

DATED 19th May **2021**

**Colin George Mackie, Donald Hugh Mackie and Jack Ross Mackie
(the Owner) (1)**

and

**READING BOROUGH COUNCIL
(the Council) (2)**

AGREEMENT

**constituting Planning Obligations relating to
land adjoining 135 Norcot
Road, Tilehurst, Reading,**

(Appl. No.201452)

**Michael Graham LLB (Hons);
MBA
Assistant Director of Legal
and Democratic Services
Reading Borough Council
Civic Offices Bridge Street
Reading RG1 2LU**

**IKEN NO.
S106 No 16460**

THIS AGREEMENT is made the 19th day of May 2021

BETWEEN:

Colin George Mackie Donald Hugh Mackie and Jack Ross Mackie all as Executors of Georgina Mackie of 135 Norcot Road Tilehurst RG30 6BS (hereinafter referred to as "the Owner") (1) and

READING BOROUGH COUNCIL of Civic Offices Bridge Street Reading RG1 2LU ("the Council") (2)

RECITALS

A. Planning Obligation

This Agreement constitutes a planning obligation within the meaning of the term in Section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act")

B. The Land

The Council is the Local Planning Authority for the purposes of the 1990 Act for the Borough of Reading in which the land adjoining 135 Norcot Road, Tilehurst ("the Land") more particularly described in the Schedule hereto is situated and the Council is the authority who can enforce the provisions of this Agreement

C. Land Ownership

The Owner is the owner of the freehold of the Land and has an interest in the Land within the meaning of the term in Section 106(9)(b) of the 1990 Act

D. Planning Application

An application (given reference 201452 by the Council) has been submitted to the Council for the development of the Land hereinafter described

E. Planning Permission

The Council and the Owner having regard to the Development Plan and to all other material considerations including the Court of Appeal decision in the case of Secretary for Communities and Local Government and West Berkshire Council and Reading Borough Council (CO/76/2015) consider that Planning Permission should be granted for the Development pursuant to the Application subject to the prior completion of this Agreement

F. The registered proprietors of the Property have passed away and a grant of probate was issued on 8 September 2020 to Colin George Mackie Donald Hugh Mackie and Jack Ross Mackie.

NOW IN PURSUANCE OF THE POWERS CONTAINED in Section 106 of the 1990 Act IT IS HEREBY AGREED AND DECLARED between the parties hereto as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following expressions shall have the under mentioned meanings:-

“1990 Act”

means the Town and Country Planning Act 1990 as amended

“Affordable Housing”

means social rented housing affordable rented housing and intermediate housing as defined in Annex 2 of the National Planning Policy Framework published on 27th March 2012 or any subsequent definition in any revision amendment or re-enactment thereof published by the U K Government

“the Affordable Housing Contribution”

means the sum of SEVENTEEN THOUSAND POUNDS (£17,000.00) towards the provision by the Council of Affordable Housing in the Borough which is not being provided by the Owner on the Land

“this Agreement”

means this planning obligation by agreement pursuant to Section 106 of the 1990 Act

“the Application”

means the application for planning permission submitted to the Council and given reference number 201452

“Deferred Affordable Housing Contribution Mechanism”

means the mechanism whereby upon first occupation or sale of the Development the owner shall pay 50% of the Sale Value achieved or Estimated Sale Value in default in excess of £700,000 seven hundred thousand pounds sterling to be used towards Affordable Housing but this clawback is capped at the sale price reaching Seven hundred and thirty six thousand pounds £736,000 Sterling

“develop” and “development”

shall be construed in accordance with Section 55 of the 1990 Act

“the Development”

means the construction of 1no. new 4 Bedroom dwelling with associated amenity space and off-street parking to be permitted by the Planning Permission

“the Effective Date”

means the date of this Agreement

“Estimated Sales Value”

Means the market value of the property as assessed by an independent property valuer as agreed with the Council

“Implementation”

means the carrying out of a “material operation” as defined in Section 56(4) of the 1990 Act and “Implement” and “Implemented” shall be construed accordingly

“Index”

means the All Items Index of Retail Prices issued by the Office for National Statistics

“the Land”

means the land described in the Schedule hereto

“New Dwelling”

means the new dwelling formed or to be formed in the carrying out of Development pursuant to the Planning Permission

