

**Dated** 18 October

**2024**

**BROADLAND DISTRICT COUNCIL**

and

**NORFOLK COUNTY COUNCIL**

and

**PERSIMMON HOMES LIMITED**

and

**TAYLOR WIMPEY UK LIMITED**

and

**HOPKINS HOMES LIMITED**

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**DEED OF VARIATION OF PLANNING  
AGREEMENT UNDER SECTION 106 OF THE  
TOWN AND COUNTRY PLANNING ACT 1990**

relating to the development of land at White  
House Farm, Blue Boar Lane, Sprowston, Norfolk

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Flint Buildings  
1 Bedding Lane  
Norwich  
NR3 1RG

Ref: JZM/243762.0001

THIS DEED OF VARIATION is dated 18 October

2024

**PARTIES:**

- (1) **BROADLAND DISTRICT COUNCIL** of Horizon Centre Broadland Business Park Peachman Way Norwich, Norfolk, NR7 0WF (referred to as the "District Council");
- (2) **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich, NR1 2DH (referred to as the "County Council");
- (3) **PERSIMMON HOMES LIMITED** (Company Number: 04108747) whose registered office is at Persimmon House, Fulford, York, YO19 4FE (referred to as "Persimmon")
- (4) **TAYLOR WIMPEY UK LIMITED** (Company Number: 00296805) whose registered office is at Gate House, Turnpike Road, High Wycombe, Buckinghamshire, United Kingdom, HP12 3NR (referred to as "Taylor Wimpey");
- (5) **HOPKINS HOMES LIMITED** (Company Number: 02875798) whose registered office is at Melton Park House, Melton, Woodbridge, Suffolk, IP12 1TJ (referred to as "Hopkins Homes").

AND in this Deed reference to "the Consortium" shall be construed as a reference to the parties of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> parts acting together.

**INTRODUCTION**

- (A) The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and by whom terms of the Original Agreement and this Deed are enforceable.
- (B) The County Council is the relevant Highway Authority, Transport Authority, Education Authority, Library Service Provider and Fire Authority and is also a local planning authority and by whom the terms of the Original Agreement and this Deed are enforceable.
- (C) The Consortium are the registered proprietors of the Site.
- (D) Planning permission was granted by the District Council on 23 May 2011 for the Development under reference 20080367 subject to conditions and the Original Agreement.

- (E) On 11 January 2019 the District Council, the County Council, Persimmon and Sage Housing Limited entered into the First Variation.
- (F) The District Council and the County Council on request have agreed to vary the Original Agreement (as varied by the First Variation) on the terms set out in this Deed.

## **1. DEFINITIONS**

- 1.1. In this Deed the following expressions have the following meanings:

"First Variation"	means the Deed of Variation to the Original Agreement dated 11 January 2019 entered into by the District Council (1); the County Council (2); Persimmon (3); and Sage Housing Limited (4)
"Original Agreement"	means an agreement dated 23 May 2011 made under Section 106 of the Act between the District Council (1), the County Council (2), Peter Willoughby Furnivall, Andrew Edward Buxton, Richard Eustace Thomas Gurney and George Bell (3), Persimmon (4), Taylor Wimpey (5), Hopkins Homes (6) and Barclays Bank Plc (7) containing planning obligations enforceable by the District Council and the County Council as modified pursuant to an application under Section 106A of the Act approved by the District Council on 10 May 2018 under reference 20180781
"Site"	the part of the Land (as defined in the Original Agreement) which is owned by the Consortium

## **2. CONSTRUCTION OF THIS AGREEMENT**

- 2.1. Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless specifically staged otherwise or the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa

- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms all such words shall be construed interchangeably in that manner
- 2.4. Wherever 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 severally unless there is an express provision otherwise
- 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
- 2.6. References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council shall include any successors to their statutory functions (as appropriate)
- 2.7. The headings and contents list are for reference only and shall not affect construction and/or interpretation
- 2.8. Unless otherwise stated defined terms used in this Deed shall have the meanings given to them in the Original Agreement (as varied by the First Variation) and the terms of the Original Agreement (as varied by the First Variation) shall apply to this Deed mutatis mutandis

### **3. LEGAL BASIS**

This Deed is supplemental to the Original Agreement (as varied by the First Variation) and is made pursuant to Section 106 and Section 106A of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the District Council and County Council against the Site

### **4. CONDITIONALITY**

The provisions set out in Schedule One shall come into effect immediately upon completion of this Deed.

