO:**

2. **WILTSHIRE COUNCIL** of County Hall, Bythesea Rd, Trowbridge BA14 8JN (“**the Council**”)

### **BACKGROUND**

1. The Council is the local planning authority (LPA) for the purposes of the 1990 Act for the area in which the Site is situated.
2. The Owner is the registered proprietor of the Site which is registered at the Land Registry with freehold title absolute under Title Number WT223395
3. On 8<sup>th</sup> September 2017 the Owner submitted the Application to the Council for permission to carry out the Development on the Site.
4. The Owner is prepared to enter into this deed in order to secure the planning obligations it creates in the event that the Planning Permission is granted.

**NOW THIS DEED WITNESSES** as follows:

#### **1. Definitions and Interpretation**

##### **1.1 Definitions**

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

- 1.1.1 **'the 1990 Act'** means the Town and Country Planning Act 1990 (as amended).
- 1.1.2 **'Affordable Housing'** means Affordable Rented Housing Social Rented Housing and Intermediate Housing provided to eligible households whose needs are not met by the market, where eligibility is determined with regard to local incomes and local house prices and which remains at an affordable price for future eligible households.

- 1.1.3 **'the Affordable Housing Land'** means the land within the Site upon which the Affordable Housing Units are to be constructed.
- 1.1.4 **'the Affordable Housing Scheme'** means the scheme submitted in accordance with the Planning Permission which shall include details of: (i) the numbers, type, tenure and location on the Site of the Affordable Housing Units, and (ii) the timing of the construction of the Affordable Housing Units and its phasing in relation to the occupancy of the Market Housing Units, and (iii) the arrangements for the transfer of the Affordable Housing Units to a Registered Provider, and (iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing Units, and (v) the occupancy criteria to be used for determining the identity of the occupiers of the Affordable Housing Units and the means by which such occupancy criteria shall be enforced.
- 1.1.5 **'the Affordable Housing Units'** means such part of the Development comprising 40% of the Dwellings which shall be constructed for Affordable Housing in accordance with the approved Affordable Housing Scheme, 75% of which shall be Affordable Rented Housing and/or Social Housing and 25% of which shall be Intermediate Housing and 'an Affordable Housing Unit' shall be construed accordingly. In assessing the number of Dwellings to be constructed as Affordable Housing Units, such number shall be rounded up to the nearest whole number where such percentage shall not be a whole number as per Wiltshire Council Core Policy 43
- 1.1.6 **'Affordable Rented Housing'** has the meaning set out in Annex 2 to the NPPF.
- 1.1.7 **'the Application'** means the application for full planning permission for the Development dated 19 September 2017 submitted to the Council and allocated reference number 17/08735/FUL OR Planning Appeal reference APP/Y3940/W/18/3205367 submitted to the Secretary of State.
- 1.1.8 **'Approval (Reserved Matters)'** This does not apply to these proposals which are made in Full.
- 1.1.9 **'a Chargee'** means any mortgagee or chargee of the Registered Provider, the successors in title to such a mortgagee or chargee, or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925.
- 1.1.10 **'the Chargee's Duty'** means the tasks and duties set out in Schedule 1 paragraph 2.5

- 1.1.11 **'Commencement of Development'** means the commencement of any material operation (as defined in the 1990 Act section 56(4)) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and **'Commence Development'** shall be construed accordingly.
- 1.1.12 **'Composition of the Development'** means the aggregate number of Dwellings comprised in the Development as referred to in the notice of Approval (Full Planning Permission).
- 1.1.13 **'the Date of Practical Completion'** means the date of issue of a certificate of practical completion by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect.
- 1.1.14 **'the Development'** means the development of the Site with 9 (nine) residential dwellings (including up to 40% affordable housing), with an estate road pursuant to the Planning Permission.
- 1.1.15 **'Dwelling'** means a dwelling (including a house, flat, maisonette or bungalow) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly.
- 1.1.16 **'the RSA'** means the Regulator of Social Housing Agency created pursuant to the Housing and Regeneration Act 2008 exercising the functions in relation to the funding of affordable housing and includes any successor body exercising similar functions.
- 1.1.17 **'the Index'** means the All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation.
- 1.1.18 **'Infrastructure'** has the meaning ascribed in Section 216(2) of the Planning Act 2008
- 1.1.19 **'Interest'** means interest at 4% above the base lending rate of National Westminster Bank plc from time to time.
- 1.1.20 **'Intermediate Housing'** has the meaning set out in Annex 2 to the NPPF.
- 1.1.21 **'the Market Housing Units'** means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing

