

DATED 5th December **2024**

HARMAN HOMES DEVELOPMENTS LIMITED
(the Owner) (1)

READING BOROUGH COUNCIL
(the Council) (2)

AGREEMENT
constituting Planning Obligations relating to
land at 7 HAWTHORNE ROAD, CAVERSHAM, READING RG4 6LY

(Application Number PL/23/1733)

Michael Graham
Assistant Director of Legal
and Democratic Services
Reading Borough Council
Civic Offices Bridge Street
Reading RG1 2LU
IKEN NO. 028737

Agreement

Dated 5th December

2024

Between:

- (1) **HARMAN HOMES DEVELOPMENTS LIMITED** (company registration number 13775980) whose registered address is at of 11 Tudor Gardens, Slough, England, SL1 6HJ (the **Owner**); and
- (2) **READING BOROUGH COUNCIL** whose address is at Civic Offices, Bridge Street, Reading RG1 2LU (the **Council**)

Background

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the borough of Reading in which the Application Land is situated.
- (B) The Owner is the registered proprietor of the freehold interest in the Application Land under HM Land Registry title number ON40938 and has an interest in the Application Land within the meaning of section 106(9)(b) of the 1990 Act.
- (C) The Parties have agreed to enter into this Agreement in order to facilitate the Development.
- (D) The Parties are satisfied that the planning obligations contained in this Agreement are:
 - (i) necessary to make the Development acceptable in planning terms;
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably related in scale and kind to the Development.

It is agreed as follows:

1 Definitions

- 1.1 The following expressions shall have the following meanings which for the avoidance of doubt shall apply to all parts of this Agreement:

1990 Act means the Town and Country Planning Act 1990;

Agreement means this deed of agreement;

Application means the application for the Planning Permission and given the reference number PL/23/1733;

Application Land means 7 Hawthorne Road, Caversham, Reading RG4 6LY being land against which this Agreement may be enforced as shown edged in red on the plan appended at Schedule 1 to this Agreement;

Approval means the written approval on behalf of the Council from the Assistant Director of Planning, Transport and Public Protection Services (or such other officer of the Council who is from time to time responsible for approving matters set out in this Agreement) to the Owner and **Approved** and **Approve** shall be construed accordingly;

Assistant Director of Planning, Transport and Public Protection Services means the Council's Assistant Director of Planning, Transport and Public Protection Services for the time being or such other officer as the Council may from time to time designate;

Building means (as the context permits) any building that comprises part of the Development and **Buildings** shall be construed accordingly;

Commencement means the carrying out of a material operation as defined in Section 56(4) of the 1990 Act but (for the purposes of this Agreement only) not including any works of removing any above ground materials (excluding buildings) from the Application Land, temporary landscaping, ground investigation, site survey works, construction of boundary fencing, site clearance, decontamination, soil investigation and archaeological testing and **Commence** and **Commenced** shall be construed accordingly;

Commencement Notice means a written notice to be served by the Owner upon the Council stating the proposed date of Commencement;

Contribution means each and every financial contribution as stipulated in Schedule 3 of this Agreement (excluding the Council's legal fees and the Monitoring Fee) that is payable by the Owner to the Council in accordance with this Agreement;

Council's Area means the administrative area of the Council;

Council's Legal Fees means the sum of TWO THOUSAND POUNDS (£2000.00) incurred by Council's Legal Department in the preparation, negotiation and completion of this Agreement;

Development means the development as set out in Schedule 2 to this Agreement;

Due Date means the date when a Contribution or sum of money (or any part of it) is required to be paid to the Council in accordance with the terms of this Agreement;

Effective Date means the date of this Agreement;

Expert means an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement between the parties) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications;

Index means the Retail Price Index issued by the Office for National Statistics (including any index that replaces it from time to time);

Index Linked means that the amount of each Contribution payable under this Agreement and any other sum referred to in this Agreement shall be increased by an amount equivalent to the increase in the Index from the Effective Date until the Due Date;

Local Area means the Council's administrative area;

Monitoring Fee means the sum of FOUR HUNDRED POUNDS (£400.00) as a contribution towards the Monitoring Officer's costs of monitoring the provisions of this Agreement;