### **5. COVENANTS AND VARIATIONS TO THE ORIGINAL AGREEMENT**

- 5.1. The Parties agree that the Original Agreement (as varied by the First Variation) shall be varied as set out in the Schedule One.
- 5.2. In all other respects the contents of the Original Agreement (as varied by the First Variation) are confirmed and agreed and shall continue to bind the Site as varied by this Deed.
- 5.3. The Consortium covenant with the District Council and the County Council to comply with the obligations and restrictions in the Original Agreement as varied by this Deed in so far as they relate to the Site and the Parties agree that any obligations under the Original Agreement which have been satisfied shall be deemed to have been satisfied for the purposes of this Deed and of the Original Agreement as varied by this Deed.
- 5.4. The District Council and the County Council each undertake that they shall not enforce the provisions of the Original Agreement or this Deed against any individual owners occupiers or mortgagees of any Dwellings constructed on the Land pursuant to the Planning Permission SAVE FOR the provisions in Schedule 1 of the Original Agreement (as varied by the First Variation) which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable Housing Units subject to the provisions contained therein.

## **6. MISCELLANEOUS**

- 6.1. This Deed may be registerable as a local land charge by the District Council.
- 6.2. Following the performance and satisfaction of all the obligations contained in the Original Agreement (as varied by the First Variation) and this Deed the District Council shall forthwith effect the cancellation of all entries made in the register of local land charges in respect of this Deed
- 6.3. Insofar as any clause or 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 or enforceability of the remaining provisions of this Deed
- 6.4. In all other respects the terms and conditions of the Original Agreement (as varied by the First Variation) shall remain in full force and effect except as varied by this Deed
- 6.5. The Consortium hereby agrees on completion to pay the District Council's and County Council's and reasonable legal costs of negotiating and completing this Deed

- 6.6. The Consortium warrants that they have full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Site
- 6.7. No person shall, subject as hereinafter provided, be liable to observe or perform the obligations under this Deed or for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or the part of the Land to which the obligation or breach relates PROVIDED always that this shall be without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED FURTHER THAT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Land (or part of the Land) shall constitute an interest for the purposes of this clause
- 6.8. Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission granted after the date of this Deed
- 6.9. A party who is not a party to this Deed shall not have any rights under the Contracts (Third Party) Rights Act 1999 to enforce the terms of this Deed

## **7. JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England

## **8. DELIVERY**

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



## Schedule One

### Variations to the Original Agreement

The Parties agree that the Original Agreement shall be varied as follows:

1. The definition of "Bus Route" in Clause 1 shall be deleted and replaced with the following definition:

*"means the construction of a surfaced bus route within the Development along the route along Atlantic Avenue coloured blue on Plan 4, which shall include access to and from the adjoining public highway network;"*

2. The definition of "Landscaping Scheme" shall be deleted and replaced with the following definition:

*"means the details approved under the landscaping conditions planning references 2022/1648 and 2023/1943 (or such other scheme as may be agreed by the District Council)"*

3. "Open Space Maintenance Contribution" shall be amended to read "Open Space Contribution" throughout the Original Agreement

4. The definition of Open Space Contribution (as amended) shall be deleted and replaced with the following definition:

*"means a financial contribution of £700,589.43 [Seven Hundred Thousand and Five Hundred and Eighty Nine Pounds and Forty Three Pence] to be apportioned in accordance with the table at Appendix 1 and Index Linked from Q1 2023 (Index 379) to the date of payment using the BCIS All-in Tender Price Index and applied towards the provision, repair, management and maintenance of the Open Space or part thereof which for the avoidance of doubt shall also include the Car Park and shall also include the delivery of a skate park on the Skate Park Site"*

5. The definition of "Woodland Maintenance Contribution" shall be deleted and replaced with the following definition:

*"means a financial contribution of £122,478.86 and Index Linked from Q1 2023 (Index 379) to the date of payment using the BCIS All-in Tender Price Index and applied towards the future costs of maintaining the Woodland Areas in accordance with the Woodland Management Plan and which FOR THE AVOIDANCE OF DOUBT shall*

*exclude the Advance Payment"*

6. The following definitions shall be added to Clause 1:

*"Advance Payment means the sum of £43,749.00*

*"Car Park" means the car park to be provided as shown hatched grey on the Open Space Plan (unless otherwise agreed)*

*"Open Space Plan" means the drawing appended to this Agreement marked "Town Council Phasing Plan" with drawing number SPR-CONS-002 or such other plan as the District Council may agree*

*"Open Space Phase" means one of Open Space Phase 1, Open Space Phase 2, Open Space Phase 3 or Open Space Phase 4*