- 1.1.22 **'the NPPF'** means the second version of the National Planning Policy Framework issued by the Department for Housing, Communities and Local Government dated 2018.
- 1.1.23 **'to Occupy'** means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **'Occupation'** and **'Occupied'** shall be construed accordingly.
- 1.1.24 **'Party'** means any of the parties to the deed.  
**"the POS"** means the 1:500 @A1 scale plan marked **'drawing number 328-D-26-A'** dated 14<sup>th</sup> November 2018 a copy of which is attached to this deed.  
**"the Plan"** means the 1:2000 @A3 scale plan marked **'drawing number 328-D-10'** dated 16<sup>th</sup> June 2017 a copy of which is attached to this deed.
- 1.1.25 **'the Planning Permission'** means any planning permission granted by the Council or the Secretary of State in relation to the Application.
- 1.1.26 **'a Protected Tenant'** means any tenant who:  
1.1.26.1 has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of an Affordable Housing Unit, or  
1.1.26.2 has exercised any statutory right to buy (or any equivalent contractual right) in respect of an Affordable Housing Unit, or  
1.1.26.3 was granted a shared ownership lease (or similar arrangement where a share of an Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) by the Registered Provider in respect of an Affordable Housing Unit and has subsequently purchased all the remaining shares from the Registered Provider so that the tenant owns the entire Affordable Housing Unit
- 1.1.27 **'the Registered Provider'** means a registered provider of social housing within the meaning of Section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with the Regulator of Social Housing (formerly the HCA) or any other body who may lawfully provide or fund affordable housing from time to time.
- 1.1.28 **'Social Rented Housing'** means social rented housing as described in the definition of Affordable Housing set out at Annex 2 of the NPPF.

1.1.29 **'the Site'** means the area of land to the shown edged red on the Plan against which the provisions of this deed may be enforced as referred to in section 1.1.24.

## 1.2 Interpretation

1.2.1 Reference in this Deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.

1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.

1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

1.2.4 Wherever 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 unless there is an express provision otherwise.

1.2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

1.2.6 Save in respect of clause 11 (Indemnity) references to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.

1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

## 2. Legal basis

2.1 This Deed is an undertaking made pursuant to Section 106 of the 1990 Act.

2.2 The terms of this deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council as the local planning authority.

## 3. Conditions, duration and enforcement

### Conditions precedent

3.1 The obligations contained in the schedules to this deed are conditional upon:

3.1.1 the grant of the Planning Permission, and

3.1.2 the Commencement of Development

save in respect of any obligations contained in the schedules to this deed expressly requiring compliance prior to the Commencement of Development, which shall come into effect immediately upon the grant of Planning Permission.

### 3.2 **Duration**

3.2.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.

3.2.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.

### 3.3 **Other development**

Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

### 3.4 **Non-enforcement**

3.4.1 The obligations contained in this deed shall not be binding upon or enforceable against any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport services.

## 4. **Owner's covenants**

4.1 The Owner covenants with the Council as set out in Schedule 1.

## 5. **Provisions of immediate effect**

- 5.1 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 5.2 The Owner agrees with the Council to give the Council prompt 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 contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

## **6. Notices**

- 6.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.
- 6.2 The address for any notice or other written communication shall be within the United Kingdom.
- 6.3 A notice or communication shall be served or given:
- 6.3.1 on the Owner at the address set out above, or such other address as shall be notified in writing to the Council from time to time, and
  - 6.3.2 on the Council at the address set out above or such other address as shall be notified in writing to the parties from time to time marked for the attention of the Director of Regeneration and Business.

## **7. Local land charge**

- 8.1 This deed shall be registerable as a local land charge.

## **8. Jurisdiction and legal effect**

- 8.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.
- 8.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.
- 8.3 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 from acting upon any subsequent breach or default.

8.4 The provisions of this deed shall be of no effect until this deed has been dated.

**9. Indexation, interest and VAT**

9.1 Any sum to be paid to the Council under Schedule 1 shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is paid.

9.2 If any payment due under this deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

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

IN WITNESS of which the Owner has executed this deed as a deed and delivered it the day and year first before written.

## **SCHEDULE 1**

### **(the Owner's covenants with the Council)**

The Owner covenants with the Council as follows:-

**1. Progress of development**

1.1 The Owner shall notify the Council:

- (a) upon the Commencement of Development, and
- (b) upon construction of the Affordable Housing, and
- (c) upon Occupation of 60% of the Market Housing Units, and
- (d) upon Occupation of 80% of the Market Housing Units.