“Occupation”

means (for the purposes of the covenant in Clause 4) the first beneficial occupation of the New Dwelling for residential purposes following Implementation of the Planning Permission and “Occupied” shall be construed accordingly

“the Planning Permission”

means planning permission granted by the Council pursuant to the Application substantially in the form of the draft set out in the Annexure hereto

“Sale Value”

means the price at which the sale of the relevant freehold or long leasehold interest with vacant possession would have been completed unconditionally for cash consideration on the date of valuation assuming:

- a willing seller and a willing buyer;
- that the sale is an arm's-length transaction;
- that prior to the date of valuation there had been a reasonable period (having regard to the nature of the New Dwelling and the state of the market) for the proper marketing of the interest for the agreement of the price and terms and for the completion of the sale;

- that the state of the market level of values and other circumstances were on an earlier assumed date of exchange of contracts the same as on the date of valuation;
- that no account is taken of any additional bid by a prospective purchaser with a special interest;
- that both parties to the transaction had acted knowledgeably prudently and without compulsion; and
- that this Agreement did not bind the interest concerned

1.2 Interpretation

IT IS HEREBY FURTHER AGREED that unless the context otherwise requires:

- 1.2.1 the singular shall include the plural and vice versa
- 1.2.2 references to any party shall include the successors in title of that party
- 1.2.3 where a party includes more than one person the obligations of those persons shall be joint and several
- 1.2.4 references to Clauses Schedules and the Annexure are references to clauses schedules and the Annexure respectively in this Agreement
- 1.2.5 references to a statute or statutory instrument shall mean and include any statutory revision amendment or re-enactment thereof
- 1.2.6 words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit infringement of the restriction

AND THAT Clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation

2. **CONDITIONALITY**

- 2.1 Subject to Clause 2.2 below this Agreement shall have immediate effect

- 2.2 The covenants by the Owner in Clause 4 are conditional upon the grant by the Council of the Planning Permission on the Effective Date and Implementation of the Development

3. **COVENANTS BY THE OWNER: DECLARATION**

The covenants by the Owner hereinafter set out are entered into with the intent that those covenants shall (subject to Clause 5) be enforceable without any limits of time against the Owner and any person deriving title from the Owner to all or any part of the Land and any person deriving title under them in respect of a lesser interest in the whole or any part of the Land as if that person had also been an original covenanting party in respect of the interest for the time being held by him

4. **THE OWNER'S COVENANTS**

The Owner COVENANTS AND AGREES with the Council to pay the Affordable Housing Contribution as increased by the indexation provision in Clause 10 to the Council no later than the date of first Occupation of the New Dwelling to be Occupied and not to Occupy the New Dwelling until such payment has been made to the Council in full including any interest due thereon under the terms of this Agreement or sale of the New Dwelling whichever is the earliest and not to complete the sale until such payment has been made to the Council in full including any interest due thereon under the terms of this agreement

- 4.1 The owner further agrees to pay monies to the Council in accordance with the Deferred Affordable Housing Contribution Mechanism as increased by the indexation provision in Clause 10 no later than the date of first Occupation or sale whichever is the earliest of the New Dwelling to be Occupied and not to Occupy the New Dwelling until such payment has been made to the Council in full including any interest due thereon under the terms of this Agreement AND for the avoidance of doubt the maximum sum payable to the Council under this clause is £18,000 Eighteen Thousand Pounds sterling

- 4.2 The owner shall not sell the development without giving 14 fourteen days days written notice upon exchange of contracts for sale to be served by 1st Class post service to be sent to Infrastructure Monitoring Officer at Reading Borough Council Offices Bridge Street Reading RG1 2LU

5. CESSER OF LIABILITIES

The liabilities of the person who for the time being is the Owner under this Agreement in relation to the Land shall cease (subject to and without prejudice to the Council's rights in relation to any antecedent breach of the obligations contained in this Agreement) after the person has parted with all his interest in the Land

6. NO WAIVER

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 thereof by the Owner

7. RIGHTS OF THIRD PARTIES

It is not intended that any of the provisions of this Agreement be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than the parties to this Agreement