*"Open Space Phase 1" means the area of Open Space shown shaded green on the Open Space Plan BUT FOR THE AVOIDANCE OF DOUBT excludes the Woodland Areas (or such other area as the District Council agree)*

*"Open Space Phase 2" means the area of Open Space shown shaded pink on the Open Space Plan (or such other area as the District Council agree)*

*"Open Space Phase 3" means the area of Open Space shown shaded light blue on the Open Space Plan (or such other area as the District Council agree)*

*"Open Space Phase 4" means the area of Open Space shown shaded dark blue on the Open Space Plan (or such other area as the District Council agree)*

*"Skate Park Site" means the 2,500m<sup>2</sup> site to be provided by the Owners for the skate park development as shown shaded pink on the Open Space Plan (unless otherwise agreed)*

*"Town Council" Sprowston Town Council of Council Office, Recreation Ground Road, Norwich, NR7 8EW.*

7. The definition of "Waste Recycling Area" in Clause 1 shall be deleted.



8. Paragraph 6.2.1 of Part 1 of Schedule 2 shall be deleted and replaced as follows:

*"prior to the completion of the transfer referred to in paragraph 6.2.2 below pay to the District Council the relevant part of the Open Space Contribution attributable to the Open Space Phase to be transferred (as shown in Appendix 1)"*

9. The word "Council" in the fifth line of Paragraph 6.2.2 of Part 1 of Schedule 2 shall be deleted and replaced with the words "District Council (or such other body as the District Council may elect pursuant to Clause 13.2)"

10. The following shall be added after the words "for no other purpose" in paragraph 6.3 of Part 1 of Schedule 2:

*"and in the event the Open Space or any part thereof is transferred to the Town Council pursuant to Clause 13.2, the District Council shall pass the Open Space Contribution as soon as reasonably practicable to the Town Council to be applied towards the provision, repair, management and maintenance of the Open Space or part thereof which for the avoidance of doubt shall also include the Car Park and shall also include the delivery of a skate park on the Skate Park Site"*

11. Paragraph 7.1 of Part 2 of Schedule 2 shall be deleted and replaced with the following:

*"2 (two) No. Neighbourhood Equipped Area for Play ("NEAP")"*

12. Paragraph 7.2 of Part 2 of Schedule 2 shall be deleted and replaced with the following:

*"1 (one) No. Local Equipped Area for Play ("LEAP")"*

13. Paragraph 7.3 of Part 2 of Schedule 2 shall be deleted.

14. Paragraph 9 and 10 of Part 2 of Schedule 2 shall be deleted and replaced with *"not used"*.

15. Paragraph 13 and 14 of Part 2 of Schedule 2 shall be deleted and replaced with:

*"The Play Areas shall be maintained as part of the Open Space maintenance in accordance with paragraph 6 of this Schedule"*

16. Delete Paragraph 16 of Schedule 2 and insert "Not used"

17. Paragraph 15.1 of Part 3 of Schedule 2 shall be deleted and replaced with the following:

*"1 (one) Multi Use Games Area ("MUGA") and Car Park and the Skate Park Site (AND FOR THE AVOIDANCE OF DOUBT it is agreed that the Owners shall be under no obligation to provide a skate park or other recreational facility on the Skate Park Site)*

18. Paragraph 15.2 of Part 3 of Schedule 2 shall be deleted.
19. Paragraph 15.3 of Part 3 of Schedule 2 shall be deleted.
20. Paragraph 15.4 of Part 3 of Schedule 2 shall be deleted.
21. Part 4 and Part 5 of Schedule 2 shall be deleted
22. The following words shall be added at the end of Paragraph 3.2 of Schedule 3 *"(or such other body as the District Council may elect pursuant to Clause 13.2)"*
23. A new paragraph 4 of Schedule 3 shall be added as follows:
24. *"4. On completion of the Deed of Variation dated [18 October 2024] the Owners shall pay to the District Council the Advance Payment to be used towards costs already incurred on the maintenance of the Woodland Areas or relevant part thereof and for no other purpose "*
25. Paragraph 4 of Schedule 3 shall be renumbered "5".
26. A new paragraph 6 of Schedule 3 shall be added as follows:  
  
*"In the event the Woodland Areas are transferred to the Town Council pursuant to Clause 13.2, the District Council shall pass the Woodland Maintenance Contribution as soon as reasonably practicable to the Town Council (less any sum already incurred and invoiced for by the District Council at the date of the transfer of the Woodland Areas for the ongoing maintenance of the Woodland Areas which exceeds the Advance Payment) to be applied towards the maintenance of the Woodland Areas or relevant part thereof and for no other purpose."*
27. Paragraph 1.1 of Part 1 of Schedule 4 shall be deleted and replaced with the following:  
  