Monitoring Officer means the Council's monitoring officer (within the Council's Directorate of Economic Growth and Neighbourhood Services) (or any Directorate replacing it) as designated by the Council to monitor the obligations set out in this Agreement;

Occupation means (as the context permits) beneficial occupation for the purposes permitted by the Planning Permission of any Building (or part of a Building) constructed on the Application Land within the Development PROVIDED THAT, for the avoidance of any doubt, occupation for the purposes of construction, fitting out and marketing shall not constitute Occupation (and **Occupy**, **Occupied** and **Occupier** shall be construed accordingly);

Party means each party to this Agreement and its respective successors and those deriving title under it (and **Parties** shall be construed accordingly);

Planning Permission means planning permission for the Development pursuant to the Application; and

Working Days means any day (other than Saturdays Sundays or public holidays in England) when banks in London are open for business.

2 Interpretation

- 2.1 Clause headings shall not affect the interpretation of this Agreement.
- 2.2 A person includes a natural person corporate or unincorporated body (whether or not having separate legal personality).
- 2.3 A reference to a company shall include any company, corporation or other body corporate wherever and however incorporated or established.
- 2.4 Unless the context requires otherwise, words in the singular shall include the plural and words in the plural shall include the singular.
- 2.5 Unless the context requires otherwise, a reference to one gender shall include a reference to the other genders.
- 2.6 A reference to any Party shall include that Party's successors in title and assigns and personal representatives.
- 2.7 References in this Agreement to the Council shall include any successor to its functions as the local planning authority in relation to the Application Land and any body to which all or part of its functions may lawfully have been transferred.
- 2.8 An obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done and an obligation on a person to do something includes an obligation to procure that thing to be done.

- 2.9 Where 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.
- 2.10 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.
- 2.11 Save as specified to the contrary any reference to Act of Parliament whether general or specific shall include any modification or re-enactment thereof for the time being in force and shall also include all instruments, orders, plans, regulations, by-laws and directions for the time being made issued or given thereunder or deriving validity therefrom.
- 2.12 A reference to writing or written does not include faxes or e-mail.
- 2.13 References to Clauses, Plans, Schedules, Paragraphs and Appendices are to the Clauses, Plans, Schedules, Paragraphs and Appendices of this Agreement.

3 Legal Effect

- 3.1 This Agreement is made pursuant to:

- (a) section 106 of the 1990 Act;
- (b) section 1 of the Localism Act 2011;
- (c) section 111 of the Local Government Act 1972; and
- (d) all other enabling powers.

with an intent to bind the Owner's interest in the Application Land (and each part of it) subject to the provisions of Clauses 4 (conditionality), 5 (the Owner's obligations), 7.2 (lapse) and 7.5 (release).

- 3.2 This Agreement is a planning obligation within the meaning of section 106 of the 1990 Act and the obligations contained within it shall, subject to the provisions of the Agreement, be enforceable by the Council against the Owner (including its successors in title and those deriving title from the Owner).

4 Conditionality

- 4.1 Unless otherwise required to give legal effect to any provision in this Agreement, this Agreement is conditional upon:

- (a) the grant of the Planning Permission; and
- (b) the Commencement of the Development,

save for Clause 7.1 which shall come into effect upon the Effective Date.

5 Owner's Obligations

- 5.1 The Owner covenants with the Council, so as to bind the entirety of its interest in the Application Land, to comply with the restrictions, covenants and requirements set out in Schedule 3 of this Agreement.

5.2 The Owner covenants with the Council:

- (a) not to Commence unless and until it has served a Commencement Notice; and
- (b) not to encumber nor deal with the Application Land (or any part of it) in any manner pursuant to which the Owner may be prevented from carrying out its covenants and obligations contained in this Agreement.

6 Council's Obligations

- 6.1** The Council covenants with the Owner to observe and perform the obligations on its part contained in Schedule 4 to this Agreement.

7 Agreements and Declarations

7.1 Fees

- 7.1.1** The Owner covenants with the Council to pay on or before the Effective Date:

- (a) the Council's Legal Fees ; and
- (b) the Monitoring Fee.

7.2 Lapse

- 7.2.1** The obligations in this Agreement shall cease to have effect (insofar only as they have not already been complied with) if the Planning Permission is quashed, revoked or modified (without the consent of the Owner) or is withdrawn or expires prior to Commencement of the Development.

