

**Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act  
1990**

**relating to the development at land bounded by Hoad Way and M4 and High Street, Theale Reading**

**24/00145/FULMAJ**

**Dated: 2025**

**WEST BERKSHIRE DISTRICT COUNCIL (1)**

**[REDACTED] (2)**

**[REDACTED] (3) AND**

**[REDACTED] (4)**

**PARTIES**

1. The Council WEST BERKSHIRE DISTRICT COUNCIL of Council Offices  
 Market Street Newbury Berkshire RG14 5LD

2. The Owner [REDACTED]  
 [REDACTED]

3. The Developer [REDACTED]  
 [REDACTED]  
 [REDACTED]

4. The Mortgagee [REDACTED]  
 [REDACTED]  
 [REDACTED]

**RECITALS**

- A. The Council is the Local Planning Authority for the purposes of the Act and the Highway Authority for the purposes of the Highways Act 1980 for the area in which the Site is situated
- B. The Owner is registered as owner with freehold absolute title of the Site held under title number BK379301
- C. The Developer has the benefit of a sale contract over the Site dated 17 October 2023 and varied on 4 February 2025 which is in the process of being registered at HM Land Registry
- D. The Mortgagee has a charge over the Site which was registered against title number BK379301 on 2 September 2013
- E. The Developer submitted the Application to the Council and the Council refused the Application on 28 August 2024

- F. The Developer submitted the Appeal which received a starting date of 13 March 2025
- G. The Parties have agreed that in the event the Inspector allows the Appeal to apply the Deed to the Planning Permission, which the Council has determined are in the interests of the proper planning of its administrative area and satisfy the tests of planning obligations set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, being necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development (subject to the provisions of clause 17)
- H. The Owner and the Developer have agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Deed in the event Planning Permission is granted

## **1. NOW THIS DEED WITNESSES OPERATIVE PART**

### **1.1. Definitions**

- 1.1.1. “the Act” the Town and Country Planning Act 1990 as amended
- 1.1.2. “the Appeal” the planning appeal submitted to the Secretary of State under reference APP/W0340/W/25/3360702 against the Council’s refusal of the Application
- 1.1.3. “the Application” the application for planning permission submitted on 24 January 2024 to the Council for the Development and allocated reference 24/00145/FULMAJ
- 1.1.4. “Biodiversity Metric Assessment” the Biodiversity Metric Assessment undertaken for the Development
- 1.1.5. “Biodiversity Net Gain Contribution” either (i) a financial contribution to be put towards off-Site biodiversity enhancements and/or (ii) the

#### 1.1.6 “Biodiversity Net Gain Report”

carrying out of off-Site biodiversity enhancements as set out in the Off-Site Biodiversity Agreement an updated and final written report on biodiversity net gain based on the Biodiversity Metric Assessment which shall comply with the requirements of the Planning Permission and which must also include:

- details of the provision of any biodiversity net gain off-Site enhancements and how this is to be secured including a draft of the Off-Site Biodiversity Agreement (to the extent available) and
- the amount of any Biodiversity Net Gain Contribution; and if this is to be way of (or partly by way of) financial contribution who this is to be paid to and when
- the timetable for the delivery of the biodiversity net gain off-Site enhancements
- details of the long term retention and maintenance plan for the off-Site biodiversity net gain enhancements.
- provision for payment, to the Council, for the costs of monitoring compliance with the maintenance plan referred to above

1.1.7 “Biodiversity Unit”	means biodiversity unit as defined within Ministry of Housing, Communities and Local Government Biodiversity net gain Guidance published 14 February 2024 and last updated 1 May 2024
1.1.8 “Commencement of Development”	as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this Deed and for no other purpose, the following operations: demolition works; Site clearance; ground investigations; earthworks; Site survey works; temporary access construction works; archaeological investigation; plateau formation and erection of any fences and hoardings around the Property.
1.1.9 “Commenced and Commences”	shall be construed accordingly
1.1.10 “Commencement Date”	the date of Commencement of Development.
1.1.11 “CITB Client Based Approach”	the Construction Industry Training Board Client Based Approach Guidance dated July 2017 and as updated from time to time
1.1.12 “the Developer Contributions Officer”	the person from time to time holding the post of Developer Contributions Officer with the Council or the person who is designated as such by the Council for the purposes of this Deed
1.1.13 “the Development”	the development of 2 employment units for flexible uses within Class E (light industrial), B2 and/or B8 of the Use Classes Order (including ancillary office

provision) with associated enabling works, access from Hoad Way, parking and landscaping pursuant to the Planning Permission