*"the Bus Route shown on Plan 4 has been constructed to a standard suitable for use by the Public Transport Provider for the purpose of the Bus Service"*
28. Paragraph 1.3 of Part 1 of Schedule 4 shall be deleted and replaced with the following:  
  
*"save where paragraph 4 applies and subject paragraph 5, the Bus Service is operating*

*along the Bus Route shown on Plan 4."*

29. Paragraph 2 of Part 1 of Schedule 4 shall be deleted.
30. Paragraph 3 of Part 1 of Schedule 4 shall be renumbered "2".
31. Paragraph 4 of Part 1 of Schedule 4 shall be renumbered "3" and the reference to "paragraphs 5 and 6" in that clause shall be replaced with "paragraphs 4 and 5"
32. Paragraph 4.1 of Part 1 of Schedule 4 shall be renumbered "3.1".
33. Paragraph 5 of Part 1 of Schedule 4 shall be renumbered "4" and
34. Paragraph 6 of Part 1 of Schedule 4 shall be renumbered "5".
35. Paragraph 1.2 of Schedule 6 shall be deleted and replaced with the following:

*"Provision of a cycleway through the Development and linking to Blue Boar Lane shown coloured red on Plan 4 to be provided prior to 31 December 2024 unless otherwise agreed with the County Council."*
36. Schedule 9 shall be deleted and replaced with the following:

*"THIS SCHEDULE 9 HAS INTENTIONALLY BEEN LEFT BLANK"*
37. In paragraph 1 of Schedule 10, "(or such other body as the District Council or the County Council may elect pursuant to Clause 13.2)" shall be inserted after the reference to the "County Council" in the second line.
38. In paragraph 3 of Schedule 10, "or the Town Council" shall be inserted after the reference to the "County Council".
39. Schedule 14 shall be deleted in its entirety
40. The table at the appendix to this Deed of Variation shall be added as a new Appendix 1

### **Appendix 1**

<u>Open Space Phase</u>	<u>Percentage of Open Space Contribution to be paid on transfer of the phase</u>	<u>Amount of Open Space Contribution from Q1 2023 (Index 379) to the date of payment using the BCIS All-in Tender Price Index) to be paid on transfer of the phase</u>
<u>Open Space Phase 1</u>	10%	£70,059
<u>Open Space Phase 2</u>	40%	£280,236
<u>Open Space Phase 3</u>	10%	£70,059
<u>Open Space Phase 4</u>	40%	£280,236
<b>Total</b>	<b>100%</b>	<b>£700,590</b>

IN WITNESS whereof the parties hereto have executed this Deed as a deed on the day and year first before written.

THE **COMMON SEAL OF BROADLAND** )  
**DISTRICT COUNCIL** was affixed in the presence )  
of: )



Authorised Signatory:  
SINEAD CARMY  
Deputy Monitoring Officer



THE **COMMON SEAL OF**  
**NORFOLK COUNTY COUNCIL** was affixed  
hereto in the presence of:



.....  
authorised for and on behalf of the Director of  
Legal Services (nplaw)

and this deed has been duly and properly  
executed in accordance with the constitution of  
Norfolk County Council

Authorised to sign on behalf of the  
Director Legal Services (nplaw) & Monitoring Officer  
Norfolk County Council



SOLICITOR  
Date: 11-09-2024



EXECUTED as a Deed by **PERSIMMON** )  
**HOMES LIMITED** acting by its Attorneys: )

and

in the

Witness

Witness

Witness

Witness

Michelle Baker

Joshua Ford

FINANCE MANAGER

EXECUTED as a DEED by **TAYLOR WIMPEY** )  
**UK LIMITED** acting by two Attorneys: )

and

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

LEGAL SUPPORT

Taylor Wimpey UK Limited  
Castle House  
Kempson Way  
Suffolk Business Park  
Bury St Edmunds  
IP32 7AR

Emily Crowe  
Attorney

Heidi Naisbitt  
Attorney

EXECUTED as a DEED by **HOPKINS HOMES** )  
**LIMITED** acting by two directors or by a Director )  
and its secretary: )

Director:

Director/Secretary:





- Phase 1
- Phase 2 (skate park)
- Phase 3
- Phase 4
- Phase 4 (skate park car park)

PERSIMMON

10323

8568

SWANSEA COUNCIL

Officer

