

Respondent ID: 29326017

Black Box Planning on behalf of Bromford Housing Group and Edward Ware Homes

## Hearing Statement

### Matter 11: Identifying and maintaining a supply of housing

1. This Hearing Statement has been prepared on behalf of Bromford Housing Group (Bromford) and Edward Ware Homes (EWH), and should be read alongside the Representations submitted in response to the pre-submission (Reg19) version of the Gloucester City Plan (GCP) in February 2020. It seeks to respond to specific questions set out in the Inspector's Matters, Issues and Questions raised in respect of Matter 11, where relevant to concerns held by Bromford and EWH.

***Whether the GCP has been positively prepared and whether it is justified and consistent with the JCS, and national policy in relation to the approach towards the provision of housing?***

2. ***86. Do the policies of the GCP support the Government's objective of significantly boosting the supply of homes? How will proposals for housing on unallocated site be determined? Should it be made clear how much housing should be provided over the plan period within the administrative boundary of the city?***
3. The GCP has been prepared in the context of the adopted JCS, which was intended to be subject to an immediate review, which now appears to have been abandoned. The recognised housing needs of the City incorporated within the JCS were to deliver at least 14,359 new homes over the plan period (to 2031). This is the context and housing requirement for the GCP to work towards. It currently does not meet the needs of the City, which has been justified on the basis of constraints.
4. The affordable housing need in the City is also significant and there is even less certainty that the Strategic Allocations identified in the JCS at Innsworth, Twigworth, South Churchdown and North Brockworth will contribute to the affordable housing needs of the City, despite them being allocated for that purpose. In practice, the provisions of the site-specific Agreements enable the delivery of those affordable houses to meet the wider needs of Tewkesbury Borough, primarily, and also Cheltenham Borough by agreement, set out in the Local Connection condition within the agreement. A copy of the Twigworth SA Agreement is attached at Appendix 1. The Duty to Co-operate in the context of general housing needs is not a duty specific to affordable housing. This places even greater emphasis on the administrative area.

5. The GCP does not go far enough to consider alternative sites which could be allocated for housing, such as at East of Winneycroft Lane (06NEW17), and it is incumbent on the Council to do so.
6. Similarly, there is no provision to enable sites within the administrative area to come forward should site specific constraints be addressed satisfactorily, save for the exceptions set out in SD10 of the JCS. There is provision in SD10.4 for the GCP to set out specific circumstances which would enable housing delivery on such sites within the administrative area.
7. The GCP should explore the additional sites identified in more detail and also provisions to enable them to come forward in accordance with policy. This consideration is also required as part of the remedy to issues raised in Matter 1 in respect of the consistency of the site selection process and assessment of reasonable alternatives.
8. The secondary solution of expanding the potential for windfall delivery in the administrative area would also aid the delivery of a positively prepared and effective plan, which makes every effort to boost the supply of housing including affordable housing which is required in the City. However, in the context of a genuinely plan led system, the preference is to explore sites further in the first instance.
9. **87. Notwithstanding the ongoing review of the JCS, and that is accepted that Gloucester cannot realise all its housing needs without help from neighbouring authorities, does the GCP identify enough land for housing to be deliver, consistent with Policies SP1 and SP2 of the JCS?**
10. The constraints to housing need within the geographic context of the administrative area of the City and that it cannot meet all of its own housing needs are recognised. However, that is reason to create a policy environment to encourage housing delivery to come forward, applying a presumption in favour of sustainable development across the administrative area and also to exhaust consideration of potential additional allocations. Left unchanged, the Development Plan will continue to operate policies of restraint in Gloucester City where sites are not previously developed.
11. Provision for affordable housing delivery should be supported beyond the constraints of a rural exception basis across the administrative area.