1.1.14 “Employment and Skills Plan”

the Developer’s written plan providing for training and local employment opportunities during the construction period of the Development as detailed within the Second Schedule of this Deed

1.1.15 “Off-Site Biodiversity Agreement”

means any of a binding legal contract, covenant or planning obligation between the off-Site landowner and/or the Owner and/or the Council or proof of evidence of the acquisition of Biodiversity Units to secure the provision of off-Site biodiversity enhancements required by the Biodiversity Net Gain Report to ensure that the Development delivers an overall biodiversity net gain including provision for the retention and ongoing maintenance of the off-Site biodiversity enhancements for a least 30 years thereafter

1.1.16 “the Plan”

the plan attached to this Deed

1.1.17 “the Planning Permission”

the planning permission for the Development subject to conditions to be granted pursuant to the Application and including any approved non-material amendment(s) to it and subsequent permissions to vary the conditions therein under Section 73, Section 73A, Section 73B (when brought into force) of the Act

1.1.18 “the Site” for the purposes of this Deed only the land shown edged red on the Plan and known as land bounded by Hoad Way and M4 and High Street, Theale, Reading

## **1.2. Interpretation**

- 1.2.1. Save where this Deed specifies otherwise or where the context so requires the singular includes the plural and vice versa and references in this Deed to any part shall include the successors in title to that party’s interest in the Site or part thereof
- 1.2.2. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and unincorporated bodies and all such words shall be construed interchangeably in that manner
- 1.2.3. Whenever 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 against each individually unless there is an express provision otherwise
- 1.2.4. Where in this Deed reference is made to any clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule plan or recital in this Deed or (in the case of a plan) attached to this Deed
- 1.2.5. The titles and headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed
- 1.2.6. Where in this Deed any party covenants not to act such covenant shall include an obligation not to permit or suffer such an act by another person
- 1.2.7. All references in this Deed to statutes statutory instruments regulations and other legislation shall include their successor amended or replacement provision
- 1.2.8. All references in this Deed to a particular title of officer or post at the Council shall include successor or replacement officers or posts

- 1.2.9. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms

## **2. LEGAL BASIS**

- 2.1. This Deed is made pursuant to Section 106 of the Act and to the extent that any obligations contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and any other enabling powers
- 2.2. Clause 4 and each and every covenant set out in the First Schedule Second Schedule and Third Schedule are planning obligations for the purposes of Section 106 of the Act and shall be enforceable by the Council

## **3. CONDITIONALITY**

- 3.1. With the exception of clauses 5.1, 14, 15 and Schedule 1 which shall come into effect immediately upon completion of this Deed this Deed is conditional upon the grant of the Planning Permission and Commencement of Development

## **4. THE OWNER AND DEVELOPER'S COVENANTS**

- 4.1. The Owner and the Developer covenant with the Council as set out in the First Schedule, the Second Schedule and the Third Schedule

## **5. MISCELLANEOUS**

- 5.1. The Developer shall pay to the Council on or before the completion of this Deed the reasonable costs of the Council incurred in the review negotiation and execution of this Deed and the Planning Administration Fee of £1,350

- 5.2. Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the Council no provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 5.3. This Deed shall be registered on the Register of Local Land Charges and any other register as the Council shall determine
- 5.4. Insofar as any 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 legality or enforceability of the remaining provisions of this Deed
- 5.5. This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner and the Developer) it is modified by any statutory procedure or expires prior to Commencement of the Development
- 5.6. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they shall have parted with their entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 5.7. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission) granted after the date of the Planning Permission

## **6. WAIVER**

- 6.1. No waiver (whether express 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 acting upon any subsequent breach or default

## **7. FETTER OF DISCRETION**

The parties agree that;-

- 7.1. Nothing in this Deed constitutes a planning permission or an obligation to grant planning permission