8. LOCAL LAND CHARGE

This Agreement is and shall be registered as a Local Land Charge by the Council

9. REVOCATION

In the event that the Planning Permission expires or is quashed before implementation or is (without the consent of the Owner) revoked by any statutory enactment then in that event the provisions of this Agreement shall lapse and

determine and in that event the Council will thereafter effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement

10. INDEXATION

The amount of any contribution payable under the provisions of Clause 4 of this Agreement shall be increased by an amount equivalent to the increase in the Index from the Effective Date until the date on which the respective contribution is payable

11. INTEREST ON UNPAID MONIES

If any payment due under this Agreement is paid late interest at the rate of 4% per annum above the base rate of the Bank of England for the time being in force will be payable from the date payment is due to the date of payment

12. LEGAL FEES

The Owner agrees to reimburse the Council the legal costs and expenses incurred by the Council in the preparation and completion of this Agreement in the sum of £1760.00 such sum to be paid to the Council on the Effective Date

13. MONITORING FEE

The Owner agrees to pay the Council's costs and expenses incurred or to be incurred by the Council in the administration and monitoring of the provisions of his Agreement in the sum of £800.00 such sum to be paid to the Council on the Effective Date

14. PAYMENTS TO THE COUNCIL

Any payments due to the Council under the terms of this Agreement (SAVE AND EXCEPT for the legal fees payable to the Council under the provisions of the Clause 12 and the monitoring fee under the provisions of Clause 13) shall be paid to the Council by means of telegraphic transfer to the Council as follows:

Reading Borough Council

Sort Code: 30-91-31

Account Number: 00271502

Lloyds Bank plc 24 Broad Street Reading RG1 2BT

quoting reference: WB/16460/20145 or other reference quoted in relevant S106 Demand Notice issued in respect of the obligation

16. AGREEMENT AND DECLARATION

It is agreed by the Owner and the Council that should the Development the subject of the Planning Permission be varied under a new planning permission ("the VARIAT planning permission") granted by the Council under Section 73 of the 1990 Act the planning obligations in this Agreement shall apply to the VARIAT planning permission

EXECUTED as a deed by the parties hereto and delivered on the date written at the start of this deed

THE SCHEDULE

(The Land)

All that land adjoining 135 Norcot Road, Tilehurst the subject of the Application and which comprises the land registered at the Land Registry under Title Number BK294428 shown edged red on the plan annexed hereto