**Appendix 1:**

**Twigworth Strategic Allocation Site Specific Agreement – Affordable Housing**

**DATED**

**2017**

**ROBERT HITCHINS LIMITED**

**and**

**BODDINGTON ESTATES LIMITED**

**and**

**THE COUNCIL FOR THE BOROUGH OF TEWKESBURY**

**AGREEMENT**

**pursuant to S106 Town and Country Planning Act 1990  
Affordable Housing  
in relation to land at Twigworth  
in the County of Gloucester**

**Reference number 15/01149/OUT**

**THIS DEED** is made the                    day of                    2017

**BETWEEN:**

- (1) **ROBERT HITCHINS LIMITED** whose registered office address is at The Manor Boddington Cheltenham Gloucestershire GL51 0TJ (Company Registered Number: 00686734) ("**the First Owner**")
  
- (2) **BODDINGTON ESTATES LIMITED** whose registered office address is at The Manor Boddington Cheltenham Gloucestershire GL51 0TJ (Company Registered Number: 00874206) ("**the Second Owner**")
  
- (3) **THE COUNCIL FOR THE BOROUGH OF TEWKESBURY** of the Council Offices, Gloucester Road, Tewkesbury in the County of Gloucester ("**the Council**")

**INTRODUCTION**

1. The words and phrases used in this Agreement are defined in Clause 1
2. The Council is the Local Planning Authority for the purposes of the Act
3. The First Owner is registered as the proprietor of the freehold of that part of the Site with Absolute Title at the Land Registry under Title Number GR298992 as more particularly described in the First Schedule and the Second Owner is registered as the proprietor of the freehold of that part of the Site with Absolute Title at the Land Registry under Title Number GR367399 as more particularly described in the First Schedule
4. The First Owner has submitted the Application to the Council
5. The Owners (as defined below) have agreed to enter into a separate planning obligation with Gloucestershire County Council in relation to those planning obligations which may be enforced by Gloucestershire County Council

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS**

For the purposes of this Agreement the following expressions shall have the following meanings:

- 1.1.** “Accessible and Adaptable Homes Standard” means the optional requirement M4(2) (Category 2 – accessible and adaptable dwellings) of Part M of Schedule 1 of the Building Regulations 2010
- 1.2.** “Act” means the Town and Country Planning Act 1990 or any re-enactment or modification thereof for the time being in force
- 1.3.** “Affordable Housing” means affordable housing as that term is defined in Annex 2 of the National Planning Policy Framework dated March 2012 as updated from time to time or as defined in any government documentation that shall supersede it
- 1.4.** “Affordable Housing Land” means the General Affordable Housing Land
- 1.5.** “Affordable Housing Provider” means any one of the following:
- (a) a body that meets the definition of ‘Housing Association’ in section 1(1a) of the Housing Associations Act 1985; or
  - (b) a private registered provider as defined in Section 80 of the Housing and Regeneration Act 2008, or body registered with the Homes and Communities Agency; or
  - (c) a body approved or accredited by the Homes and

Communities Agency or equivalent successor body whose terms of approval or accreditation have been evidenced to the satisfaction of the Council in writing; or

(d) any other body previously agreed in writing by the Council

**1.6.** “Affordable Housing Plan (Phase)” means a plan for the Affordable Housing Units in each Phase to be submitted to the Council pursuant to paragraph 2 of the Second Schedule and such plan shall meet the following criteria:

- i) the Council shall not be entitled to require more than 35% of the total number of Dwellings to be provided on the Site as Affordable Housing Units and no more than 50% of the Dwellings and no less than 10% of the Dwellings on any Phase to be provided as General Affordable Housing Units unless otherwise agreed in writing with the Council
- ii) the scheme shall detail the location, design, property type and size of the Affordable Housing Units within the Phase and the tenure and dwelling type shall be in general accordance with the Affordable Housing Plan (Whole Site) as previously approved by the Council
- iii) the location and boundaries of each of the General Affordable Housing Units shall be

compliant with the Clustering Requirements

**1.7.** “Affordable Housing Plan (Whole Site)” means an indicative plan for the Affordable Housing Units on the Site to be submitted to the Council pursuant to paragraph 1 of the Second Schedule and such plan shall meet the following criteria:

- i) the Council shall not be entitled to require more than 35% of the total number of Dwellings to be provided on the Site as Affordable Housing Units
- ii) the approximate intended numbers and clustering arrangement of the General Affordable Housing for each Phase shall be in accordance with the Clustering Requirements
- iii) provide for the provision of General Affordable Housing Units on every Phase that includes Dwellings and for there to be no more than 50% of the Dwellings and no less than 10% of the Dwellings on any Phase to be provided as General Affordable Housing Units

**1.8.** “Affordable Housing Units” means those Dwellings provided/to be provided as Affordable Housing comprising the Affordable Rented Units and the Intermediate Housing Units together with:

- associated parking
- soft landscaped areas
- landscaping to private areas



and “Affordable Housing Unit” shall be construed accordingly

- 1.9.** "Affordable Rent" means rented housing provided by an Affordable Housing Provider subject to rent controls other than the national rent scheme that requires housing to be offered at a rent (inclusive of Service Charge where applicable) which would not exceed whichever is the lower of
- (a) up to 80% of local Open Market Rents and using the Royal Institution of Chartered Surveyors approved valuation methods and
- (b) the Local Housing Allowance rates, unless otherwise agreed in writing with the Council Provided That the rents may be increased annually during the tenancy in accordance with arrangements made for such rent increases established by the Homes and Communities Agency
- 1.10.** “Affordable Rented Units” means Dwellings that are to be rented by the Affordable Housing Provider at an Affordable Rent to Eligible Persons and “Affordable Rented Unit” is to be construed accordingly
- 1.11.** “Application” means the application for outline planning permission submitted to the Council for the Development and allocated reference number 15/01149/OUT
- 1.12.** “Approved Purchaser(s)” means a person or persons in need of an Intermediate Housing Unit and who are registered with the Help to Buy Agent (or as otherwise approved in writing by the

Council) and who have a Local Connection

- 1.13.** “ARM” means approval of reserved matters for the Development (or part of it) pursuant to the Planning Permission
- 1.14.** “CIL Regulations” means the Community Infrastructure Levy Regulations 2010 (as amended)
- 1.15.** “Clustering Requirements” means unless otherwise agreed in writing with the Council that the General Affordable Housing Units must not be located in groups of:
- i) more than 16 General Affordable Housing Units where they comprise a mix of houses and flats; and
  - ii) more than 12 General Affordable Housing Units where they comprise houses only
- 1.16.** “Commencement of Development” means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance (including vegetation), demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, construction of temporary

accesses or temporary works, erection of hoardings and fencing and other site security measures including the provision of site compounds, and “Commence Development” shall be construed accordingly

- 1.17.** “Community Infrastructure Levy” means the community infrastructure levy pursuant to the CIL Regulations (or similar tax, levy, tariff or charge relating to the grant of planning permission)
- 1.18.** “Deed of Covenant (General Affordable Housing)” means a deed of covenant substantially in the form of the draft deed of covenant as contained within the Third Schedule
- 1.19.** “Development” means the development of the Site as set out in the Application
- 1.20.** “Discounted Homes for Sale” means an Intermediate Affordable Housing Unit made available for sale to an Approved Purchaser at a discount of at least 20% of its Open Market Value
- 1.21.** “Dwelling” means a dwelling to be constructed pursuant to the Planning Permission and “Dwellings” is to be construed accordingly
- 1.22.** “Eligible Person(s)” means a person or persons who:
- either
- (i) are in need of an Affordable Rented Unit and are registered on the Homeseeker Plus Scheme and meet the criteria set out within the allocations policy of the Homeseeker Plus Policy; and have a Local Connection; or

- (ii) are approved in writing by the Council as someone otherwise in need of Affordable Housing

