

Dated 11<sup>th</sup> January 2024 ~~2023~~ MC

Broadland District Council

-and-

Orbit Homes (2020) Limited

- and -

Orbit Group Limited

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

relating to land off Green Lane West, Rackheath

**THIS DEED OF VARIATION** is dated

11<sup>th</sup> January 2024

2023<sup>MC</sup>

**PARTIES:**

- (1) BROADLAND DISTRICT COUNCIL, The Horizon Centre, Peachman Way, Broadland Business Park, Norwich, NR7 0WF (referred to as "the Council")
- (2) Orbit Homes (2020) Limited (registered company number 06950748) registered address at Garden Court Harry Weston Road, Binley Business Park, Coventry, West Midlands, CV3 2SU (referred to as the "Developer")
- (3) Orbit Group Limited (registered society No. IP28503R) registered address at Garden Court, Binley Business Park, Harry Weston Road, Coventry, CV3 2SU (referred to as the "Owner")

together referred to as 'the Parties'

**INTRODUCTION**

- (A) The Council is a local planning authority for the area within which the Site is located
- (B) The Owner owns the freehold of the Site which is registered at the Land Registry with Title Number NK518860 and held free from encumbrances.
- (C) The Developer has applied to the Council to vary the Original Agreement and the Council has agreed provided the Parties enter into this Deed
- (D) The expressions in this Deed have the meaning ascribed to them in the Original Agreement save as expressly provided in this Deed

**1. DEFINITIONS**

In this Deed the following expressions have the following meanings:

|                    |                                                                                                                                             |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Original Agreement | An agreement dated 02 October 2017 made under Section 106 of the Act between the Council (1) and Paul Stephen Dunthorne (2) and R Dunthorne |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------|

Limited (3) and Sandra Riches (4) containing planning obligations enforceable by the Council relating to planning permission numbered 20152081.

## **2. LEGAL BASIS**

- 2.1 This Deed is supplemental to the Original Agreement and is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 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 Council.
- 2.2 The terms and conditions of the Original Agreement shall remain in full force and effect except as varied by this Deed.
- 2.3 This Deed may be executed in any number of counterparts each of which shall constitute a duplicate original but all the counterparts shall together constitute one Deed.

## **3. VARIATION**

- 3.1 With effect from the date of this Deed the Parties agree to vary the Original Agreement as set out in the Schedule to this Deed.
- 3.2 In all other respects the contents of the Original Agreement are confirmed and agreed and shall continue to bind the Site as varied by this Deed.

## **4. OTHER PROVISIONS**

- 4.1 On completion the Developer will pay the Council's, reasonably and properly incurred legal costs in connection with this Deed

- 4.2 The Owners warrant 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.

## **Schedule Variation**

- 1 The Parties agree to vary the Original Agreement as follows:
- 2 An additional clause 2.7 shall be inserted into the Original Agreement as set out below:

References to any party to this Deed shall include successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County the successors to their respective statutory functions.

- 3 An additional clause 4.9 shall be inserted into the Original Agreement as set out below:

'4.9 Save for the obligations contained in Schedule 2 which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable Dwellings and any Provider or their mortgagee or chargee or Receiver subject to the provisions contained therein, the covenants, restrictions and requirements contained in this Deed shall not be enforceable against:

4.9.1 individual purchasers or lessees of Dwellings constructed on the Site pursuant to the Permission or their mortgagees where (in relation to a breach) that breach occurs after that individual purchaser or lessee has completed the purchase or lease of the Dwelling or has entered into a binding contract for such purchase or lease.

4.9.2 any Provider or their mortgagee or chargee or Receiver.

4.9.3 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of any utility or infrastructure services or highways in connection with the Development of the Site.

4.9.4 A successor in title or those deriving title of those referred to in clause 4.9.1 – 4.9.4 above.

- 4 There shall be the following definitions inserted into Part 1 of Schedule 2 of the Original Agreement so as to secure that they are alphabetised.

**"Homes England"** Homes England or the Regulator of Social Housing or their successor bodies or other appropriate body as the Council may nominate.

**"NPPF"** The National Planning Policy Framework published in July 2021 or subsequent variation amendment or replacement.

**"Void"** The period of time a Dwelling is unoccupied between tenancies.

**"Void Works"** Repairs and maintenance to a Dwelling during the Void period.

- 5 The definition of **"Affordable Housing"** at Part 1 of Schedule 2 of the Original Agreement shall be deleted and replaced as follows:

**"Affordable Housing"** the Intermediate Housing and Rented Housing to be provided to Eligible Households whose needs are not met by the market (including housing that provides a subsidised route to home ownership) and which complies with one or more of the definitions of affordable housing in Annex 2 of the NPPF) unless other types of affordable housing are agreed in writing by the Council.

- 6 The definition of **"Affordable Housing Provision"** at Part 1 of Schedule 2 of the Original Agreement shall be deleted and replaced as follows:

**"Affordable Housing Provision"** The construction and provision of Affordable Dwellings on the Site equating to 33% of the total number of Dwellings (or such other percentage as the Council may agree in its absolute discretion) in accordance with the Affordable Housing Mix.