THE PLAN

H. M. LAND REGISTRY

NATIONAL GRID PLAN

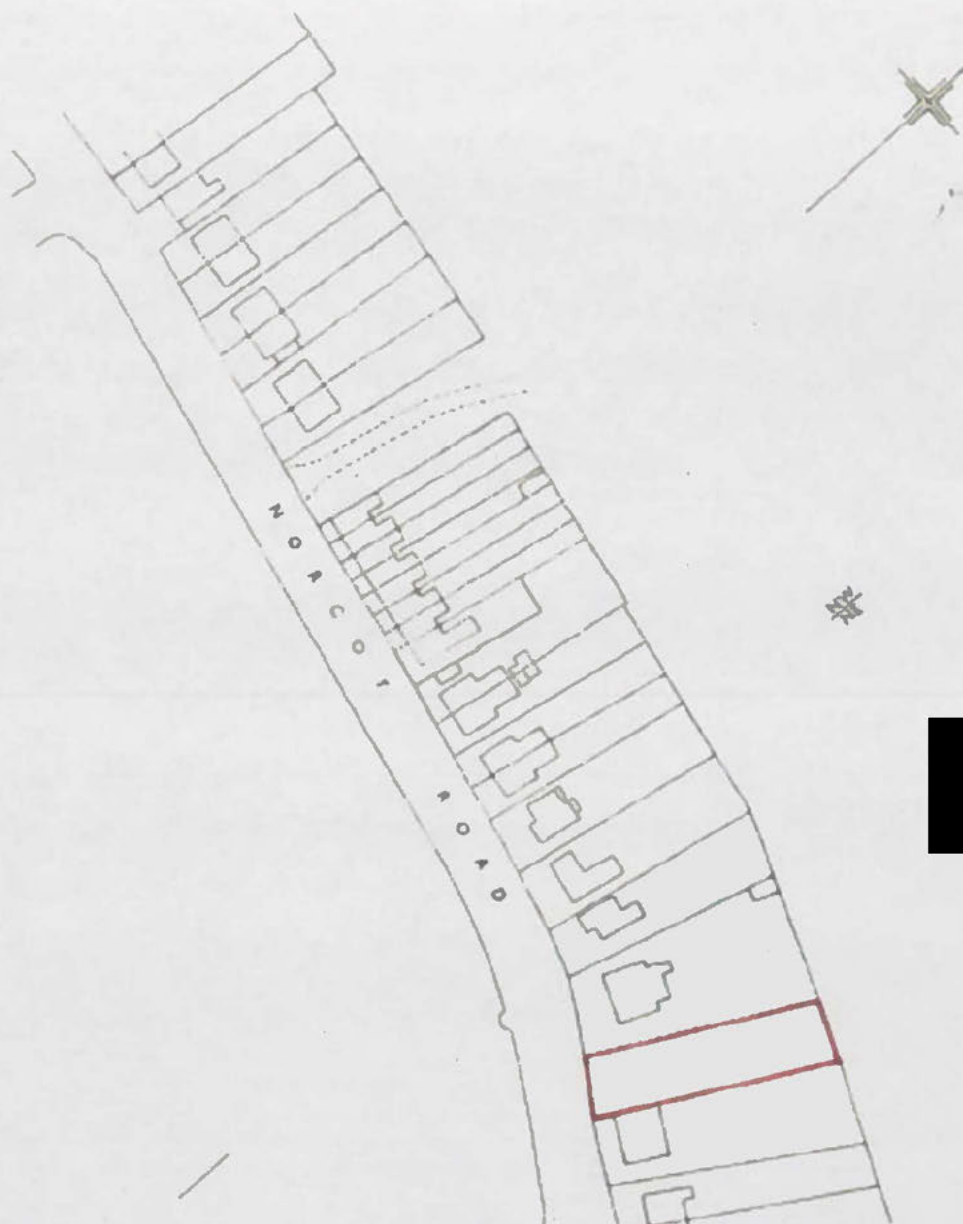
SU 6773

SECTION B

BERKSHIRE
READING DISTRICT

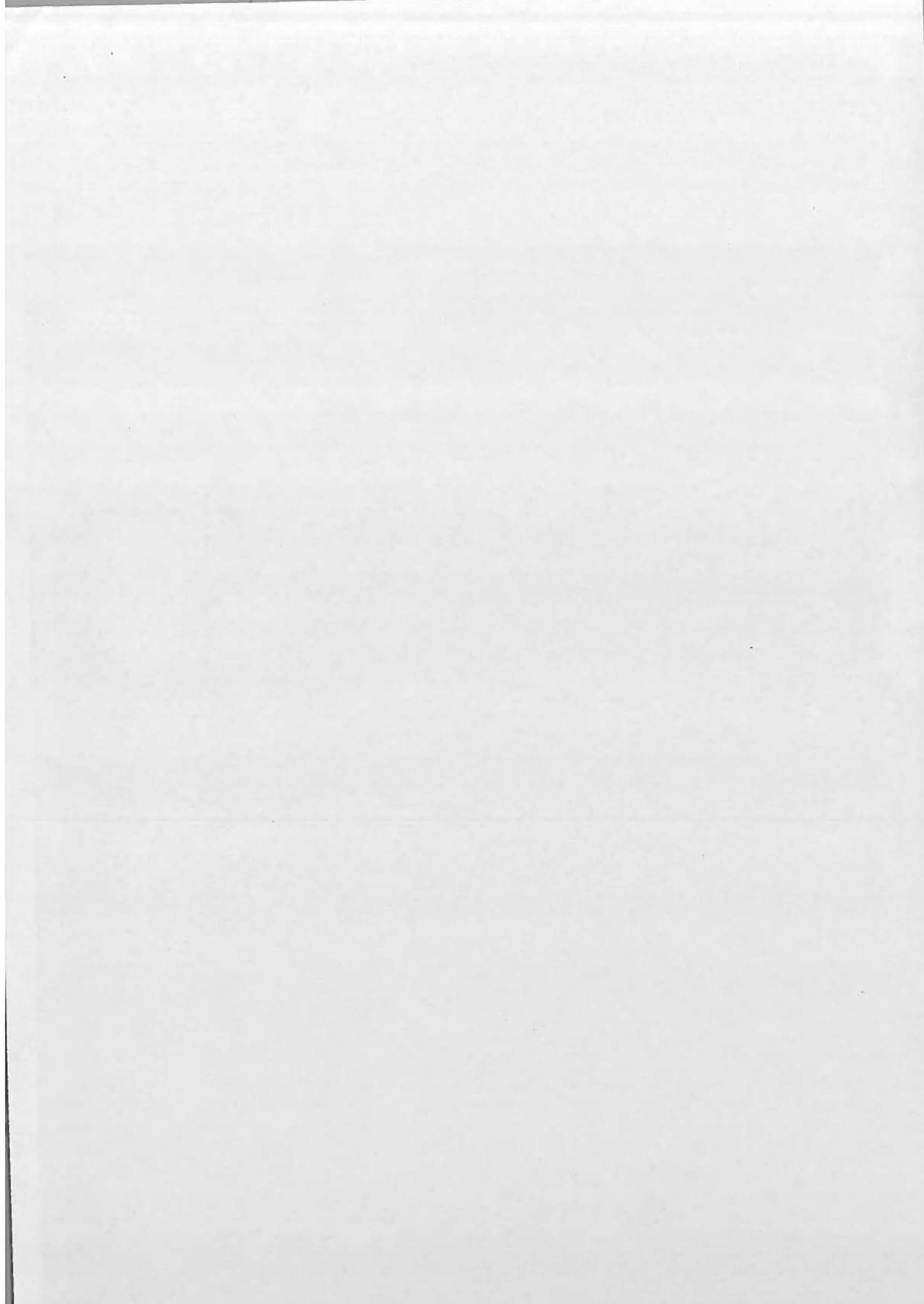
Scale 1:1250

The boundaries shown by dotted lines have been plotted from the transfer plan. The title plan may be updated from later survey information.



THE ANNEXURE

(The Draft Planning Permission)



SIGNED AS A DEED (but not delivered)
until the date hereof) by the said)
Colin George Mackie in the presence)
of:-

[Redacted Signature]

sign here

W
I
T
N
E
S
S

Name: Paul Snook

Address: 16 Middle Farm Close
Chieveley
RG20 8RT

Signature: [Redacted Signature]

SIGNED AS A DEED (but not delivered)
until the date hereof) by the said)
Jack Ross Mackie in the presence)
of:-

[Redacted Signature]

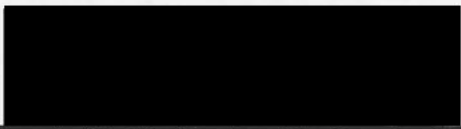
sign here

W
I
T
N
E
S
S

Name: Paul Snook

Address: 16 Middle Farm Close
Chieveley
RG20 8RT

Signature: [Redacted Signature]

SIGNED AS A DEED (but not delivered) 
until the date hereof) by the said)
Donald Hugh Mackie in the presence) sign here
of:-