**2. Affordable housing**

2.1 Not to permit or allow the Commencement of Development on any Phase of Development until the Affordable Housing Scheme in relation to the Development has been agreed in writing by the Council. Unless otherwise formally amended by the Secretary of State or Wiltshire Council such provision will take the shape of 2 x 2-Bed social housing and 1x3 Bed plus 1x4-Bed shared equity housing referenced as Plots 1-4 on the Masterplan. Such provision is based on the formal response of housing officers.

2.2 No more than 60% of the Market Housing Units on the Development shall be Occupied until all of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential occupation, and written notification of that has been received by the Council.

2.3 No more than 60% of the Market Housing Units on the Development shall be Occupied until the Public Open Space has been set out in accordance with the Planning Permission and a management company has been established to ensure the ongoing enjoyment of the space pursuant to its purpose. The management company shall be funded by the residents of the Development.

2.4 From the Date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing in accordance with the approved Affordable Housing Scheme, save that this obligation shall not be binding on:

2.4.1 any Protected Tenant, any mortgagee or chargee of a Protected Tenant or any person deriving title from a Protected Tenant, or any successor in title to a Protected Tenant and their respective mortgagees and chargees, or

2.4.2 any Chargee provided that he has first complied with the Chargee's Duty, or

- 2.4.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 2.5 No more than 80% of the Market Housing Units shall be Occupied until the Affordable Housing Units have been transferred to the Registered Provider such transfer to include the following:
- 2.5.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land;
- 2.5.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits 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
- 2.5.3 a reservation of all rights of access and passage of services and rights of entry necessary for the purposes of the Development.
- 2.6 If the Chargee shall, before seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge, give not less than three months' prior notice to the Council of its intention to dispose, and the following provisions shall apply, provided that the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage :
- 2.6.1 if the Council responds within two months from receipt of the Chargee's notice and indicates that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing and and Chargee co-operates with those arrangements and uses its best endeavours to secure the transfer, and if the Council or any other person cannot within two months of the date of service of its response under paragraph 2.5.1 secure said transfer then, provided that the Chargee can prove he has complied with its obligations under paragraph 2.5.1, the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this paragraph 2.1 which shall then cease to apply to those units.
- 2.6.2 If the Council does not serve its response to the Chargee's notice within two months, the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this paragraph 2.1 which shall then cease to apply to those units.

SIGNED AS A DEED by

**Steven Kershaw**

In the presence of:

Witness name: Mark Doodes  
Witness address: Old Toll House.....  
Beckhampton.....  
Wiltshire, SN8 1QJ.....  
Occupation: Town Planner.

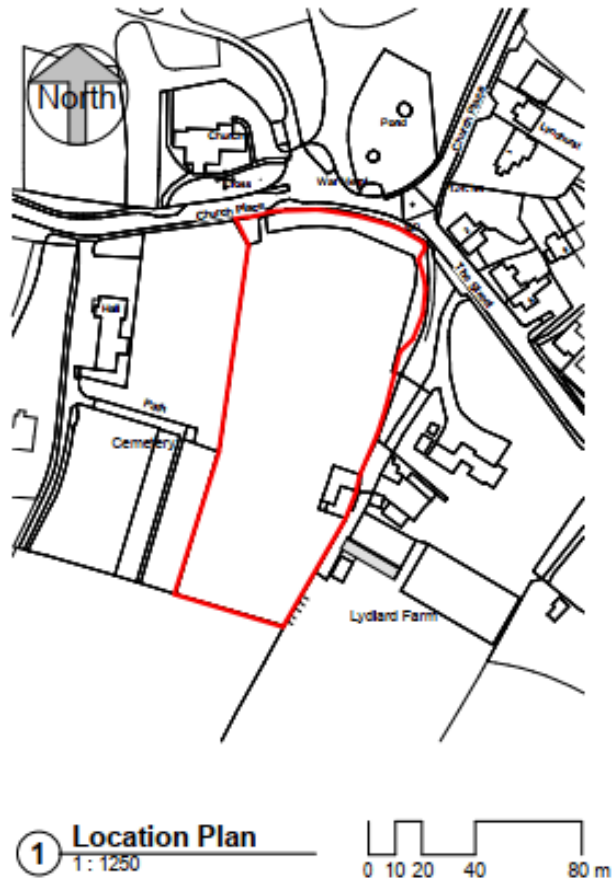
SIGNED AS A DEED by

**Ruth Kershaw**

In the presence of:

Witness name: Mark Doodes  
Witness address: Old Toll House.....  
Beckhampton.....  
Wiltshire, SN8 1QJ.....  
Occupation: Town Planner.

Appendix 1 – Site Location Plan



Appendix 2 – Public Open Space Plan – POS denoted in green hashing.

