

DATED

23 NOVEMBER

2023

PLANNING AGREEMENT

between

(1) CHERWELL DISTRICT COUNCIL

and

(2) OXFORDSHIRE COUNTY COUNCIL

and

(3) BDW TRADING LIMITED

Deed of Variation pursuant to Section 106 & 106A of the  
Town and Country Planning Act 1990 (as amended)

relating to the land at White Post Road, Bodicote

THIS DEED is made the 23 day of NOVEMBER 2023

**BETWEEN**

- (1) **CHERWELL DISTRICT COUNCIL** of Bodicote House White Post Road Bodicote Banbury in Oxfordshire OX15 4AA (“the Council”);
- (2) **OXFORDSHIRE COUNTY COUNCIL** of County Hall New Road Oxford OX1 1ND (“the County Council”);
- (3) **THE BDW TRADING LIMITED** of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville LE67 1 UF (“the Owner”);

together “the Parties”

**WHEREAS:**

- 1 The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated and by whom the obligations and covenants contained in this Deed are enforceable.
- 2 The County Council is the local education authority and highway authority for the area within which the Site is situated.
- 3 The Owner is the freehold owner of the Land being the land registered at HM Land Registry under title number ON353292 free from encumbrances.
- 4 On 20 November 2017 the Outline Planning Permission was granted on appeal.
- 5 On 31 July 2020 the Reserved Matters Approval was granted.
- 6 The Principal Agreement was entered into for the purpose of regulating the development of the Site pursuant to the Outline Planning Permission.
- 7 On 13 April 2021 the Owner (1) and Oxford County Council (2) entered into the First Deed of Variation.
- 8 The Owner has Commenced and already built out a significant extent of the Primary Development on the Site.
- 9 The Owner has submitted the Slot-In Planning Application to the Council.

- 10 The Parties agree that it is necessary to vary the Principal Agreement for the purpose of ensuring that the Owner is obligated to perform the planning obligations secured therein in full prior to implementing the Slot-In Planning Permission. The Parties have agreed to enter into this Deed in order to vary the Principal Agreement as varied by the First Deed of Variation for this purpose.

It is agreed as follows:

## 1 Definitions and Interpretation

- 1.1 In this Deed the following terms and expressions shall have the following meaning:

<b>"Commencement"</b>	means the carrying out of any material operation (as defined in section 56(4) of the 1990 Act) on the Site pursuant to the Outline Planning Permission and "Commence" and "Commenced" shall be construed accordingly
<b>"the First Deed of Variation"</b>	means the deed of variation to the Principal Agreement made on 13 April 2021 between the First Owner (1) and West Dorset District Council (2)
<b>"Outline Planning Permission"</b>	means the outline planning permission granted pursuant to planning application reference 15/01326/OUT on appeal for non-determination under appeal reference APP/C3105/W/17/3172731
<b>"the Primary Development"</b>	means the development of the Site authorised by the Outline Planning Permission and the Reserved Matters Approval
<b>"Principal Agreement"</b>	means the unilateral agreement dated 20 November 2017 entered into pursuant to Section 106 of the 1990 Act by the First Owner (1) the Second Owner (2) the Council (3) and the County Council (4) as varied by the First Deed of Variation
<b>"Reserved Matters Approval"</b>	means the reserved matters approval granted pursuant to planning application reference 19/00895/REM
<b>"the Slot-In Planning Application"</b>	means the application for full planning permission for the replan of the western part of the residential development which is

located within parameters permitted through Reserved Matters application 19/00895/REM for the delivery of 107 dwellings at Os Parcels 6741 and 5426 West Cricket Field North, Wykham Lane, Bodicote submitted to the Council and allocated planning application reference 21/03639/F

**“the Slot-In Planning Permission”** means a planning permission granted by the Council pursuant to the Slot-In Planning Application

**“Working Day”** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

1.2 Terms and expressions defined in the Principal Agreement shall have the same meaning in this Deed unless otherwise provided.

1.3 Unless the context otherwise requires, references to clauses are to clauses of this Deed.

1.4 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.

1.5 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

1.6 Wherever 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 unless there is an express provision otherwise.

1.7 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.

1.8 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council the successor to its statutory functions.

1.9 Headings where they are included are for convenience only and are not intended to influence the interpretation of this Deed.

1.10 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

## **2 Legal basis**

2.1 This Deed is made pursuant to sections 106 and 106A of the 1990 Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.