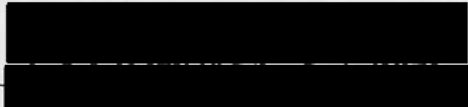
W

I Name: NICHOLAS SYFRET

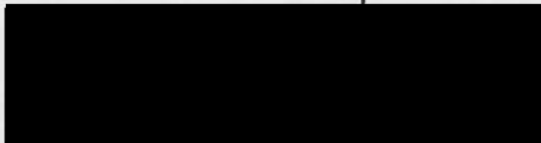
T

N Address: St. Margaret's Cottage
E 15 The Moss, Pangbourne
S Reading RG8 7LP

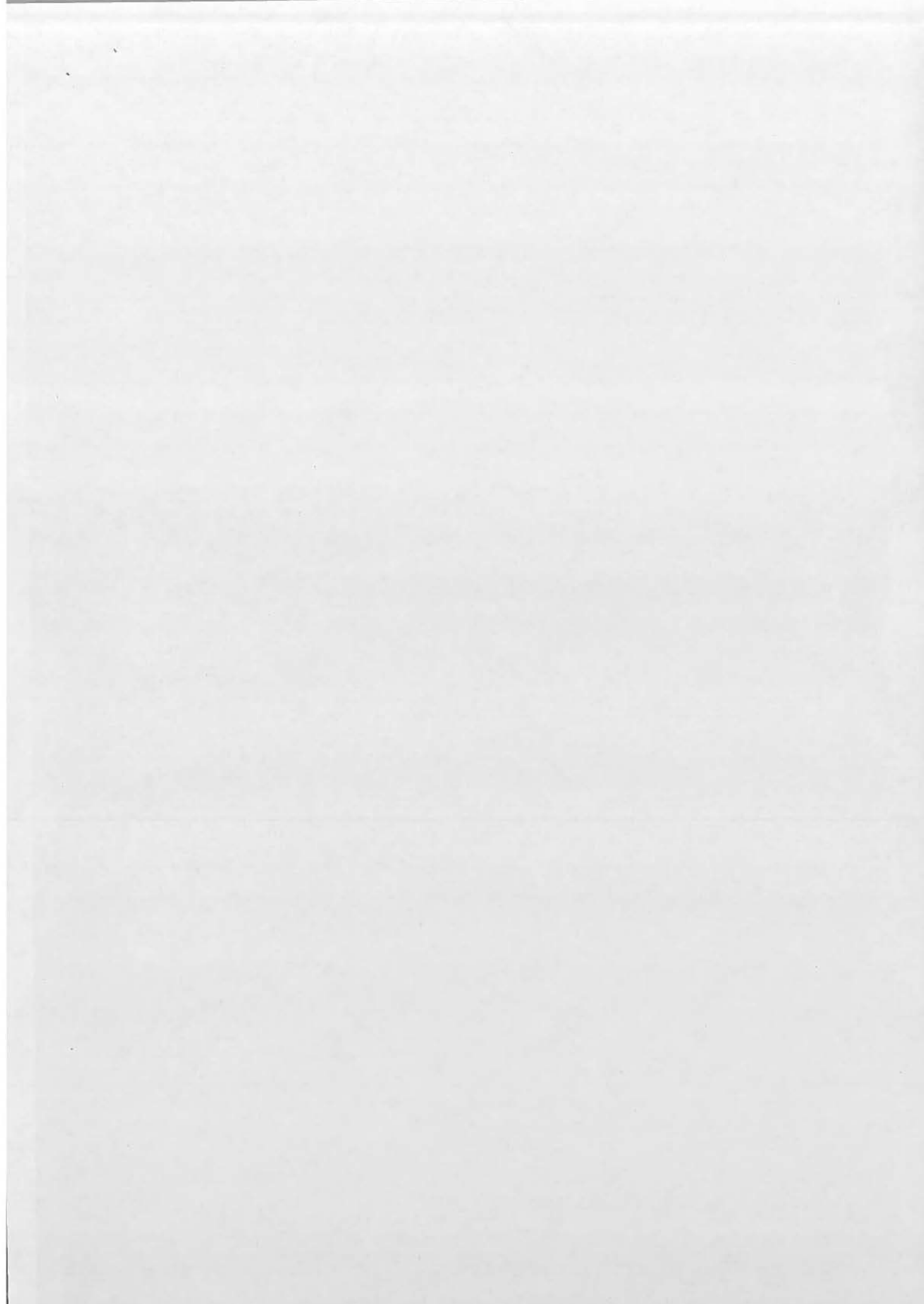
S

Signature: 

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	HPRS 23.07.14
Originator	WB
Seal No.	121/21
Checked	



DATED

19th May

2020/

**Colin George Mackie, Donald Hugh Mackie and Jack Ross Mackie
(the Owner) (1)**

and

**READING BOROUGH COUNCIL
(the Council) (2)**

AGREEMENT

**constituting Planning Obligations relating to
land adjoining 135 Norcot Road, Tilehurst**

(Appl. No.201452)

**Michael Graham, LLB (Hons);
MBA
Assistant Director of Legal
and Democratic Services
Reading Borough Council
Civic Offices Bridge Street
Reading RG1 2LU
IKEN NO. 16460**