7.2. Nothing in this Deed shall prejudice the exercise of any statutory power duty or discretion by the Council

## **8. APPLICATION OF CONTRIBUTIONS**

8.1 The Council may either spend a contribution or sum it has received under this Deed itself for the purposes for which it was paid or pass it to a third party to spend on its behalf provided that such contribution or sum may only be applied by the third party for the purpose for which it was paid to the Council and the Council shall procure that the third party complies with the relevant terms of this Deed in relation to such sum or contribution

8.2 In the event of any of the relevant contributions required under this Deed not being expended or contractually committed to be expended within a period of ten years starting on the date of receipt by the Council of the relevant contribution or the date of the commencement of the Development whichever is the later then the Council shall within 28 days of receiving a written request to do so repay the unexpended part of that relevant contribution or the part of that relevant contribution which has not been contractually committed to the person from whom it was received along with the interest accrued thereon following the expiry of the said ten year period

## **9. OWNERSHIP**

9.1 The Owner warrants that to the best of their knowledge no person other than the Owner, the Developer and Mortgagee has any legal or equitable interest in the Site

9.2 The Owner and the Developer agree with the Council to give the Council written notice within fourteen (14) days of any change in ownership of any of their interests in the Site occurring before all the obligations under this Deed have been discharged. Such notice to give details of the transferees full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan

## **10. NOTICES**

Unless otherwise agreed in writing:-

10.1 Notices shall be in writing and delivered by hand or first class post to the Owner and the Developer at such address and for the attention of such person as may be specified from time to time or in the absence of a specified address to (in the case of a company) its registered address marked for the attention of the Company Secretary or (in the case of an individual) to their usual or last known address and to the Council at West Berkshire District Council Council Offices Market Street Newbury Berkshire RG14 5LD addressed to the Developer Contributions Officer

10.2 Notices and representations served by the Owner or the Developer are deemed valid if signed by the relevant person referred to in clause 10.1

## **11. NO COMPENSATION PAYABLE**

11.1. No compensation shall be payable by the Council as a result of the obligations contained in this Deed

## **12. INTEREST**

12.1. If any payment due under this Deed is paid late interest will be payable from the date payment is due to the date of payment at the rate of 4% above the Bank of England's base rate

## **13. VAT**

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

## **14. JURISDICTION**

14.1. This Deed is governed by and shall be interpreted in accordance with the law of England and Wales

## **15. DELIVERY**

15.1. 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

## 16. MORTGAGEES CONSENT

16.1. The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee (and any mortgagee or chargee from time to time) shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

## 17. APPEAL

17.1. In the event that the Planning Inspector concludes that any of the planning obligation(s) set out in this Deed is or are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended substituted extended or replaced from time to time) and or Paragraph 58 of the National Planning Policy Framework (or any successor policy or replacement thereto) and accordingly attaches no weight to that obligation in determining the Appeal then the relevant obligation(s) shall from the date of the Planning Permission immediately cease to have effect and the Owner and the Developer shall be under no obligation to comply with them.

IN WITNESS WHEREOF the Parties have executed this Agreement as a Deed the day and year before written

**EXECUTED AS A DEED** by affixing the Common Seal of **WEST BERKSHIRE DISTRICT COUNCIL** and authenticated by:

)  
)  
)  
  
Authorised Signatory

**EXECUTED** as a **DEED** on behalf of  
[Redacted]  
[Redacted]

)  
[Redacted]  
)

and  
  
Authorised Signatory  
  
Authorised Signatory

being a person or persons who, in accordance with the laws of that territory are acting under the authority of the company

**EXECUTED** as a **DEED** on behalf of

[Redacted signature line]

)  
[Redacted signature]  
)

and

Authorised Signatory

Authorised Signatory

being a person or persons who, in accordance with the laws of that territory are acting under the authority of the company

**EXECUTED** as a **DEED** on behalf of

[Redacted signature line]

)  
)