- 2.2 The terms of this Deed create planning obligations pursuant to section 106 of the 1990 Act with the intention that the interests of the Owner and their successors in title and assigns to the Site are bound and that the planning obligations contained herein are enforceable by the Council as provided in the clauses of the Principal Agreement as varied by the Deeds of Variation and by this Deed.
- 2.3 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of section 106 of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2022 and all other enabling powers.
- 2.4 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 2.5 No person shall be liable for a breach of covenant contained in this Deed after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenants prior to parting with such interest.
- 2.6 Nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Reserved Matters Approval or modification, variation or amendment thereof) granted by the Council or by the Secretary of State on appeal after the date of this Deed.
- 2.7 This Deed shall cease to have effect if the Principal Agreement ceases to have effect.
- 2.8 If any provision of this Deed is held to be illegal invalid or unenforceable the legality validity and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.
- 2.9 If there is any inconsistency between the variations set out in Schedule 1 of this Deed and the variations effected by the First Deed of Variation then this Deed will take precedence.

### **3 Conditionality**

- 3.1 This Deed takes effect on the date hereof.

### **4 Variation to the Principal Agreement**

- 4.1 The Council the County Council and the Owner agree that the Principal Agreement shall be varied as set out in the Schedules hereto provided that in all other respects the Principal Agreement shall remain in full force and effect.

### **5 Owner's covenants**

- 5.1 The Owner covenants with the Council and the County Council to observe and perform the covenants, restrictions and obligations contained in the Principal

Agreement as varied by this Deed. The Owner shall on completion of this Deed pay to the Council and the County Council respectively their reasonable and proper legal costs incurred in connection with this Deed.

## **6 Notices**

- 6.1 Any notice consent or approval required to be given under this Deed to any Party to this Deed shall be in writing and shall be delivered personally sent by pre-paid first class post or by recorded delivery to the address of each Party as set out above or such other address for service as shall subsequently be notified in writing by the Party to the other Parties.
- 6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:
- 6.2.1 if delivered by hand, at the time of delivery;
  - 6.2.2 if sent by first class post, on the second Working Day after posting;  
or
  - 6.2.3 if sent by recorded delivery, at the time delivery was signed for.
- 6.3 If a notice, demand, or other communication is served after 4:00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

## **7 Local land charge**

- 7.1 This deed is a local land charge and shall be registered as such by the Council.

## **8 Agreements and declarations**

- 8.1 The Parties agree that:
- 8.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
  - 8.1.2 nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

## **9 No fetter of discretion**

- 9.1 Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

## **10 No waiver**

- 10.1 No failure or delay by the Council to exercise any right or remedy provided under this deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**11 Third party rights**

11.1 A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

**12 Jurisdiction**

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

## Schedule 1 Amendments to the Principal Agreement

- 1 Clause 1 of the Principal Agreement shall be varied as follows:
  - 1.1 A new clause 1.1.61.a shall be inserted immediately after clause 1.1.61 to read as follows:

“‘Open Space Interim Completion Certificate’ means a certificate issued by the Council in respect of the completion of the construction, laying out, draining, and seeding of the Play Area BUT FOR THE AVOIDNCE OF DOUBT this shall exclude marking up of the pitches and insertion of posts which can be completed once the pitches are in good condition BUT FOR THE AVOIDANCE OF DOUBT within 6 months of the Open Space Interim Completion Certificate being issued”
  - 1.2 A new clause 1.1.68.a shall be inserted immediately after clause 1.1.68 to read as follows:

“‘Plan 5’ means drawing reference 7942-UU-1 annexed to this deed at Annex 6”
  - 1.3 A new clause 1.1.71.a shall be inserted immediately after clause 1.1.71 to read as follows: Plot 176 Plan

“‘Plot 176 Plan’ means drawing reference 7942-176(S106) annexed to this deed at Annex 7”
  - 1.4 A new clause 1.1.99 shall be inserted immediately after clause 1.1.98 to read as follows:

“‘Wider Land’ means the land showed edged blue but not including the land edged red on Plan 5”
- 2 Schedule 2 to the Principal Agreement shall be varied as follows:
  - 2.1 Paragraph 1.1.5 shall be deleted and replaced with the following:

“upon Occupation of the 175<sup>th</sup> Dwelling; and”
  - 2.2 Paragraph 1.1.6 shall be deleted and replaced with the following:

“upon Occupation of the 196<sup>th</sup> Dwelling”
  - 2.3 Paragraph 2.7 shall be deleted and replaced with the following:

“Not to Occupy or permit the first Occupation of more than 150 Dwellings until the Allotment Contribution has been paid to the Council”
  - 2.4 Paragraph 2.8 shall be deleted and replaced with the following:



"To pay the Allotment Contribution to the Council before the first Occupation of more than 150 Dwellings"

- 2.5 Paragraph 3.5 shall be deleted and replaced with the following:

"Not to Occupy more than 150 Dwellings comprised in the Development until the Car Park has been transferred to the Management Company on the terms set out in Schedule 4"

- 2.6 Paragraph 3.9 shall be deleted and replaced as follows:

"Upon completion of the laying out of the Open Space and/or the Bridleway in accordance with the approved Open Space Works Specification and/or the Bridleway Scheme as appropriate to notify the Council of completion and requests the Council inspects the Open Space and/or the Bridleway within 30 working days of such notification and issues an Open Space Interim Completion Certificate in respect of the Open Space and a Final Completion Certificate in respect of the Bridleway."

- 2.7 Paragraph 3.11 shall be deleted and replaced with the following:

"Not to permit or allow the Occupation of more than 150 Dwellings until the Open Space (not including the Play Area) has been provided and/or constructed (as appropriate) in complete accordance with the approved Open Space Works Specification and an Interim Completion Certificate has been issued by the Council."

- 2.8 Paragraph 3.13 shall be deleted and replaced as follows:

"Not to permit or allow the Occupation of more than 175 of the Dwellings until the Open Space (not including the Play Area) has been provided and/or constructed (as appropriate) in complete accordance with the approved Open Space Works Specification and a Final Completion Certificate has been issued by the Council."

- 2.9 Paragraph 3.21 shall be deleted and replaced as follows:

"Not to permit or allow the Occupation of more than 150 Dwellings until the Bridleway has been provided and/or constructed (as appropriate) in complete accordance with the approved Bridleway Scheme and a Final Completion Certificate has been issued by the Council and the Bridleway has been transferred to the Management Company on the terms set out in Schedule 4"

- 2.10 Paragraph 3.23 shall be deleted and replaced as follows:

"Subject to paragraph 3.24 below not to permit or allow the Occupation of more than 150 Dwellings until that part of the Play Area which comprises a second local area for play a combined local area for play/local equipped area for play and a multi-use games area have been provided and/or constructed (as appropriate) in

complete accordance with the approved Open Space Works Specification and an Open Space Interim Completion Certificate has been issued by the Council following inspections pursuant to paragraph 3.9 and/or 3.10 of this Schedule 2 .”

- 2.11 Paragraph 3.28 shall be deleted and replaced as follows:

“Not to permit or allow the Occupation of more than 150 Dwellings until the Allotments have been laid out in complete accordance with the Planning Permission and the Allotment Scheme and purposes of this covenant the Owner will on request permit its successors in title access to the land identified for the Allotments in the Allotment Scheme for the purpose of laying out constructing and servicing them”

- 2.12 Paragraph 3.29 shall be deleted and replaced as follows:

“Upon completion of the laying out of the Allotment in accordance with the Planning Permission and the Allotment Scheme to notify the Council of completion and to request that the Council inspects the Allotments within 30 working days of such notification and issues a Final Completion Certificate provided always that no more than 150 Dwellings shall be Occupied until a Final Completion Certificate in relation to the Allotments has been issued by the Council”

- 2.13 Paragraph 3.34 shall be deleted and replaced as follows:

“Not to permit or allow the Occupation of more than 150 Dwellings until the On-Site Outdoor Sports Facilities have been laid out <sup>and</sup> an Interim Completion Certificate has been issued by the Council”

- 2.14 A new paragraph 5.2.a shall be inserted immediately following paragraph 5.2 to read as follows:

“No more than 80 of the Market Housing Units on the Wider Land shall be Occupied until all of the Affordable Housing Units to be constructed on the Wider Land have been constructed in accordance with the Planning Permission and made ready for residential Occupation, and written notification of that has been received by the Council.”

- 2.15 A new paragraph 5.4.a shall be inserted immediately following paragraph 5.4 to read as follows:

“No more than 85 of the Market Housing Units on the Wider Land shall be Occupied until all Affordable Housing Units to be constructed on the Wider Land have been transferred to the Registered Provider save for the Affordable Housing Unit at plot 176 shown edged red on the Plot 176 Plan which the developer shall reserve for access during construction of plot 295 shown edged blue on the Plot 176 Plan on the Replan Site PROVIDED THAT the Developer shall transfer the Affordable Housing Unit at plot

176 to the Registered Provider within 1 month of completion of plot 295 and prior to occupation of plot 295 such transfer to include the following:

5.4.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units;

5.4.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits in the adjoining land up to and abutting the boundary to the Affordable Housing Units, all such services to be connected to the mains; and

5.4.3 a reservation of all rights of access and passage of services and rights of entry necessary for the purposes of the Development."