- 7 The definition of **"Affordable Rented Dwellings"** at Part 1 of Schedule 2 of the Original Agreement shall be deleted and replaced as follows:

**"Affordable Rented Dwellings"** Affordable Dwellings which meet the conditions set out in the definition of "Affordable Housing for rent" in Annex 2 of the NPPF, let by a Registered Provider for the provision of affordable rents being controls that limit the rent to no more than 80 per cent of local market rents including any service charges and shall not exceed, on commencement of each tenancy, the local housing allowance for that area and increased annually by the Consumer Price Index plus 1% or as otherwise agreed with the Council in writing and subject to nominations by the Council in accordance with Part 2 of this Schedule AND for the avoidance of doubt this includes Intermediate Rented Dwellings and Social Rented Dwellings where the Council in its discretion determines this is an appropriate tenure.

- 8 The definition of **"Eligible Household"** at Part 1 of Schedule 2 of the Original Agreement shall be deleted and replaced as follows:

**"Eligible Household"** A person or persons in need of accommodation who are unable to rent or buy on the local open market nominated by the Council in accordance with Part 2 of this Schedule and determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council **PROVIDED THAT** no national or local prioritisation criteria shall apply in respect of a Shared Ownership Dwelling where it is intended to be included in the Homes England's National Affordable Housing Programme (or any successor programme approved by the Council in writing acting reasonably) and those provisions would prevent its inclusion.

- 9 The definition of "HCA" at Part 1 of Schedule 2 of the Original Agreement shall be deleted in its entirety and the term "HCA" shall be replaced by "Homes England" in every schedule, clause, definition and any other part of the Original Agreement.

- 10 The definition of "Intermediate Housing" at Part 1 of Schedule 2 of the Original Agreement shall be deleted and replaced as follows:

"Intermediate Housing" one or more of Intermediate Dwellings, Shared Ownership Dwellings and Shared Equity Dwellings"

- 11 The definition of "**Shared Ownership Lease**" at Part 1 of Schedule 2 of the Original Agreement shall be deleted and replaced as follows:

"**Shared Ownership Lease**" a lease in a form approved by Homes England or where there is no such form in a form approved by the Council such lease to provide for the following:

- not more than 75% and not less than 10% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Provider
- power to the purchaser to increase their ownership up to 100% if they so wish
- an initial rent not exceeding 2.75% of the value of the equity retained by the Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of the Homes England

- 12 Paragraph 1.4(a) of Schedule 2 of the Original Agreement shall be amended deleted and replaced as follows:

(a) for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed PROVIDED THAT this clause shall not apply where 100% of the Dwellings to be erected on the Development shall be delivered as Affordable Housing.



- 13 Paragraph 1.5.1 of Part 1 of Schedule 2 of the Original Agreement shall be deleted and replaced as follows:

a person acquiring an interest in an Affordable Dwelling under a statutory right to buy, including a preserved right to buy, or right to acquire or a voluntary Right to Buy scheme under the Housing and Planning Act 2016, its mortgagees charges and any successor in title or persons deriving title from such persons.

- 14 Paragraph 1.5.2 of Part 1 of Schedule 2 of the Original Agreement shall be deleted and replaced as follows:

an Eligible Household who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest or by a person who has acquired 100% of a Shared Equity Dwelling its mortgagees charges and any successor in title or persons deriving title from such persons.

- 15 An additional paragraph 1.5.4 shall be inserted into Part 1 of Schedule 2 of the Original Agreement as set out below:

all persons or bodies deriving title under or through any persons or bodies referred to in this paragraph 1.5 (including their successors in title)

- 16 An additional paragraph 1.6 shall be inserted into Part 1 of Schedule 2 of the Original Agreement as set out below:

**PROVIDED THAT** this shall not apply in respect of where the Affordable Housing is intended to be included in the Homes England's National Affordable Housing Programme (or any successor programme approved by the Council in writing acting reasonably) and those provisions would prevent its inclusion

Unless otherwise agreed in writing with the Council to comply with the provisions set out in Part 2 of this Schedule.

- 17 An additional paragraph 1.7 shall be inserted into Part 1 of Schedule 2 of the Original Agreement as set out below:

Notwithstanding the terms of this Schedule, the Owner shall be able to offer any Open Market Dwellings for any affordable tenure as defined in the NPPF. Should the affordable tenure be Affordable Rented Dwellings the provisions of Part 2 of this Schedule 2 shall apply and they shall be subject to the local lettings policy.

- 18 Paragraph 2 of Part 2 of Schedule 2 shall be deleted and replaced as follows:

To grant the Council nomination rights to 100% of the first letting and 100% of any subsequent lets of Affordable Rented Dwellings for up to 28 days. Where the Affordable Housing Provider is unable to allocate the subsequent Void after 28 days after advertising through the Councils allocation system, where this delay has not been a result of delayed Void Works, the Affordable Housing provider may use alternative methods to nominate an Eligible Household using their internal or external advertising platforms.

IN WITNESS whereof the parties hereto have executed this document 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: \_\_\_\_\_

LINDA MUCKFORD  
DEPUTY MONITORING OFFICER

and this deed has been duly and properly executed  
in accordance with the constitution of Broadland District Council



**EXECUTED as a DEED by**  
affixing the Common Seal  
of **ORBIT HOMES (2020) LIMITED**

In the presence of:-

Director

A handwritten signature in black ink, likely belonging to the Director.

Company Secretary

A handwritten signature in black ink, likely belonging to the Company Secretary.



**EXECUTED as a DEED by**  
**ORBIT GROUP LIMITED**  
In the presence of

Director

A handwritten signature in black ink, likely belonging to the Director.

Company Secretary

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