)

and

Authorised Signatory

Authorised Signatory

## **FIRST SCHEDULE**

### **The Owner and the Developer covenant with the Council as follows:**

#### **Notification of Commencement of Development**

1. To serve written notice of intended Commencement of Development upon the Developer Contributions Officer not less than fourteen (14) days before the intended Commencement of Development
2. Not to Commence Development unless at least 14 days has expired from the date upon which a written notice referred to in paragraph 1 has been served upon the Developer Contributions Officer

## SECOND SCHEDULE

### The Owner and the Developer covenant with the Council as follows:

- 1.1 Not to Commence the Development without first submitting to the Council and obtaining the written approval of the Council of the Employment and Skills Plan
- 1.2 The Employment and Skills Plan shall include arrangements setting out how the Owner and the Developer and to the extent they are not the same person any developer or Occupier and their contractors will work directly with local employment/training agencies as part of an employment and training consortium including but not limited to:
  - 1.2.1 Jobcentre Plus and the Learning & Skills Council; and
  - 1.2.2 Voluntary and private sectors providers; and
  - 1.2.3 Sixth form colleges; colleges of further education; and universities
- 1.3 The Employment and Skills Plan shall specify the provision for training opportunities and other initiatives in respect of the vocational and employability skills required by the Owner and the Developer, their contractors and future occupiers, for any new jobs and business opportunities created by the Development. Benchmarks for these opportunities and initiatives shall be first agreed with the Council; these shall be informed CITB Client Based Approach to developing and implementing an Employment and Skills Strategy; which the Council has used to develop its employment and skills framework.
- 1.4 Following approval of the Employment and Skills Plan by the Council; the Owner and the Developer will implement and where necessary procure implementation and promote the objectives of the approved plan and ensure that so far as is reasonably practicable the objectives are met.
- 1.5 The Owner or Developer will be responsible for providing quarterly reports to the Council's Economic Development Team on the progress of the Employment and Skills Plan during the period of construction. These reports will provide the Council with the current progress the first contractor is making towards delivering the Employment and Skills Plan. The Owner or Developer will be

responsible for ensuring that any skills outputs recorded within the quarterly report are accurate and can be evidenced if queried by the Economic Development team.

- 1.6 Should the skills output referred to in 1.5 of this Schedule not meet the objectives set out in the Employment and Skills Plan the Owner and/or Developer will provide an action plan to the Council within 28 days of the quarterly report (or such other timeframe as agreed in writing with the Council) setting out how they will rectify the position