2.16 A new paragraph 5.4.b shall be inserted immediately following paragraph 5.4.a to read as follows:

"To notify the Council within 1 month of completion of plot 295 on the Replan Site"

Braune Jacobsen  
23/10/23

3. A new clause 1.1.57a shall be inserted immediately after clause 1.1.57 to read as follows:  
"On Site Outdoor Sports Facilities Interim Completion Certificate'  
means a certificate issued by the Council in respect of the completion of the construction, laying out, draining and seeding of the sports pitches BUT FOR THE AVOIDANCE OF DOUBT this shall exclude marking up of the pitches and insertion of posts which can be completed once the pitches are in good condition BUT FOR THE AVOIDANCE OF DOUBT within 6 months of the On Site Outdoor Sports Facilities Interim Completion Certificate being issued"

## Schedule 2 Amendments to Schedule 3 of the Principal Agreement

1 Schedule 3 to the Principal Agreement shall be varied as follows:

1.1 Paragraph 1.1.7 shall be deleted and replaced with the following;

“upon Occupation of the 175<sup>th</sup> Dwelling; and”

1.2 Paragraph 2.18 shall be deleted and replaced with the following;

“To pay the **Special Educational Needs Contribution** to the County Council before the first Occupation of more than 175 Dwellings”

1.3 Paragraph 2.19 shall be deleted and replaced with the following:

“Not to Occupy or permit the first Occupation of more than 175 Dwellings until the **Special Educational Needs Contribution** has been paid to the County Council”

### Schedule 3 New Annex 6

- 1 The plan at Appendix 1 to this Deed shall be inserted into the Principal Agreement in a new Annex 6 immediately following Annex 5.

## Schedule 4 New Annex 7

- 1 The plan at Appendix 2 to this Deed shall be inserted into the Principal Agreement in a new Annex 7 immediately following Annex 6.

Appendix 1 Plan 5



File | Settings | Layers | View | Screen | Close

**DAVID WILSON HOMES**  
RESIDENTIAL COMMUNITY LIFESTYLE

Project: **The Pavilions**  
White Post Road  
Bodicote

Drawing Title: **PLAN 1**

Scale: 1:1000 @ A0  
Date: 22.02.23  
Drawn By: DG

7942-UU-1





**Appendix 2 Plot 176 Plan**



Rev	Description	Date	Drawn	CHK'd



Remix 2  
2 Cyprian Way,  
Sokral Business Park,  
West Midlands  
B90 4GT  
1851 713 7140  
1851 713 7140  
www.dwh.co.uk

Project  
**The Pavilions**  
Bodicote

Drawing Title  
**Plot 176 Plan**

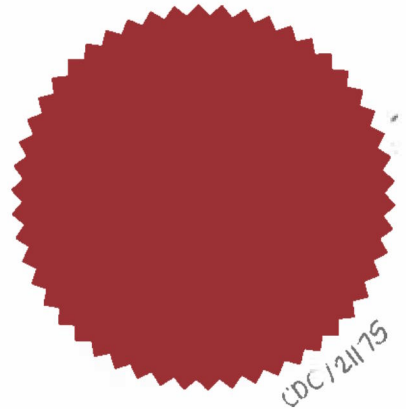
Scale  
1:500@A4  
Date  
23/08/23  
Drawn By  
DG

7942-176(S106) -

IN WITNESS whereof the parties have executed this instrument as a DEED the day and year first before written

EXECUTED as a DEED by affixing the COMMON SEAL OF CHERWELL DISTRICT COUNCIL in the presence of:-

Authorised Signatory



EXECUTED as a DEED by affixing the COMMON SEAL OF OXFORDSHIRE COUNTY COUNCIL in the presence of:-

Authorised Signatory



EXECUTED as a DEED by BDW TRADING LIMITED acting by

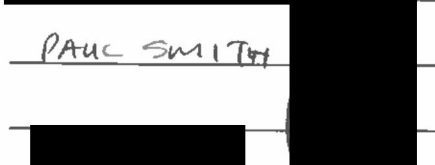
Signature of Director



Name of Director

PAUL SMITH

Signature of Director



Name of Director