**1.23.** “Expert” means the independent expert appointed for the purposes of clause 18

**1.24.** “Fully Serviced” means that the Affordable Housing Units shall be provided with full service provision as are the Open Market Units which shall include as appropriate vehicular access and parking foul and surface water drainage mains water electricity and telecommunications access to allow the Occupation of the Affordable Housing Units which shall be connected to the appropriate services constructed for the remainder of the Development

**1.25.** “General Affordable Housing Land” means each area or areas of land upon which the General Affordable Housing Units shall be constructed which shall be Fully Serviced sites in accordance with all necessary consents and permissions together with associated land for parking and landscaping in accordance with this Deed

**1.26.** “General Affordable Housing Units” means those General Housing Units provided/to be provided as Affordable Housing comprising Affordable Rented Units and Intermediate Housing Units and “General Affordable Housing Unit” is to be construed accordingly

**1.27.** “General Housing Unit” means any Dwelling and “General Housing Units” shall be construed accordingly

- 1.28.** “Homeseeker Plus Policy” means the document so called and prepared and published and amended from time to time jointly by the local housing authorities in Gloucestershire and West Oxfordshire available at [www.homeseekerplus.co.uk](http://www.homeseekerplus.co.uk) which governs the housing allocation procedure
- 1.29.** “Homeseeker Plus Scheme” means a letting scheme set out in the Homeseeker Plus Policy where applicants are invited to express interest in an available home in accordance with the procedure detailed in ~~the~~ Homeseeker Plus Policy
- 1.30.** “Help to Buy Agent” means the Government appointed Help to Buy Agent from time to time or any person or body exercising the functions that are now the duty of the Help to Buy Agent that holds the register of applicants for the occupation of Intermediate Housing Units
- 1.31.** “Homes and Communities Agency” means the Homes and Communities Agency of 110 Buckingham Palace Road London SW1W 9SA or such successor body for the time being having or being entitled to exercise the power to regulate registered providers now conferred on such organisation under the Housing and Regeneration Act 2008 or any legislation amending or replacing the same and the national government agency for the administration of affordable housing subsidy and that funds new Affordable Housing and means any successor agency/organisation taking over such functions
- 1.32.** “Index” means the All In Tender Price Index published by the

Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

- 1.33.** "Interest" means interest at 3 per cent above the base lending rate of the Barclays Bank Plc from time to time
- 1.34.** "Intermediate Housing Units" means Affordable Housing Units for sale and rent provided at a cost above social rent, but below market levels including shared equity (shared ownership and equity loans), other Discounted Homes for Sale and those which meet the definition of Affordable Housing, (but not including Affordable Rented Units) and sold or let to Approved Purchasers, and "Intermediate Housing Unit" is to be construed accordingly
- 1.35.** "Lender" means any mortgagee or chargee of an Affordable Housing Provider or any administrator fixed charge receiver including any receiver appointed under the Law of Property Act 1925 administrative receiver or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security
- 1.36.** "Local Connection" means a local connection (as defined in section 199 of the Housing Act 1996 and in accordance with any timescales contained in the Homelessness Code of Guidance for Local Authorities or any replacement therefor), in the following order of priority and with a local connection to:
- i) the administrative area of the Council, or if agreed with the Council in writing, the

administrative areas of the Council,  
Cheltenham Borough Council and/or  
Gloucester City Council

ii) the Gloucestershire administrative area

But, if no persons qualify pursuant to i) or ii) above, the occupation must be to a person or persons ordinarily resident in the United Kingdom and is approved in writing by the Council in 5 Working Days from receipt of their application on to Homeseeker Plus Scheme or with the Help to Buy Agent as being in need of Affordable Housing and as such consent shall not be unreasonably withheld or delayed