7.3 Future Development

- 7.3.1** Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission) that is granted (whether or not on appeal) after the date of this Agreement.

7.4 Statutory Undertakers

- 7.4.1** This Agreement shall not be enforceable against any statutory undertakers (including their successors in title) that shall acquire an interest in the Application Land for the purpose of providing services to or for the Development or neighbouring developments.

7.5 Release

- 7.5.1** The Owner shall upon parting:

- (a) with its interest in any part of the Application Land be released from all obligations and duties under the terms of this Agreement insofar as they relate to, or are binding on, that part of the Application Land; and
- (b) with the entirety of its interest in the Application Land be released from all liabilities whatsoever under the terms of this Agreement.

- 7.5.2** The releases provided for in this Clause shall not apply to any prior or existing breach of this Agreement as at the date of disposal.

7.6 Right of access

- 7.6.1 Without prejudice to the Council's statutory rights of entry, the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice no longer than 14 days, to enter the Application Land at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

7.7 No waiver

- 7.7.1 No waiver (whether express or implied) by the Council of any breach of or default by the Owner in performing or observing any of the terms of or covenants, obligations or restrictions in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms, covenants, obligations or restrictions or from acting upon any subsequent breach or default in respect of any of them by the Owner.

7.8 No Fetter on Discretion

- 7.8.1 Nothing in this Agreement shall fetter or prejudice the Council's statutory rights, powers, discretions and responsibilities under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

7.9 Severance

- 7.9.1 Each clause, sub-clause, schedule or paragraph shall be separate, distinct and several from each other to the extent only that if any clause, sub-clause, schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, sub-clause, schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause, sub-clause, schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause, schedule or paragraph contained in this Deed.

7.10 Indexation

- 7.10.1 The amount of each Contribution and any other sum payable under this Agreement shall be Index Linked.

7.11 Interest on unpaid monies

- 7.11.1 If any Contribution or other sum due under this Agreement is paid after its Due Date, the Owner shall pay to the Council interest at the rate of four percent (4%) per annum above the base rate of the Bank of England for the time being in force on:

- (a) the sum of the Contribution due; or
- (b) on any amount of that Contribution due.

- 7.11.2 Any interest payable pursuant to Clause 7.11.1 shall:

- (a) be calculated from the Due Date of the Contribution up to the date of actual payment of the Contribution (or the relevant part of it); and

- (b) be deemed to be part of the Contribution or sum due to which such interest relates.

7.12 Payments to the Council

- 7.12.1 All Contributions and other sums due to the Council under the terms of this Agreement shall (unless otherwise notified in writing by the Council to the Owner) be paid to the Council by means of telegraphic transfer to the Council as follows:

Account: Reading Borough Council

Sort Code: 30-91-31

Account Number: 00271502

Lloyds Bank plc 24 Broad Street Reading RG1 2BT

quoting reference: s106/028737/ PL/23/1733 or other reference quoted by the Council in the relevant S106 Demand Notice issued in respect of the obligation.

- 7.12.2 No Contribution or other sum required under this Agreement (or part of it) shall be paid to the Council earlier than eight (8) weeks before its Due Date.

7.13 Notice

- 7.13.1 Any notice or other written communication to be served by one Party upon another under the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid registered or recorded delivery post to the Party to be served at its address in accordance with this Clause.

- 7.13.2 Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by a duly authorised signatory.

- 7.13.3 The address for any notice or other written communication is the address given for that Party in its definition in this Agreement, or such other address as has been notified in writing to the other Parties in accordance with this Clause.

7.14 Consents and Approvals

- 7.14.1 In this Agreement where the agreement, Approval, consent or any other expression of satisfaction is required from the Council that agreement, Approval, consent or any other expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

7.15 Dispute Resolution

- 7.15.1 In the event of any dispute arising between the Parties (which cannot be resolved by the Parties) in respect of this Agreement either Party may at any time require by notice in writing to the other Party an independent expert (the **Expert**) to resolve the dispute in accordance with the provisions of this Clause 7.15 and as follows:

- (a) in the case of a dispute regarding the interpretation or meaning of any provision in this Agreement to leading planning counsel to be agreed between the Parties, or failing agreement, to be appointed by the President for the time being of the Law Society;
 - (b) in the case of a dispute regarding physical works or other technical matters referred to in the Schedules to a member of the Institution of Civil Engineers to be agreed between the Parties, or failing agreement, to be appointed by the President for the time being of such Institution; or
 - (c) in the case of any other dispute regarding this Agreement to a member of the Royal Institution of Chartered Surveyors to be agreed between the Parties, or failing agreement, to be appointed by the President for the time being of such Institution.
- 7.15.2 The Expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant to this Clause.
- 7.15.3 The Expert shall be appointed within one (1) month of an application being made by one of the Parties pursuant to Clause 7.15.1.
- 7.15.4 The Expert shall be entitled to invite written representations from each of the Parties.
- 7.15.5 The Expert shall act as an expert and not as an arbitrator.
- 7.15.6 The costs of the dispute shall be payable by the Parties in such proportion as may be determined by the Expert and failing such determination to be borne in equal shares by the Parties.
- 7.15.7 The decision of the Expert shall be final and binding on the Parties save in the case of manifest and material error.
- 7.15.8 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practical timescales allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of his appointment to act.
- 7.15.9 Nothing in Clauses 7.15.1 – 7.15.8 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Agreement.
- 7.16 **Future Section 73 Permission(s)**
- 7.16.1 In the event that any new planning permission(s) in respect of the Development is or are granted by the Council pursuant to section 73 of the 1990 Act (**Future S73 Permissions**) and unless otherwise agreed between the parties with effect from the date that the new planning permission is granted pursuant to section 73 of the 1990 Act:
 - (a) the obligations in this Agreement shall (in addition to continuing to bind the Application Land in respect of the Planning Permission) relate to and bind the Application Land in respect of development pursuant to that Future S73 Permission(s); and

- (b) the definitions of Application, Development and Planning Permission shall be construed to include reference to any application for that Future S73 Permission(s), the Future S73 Permission(s) granted pursuant to that application and the development permitted by that Future S73 Permission(s); and
- (c) this Agreement shall be endorsed with the following words in respect of that Future S73 Permission(s) (with the blank spaces completed with the reference number and date of issue of the relevant Future S73 Permission(s)):

'The obligations in this Agreement relate to and bind the Application Land in respect of development pursuant to a new planning permission reference [] granted on [] 20[] pursuant to section 73 of the Town and Country Planning Act 1990 (as amended).'

PROVIDED THAT nothing in this Clause shall fetter the general discretion of the Council in determining any application(s) under section 73 of the 1990 Act including a requirement for a new deed or a supplemental deed to be entered into pursuant to section 106 and/or section 106A of the 1990 Act before that application is determined by the Council.

7.17 Third Party Rights

- 7.17.1 Unless the right of enforcement is expressly granted and except in relation to:

- (a) any successor bodies of the Council; and
- (b) any successors in title of and those deriving title under the Owner,

it is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

- 7.17.2 This Agreement may be rescinded or varied without the consent of a third party to whom an express right to enforce any of its terms has been provided.

7.18 Local Land Charge

- 7.18.1 This Agreement is and shall be registered as a local land charge by the Council.

7.19 Change of Ownership

- 7.20 The Owner shall provide the Council with written notice of any change in ownership of its interest in the Application Land before all the obligations under this Agreement have been discharged within ten (10) Working Days of any such change occurring PROVIDED THAT such written notice shall include details of the name and address of the current and new owner of such interest(s) together with details of that part of the Application Land to which each of their interests apply.

7.21 Warranty

- 7.21.1 The Owner warrants that:

- (a) it has full power to enter into this Agreement; and

- (b) no person other than the Owner has any legal or equitable interest in the Site; and
- (c) no consent is necessary to make this Agreement binding on the Application Land and any estates and interests therein.

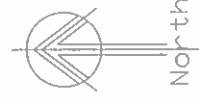
7.22 Jurisdiction

7.23 This Agreement is governed by and interpreted in accordance with the law of England.

In witness whereof the Parties have executed this Agreement as a deed the day and year first above written.