### **THIRD SCHEDULE**

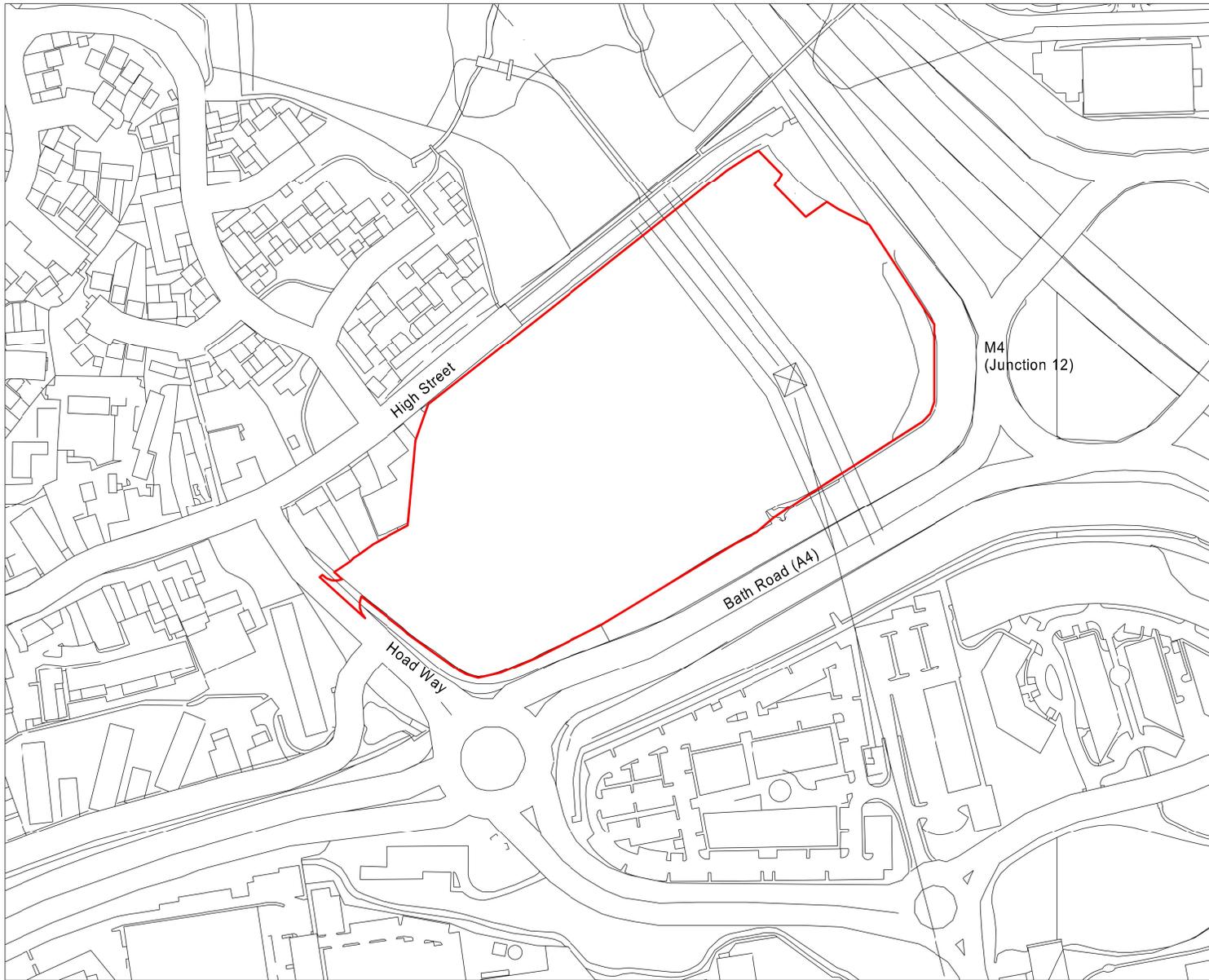
**The Owner and the Developer covenant with the Council as follows:**

- 1.1 Prior to Commencement of Development to submit the Biodiversity Net Gain Report to the Council for approval demonstrating how the development will secure at least 1% Biodiversity Net Gain over the Site's baseline using the Biodiversity Metric Assessment and maintained for a minimum period of 30 years.
- 1.2 Not to Commence Development until the Biodiversity Net Gain Report has been submitted to and approved by the Council in writing
- 1.3 Prior to the Commencement of Development to submit a draft of the Off-Site Biodiversity Agreement to the Council for approval
- 1.4 Not to Commence Development until the Off-Site Biodiversity Agreement has been submitted to and approved by the Council in writing and a copy of the completed agreement has been provided to the Council
- 1.5 To comply with the terms of the approved Biodiversity Net Gain Report and the Off-Site Biodiversity Agreement
- 1.6 In the event that the Biodiversity Net Gain Contribution is (in whole or in part) a financial contribution not to Commence the Development until the said financial contribution has been paid in accordance with the terms set out in the approved Off-Site Biodiversity Agreement for the purposes of providing the off-Site biodiversity enhancements set out in the approved Biodiversity Net Gain Report

**APPENDIX**

**PLANS**

Rev.	Date	By	App. By	Description
P1	06/03/23	ELF		Issue for Planning
P2	20/11/23	ELF		General Revisions
P3	30/10/24	ELF		Updated OS Map to 2024



Application Boundary

Red Line Boundary		
Name	Area (Hectares)	Area (Acres)
Application Boundary	5.43 hectare	13.41 acres

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Theale, Reading

Drawing Name:  
Location Plan

Drawing Stage: **Planning**

Status: **SB**

SGP File Ref: 16205-SGP-ZZ-ZZ-DR-A-0000

16205	09/03/23	ELF	MVS	1:1250	01	P3
SGP	Project	Date	Drawn	Team	Scale	Rev

18-095-SGP-ZZ-ZZ-DR-A-131000  
Project Code: Original/Validated/Type: Title: RLB Number:



SCALE 1:1000

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