Schedule 1 - Plan

Location Plan



LOCATION PLAN 1:1250



BLOCK PLAN 1:500

Crown copyright and database rights Ordnance Survey 0100031673



RAMMURTI DESIGN LTD
 ARCHITECTURAL & PLANNING SERVICES
 368 ARCHITECTURAL & PLANNING SERVICES 2ND FLOOR
 TEL: FAX: 0189510026 MOB: 07799883574



Proposed replacement dwellings comprising pair of
 2-Storey 3bedroom semi-detached houses with rooms in
 lofts
 on land at 7 Hawthorne Road, Caversham
 for Rosegold Estates Ltd

BLOCK AND LOCATION PLANS

Scale: 1:500 & 1:1250

Date: June 2023

HRC07:001 Rev -

Schedule 2 – The Development

Proposed replacement dwellings comprising a pair of semi-detached 2 storey 3 bedroom houses with rooms in loft space.

Schedule 3 – Affordable Housing

1 Definitions

- 1.1 The following expressions shall have the following meanings which for the avoidance of doubt shall apply to all parts of this Agreement:

Affordable Housing means housing accommodation to be provided with some degree of financial subsidy enabling it to be delivered for sale or rent at a price or on rent terms which are lower than the prevailing open market for similar housing within Reading and to be managed and or owned by a Registered Provider or Housing Association for the benefit of eligible persons (being such persons nominated by the Council from its housing needs register in accordance with its allocation policy).

Affordable Housing Contribution means the sum of SEVENTY FIVE THOUSAND POUNDS (£75,000) to be used by the Council (if received) towards the provision of Affordable Housing within the Local Area.

2 Affordable Housing Contribution

- 2.1 To pay to the Council the Affordable Housing Contribution to the Council prior to Occupation of any Residential Unit; and
- 2.2 Not to Occupy or permit to be Occupied any Residential Unit unless and until the Affordable Housing Contribution has been paid to the Council in full.

Schedule 4 – Council's obligations

1 Definitions

- 1.1 The following expressions shall have the following meanings which for the avoidance of doubt shall apply to all parts of this Agreement:

Prescribed Period means the period commencing on the later of:

- (a) the Due Date;
 - (b) where payment of a Contribution is received by the Council after the Due Date, the date of actual receipt of the relevant payment; and
 - (c) Occupation,
- and expiring at the end of ten (10) full financial years (ending 31 March) immediately following the end of the financial year in which the period starts.

2 Contribution

- 2.1 Not to use the Contribution (or any part of any of them) otherwise than for the purposes specified in this Agreement and for no other purposes unless otherwise agreed in writing by the Owner.

- 2.2 Following receipt of a written request from the person who paid the relevant Contribution, to re-pay to that person such Contribution (or part of that Contribution) which has not upon the expiration of the Prescribed Period been expended, committed, allocated and/or contracted to be expended together with interest on any balance then remaining unspent of the relevant Contribution (or part of that Contribution) at the Bank of England base rate for the time being in force such payment to be made within twenty-eight (28) days of receipt by the Council of the written request PROVIDED THAT:

- (a) any such written request for repayment must be made within six (6) months of the expiration of the Prescribed Period; and
- (b) the Council shall not be required to return any part of the Contribution if it does not receive such a request within six (6) months of expiration of the Prescribed Period.

- 2.3 If a written request for repayment of any Contribution is not received as specified in paragraph 2.2 above, any remaining Contribution (or part of the Contribution) including any interest on any balance then held by the Council shall be used by the Council for any other purpose identified for any other Contribution in this Agreement or for the benefit of the Local Area in the vicinity of the Development.

Execution Page

EXECUTED (BUT NOT DELIVERED)
UNTIL THE DATE HEREOF) by)
the affixing of THE COMMON)
SEAL of READING BOROUGH)
COUNCIL in the presence of:-

Authorised Signatory

Minute	ODN 5/12/24 AD PT8 PPS
Originator	PT
Seal No.	402/24
Checked	G.A.T.

G.A. Tully
G.A. TULLY

Executed as a Deed by)
HARMAN HOMES)
DEVELOPMENTS LIMITED)
acting by a director:

sign here:

H.S. Juttla

Director

print name: HARMAN SINGH JUTTIA

In the presence of:

Witness signature:

Witness sign here:

Raman Porewal

Witness name:

print name: RAMAN POREWAL

Witness address:

1-9 St Anns Road
Harrow
Middlesex

Witness occupation:

Solicitor