- 1.37.** “Local Housing Allowance” means the rent rate set annually by the Valuation Office (or any successor body thereof) for the area within which the Affordable Housing Units are located and which is used to calculate the maximum housing benefit entitlement for each tenant thereof
- 1.38.** “Offer Period” means a period of 90 Working Days from the date of receipt of the offer (or such longer period as otherwise agreed in writing with the Council)
- 1.39.** “Occupation” and “Occupied” means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupied” and “Occupier(s)” shall be construed

accordingly

- 1.40.** “Open Market Rent” means the rent charged for comparable properties rented on the open market (inclusive of service charges where applicable) within the same local area or such rent assessed as being the open market rent using the Royal Institute of Chartered Surveyors approved valuation methods and “Open Market Rents” shall be construed accordingly
- 1.41.** “Open Market Units” means the Dwellings forming part of the Development on the Site that are not Affordable Housing Units and “Open Market Unit” is to be construed accordingly
- 1.42.** “the Owners” means, together, the First Owner and the Second Owner
- 1.43.** “Phase” means such part of the Development as is comprised in a ARM
- 1.44.** “Plan” means the plan attached to this Agreement and marked ‘the Plan’
- 1.45.** “Planning Permission” means the planning permission (if any) granted by the Council or the Secretary of State or Secretary of State's inspector in respect of the Application and includes the approved plans thereto and any duly authorised non-material amendments thereto
- 1.46.** “Preferred Provider” means an Affordable Housing Provider as appears on a list (if any) prepared and published from time to time by the Council or the Council jointly with Cheltenham Borough Council and/or Gloucester City Council as a



preferred provider of Affordable Housing on the Site

- 1.47.** “Service Charge” means a charge made to the Occupiers of individual Dwellings or in the case of the Affordable Housing Land a charge made to the Affordable Housing Provider to cover the cost of the yearly maintenance and management of common parts of the Development but for the avoidance of doubt shall not include any charge made in respect of the provision of health care services and utilities supplied to or used by Occupiers of an individual Dwelling
- 1.48.** “Sales Plan Shared Ownership” means for the Shared Ownership Units a plan produced by the Affordable Housing Provider and agreed in writing by the Council setting out the expected marketing price of each Shared Ownership Unit and the proposed method of marketing the Shared Ownership Units to Approved Purchasers
- 1.49.** “Sales Plan Discounted Homes” means for the Discounted Homes for Sale and other Intermediate Housing Units excluding Shared Ownership Units a plan produced and agreed in writing by the Council and the Owner/Affordable Housing Provider setting out the expected marketing price of each aforementioned Intermediate Housing Unit and the method of marketing the same to Approved Purchasers
- 1.50.** “Shared Ownership Unit” means an Intermediate Housing Unit provided under the terms of a lease by which the lessee of the Intermediate Housing Unit (being also the Occupier of such

Intermediate Housing Unit then or on completion) obtains a share of the equity in an Intermediate Housing Unit ranging between 25% and 75% from an Affordable Housing Provider who retains any remainder and in respect of which rent is payable on the remaining equity and which allows the lessee to purchase all of the remaining equity and “Shared Ownership” shall be construed accordingly.

**1.51.** “Site” means the land against which this Deed may be enforced as shown edged red on the Plan for identification purposes only and as more particularly described in the First Schedule

**1.52.** “Working Day(s)” means any day except Saturday and Sunday or a bank holiday or any days which in England and Wales are public holidays

## **2. CONSTRUCTION OF THIS DEED**

**2.1** Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement

**2.2** Words importing the singular meaning where the context so admits include the plural meaning and vice versa

**2.3** 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

**2.4** Wherever 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

**2.5** 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

**2.6** References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions

**2.7** “including” means including without limitation.

**2.8** References to “the Site” include each and every part thereof

**2.9** The clause headings herein do not form part of this Agreement and shall have no effect upon the meaning or construction of the provisions of this Agreement

**2.10** Except where expressly stated to the contrary, where agreement, approval, consent or expression of satisfaction is required from the Council under the terms of this Agreement such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed

**2.11** Any covenant by the Owners not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing

### **3. LEGAL BASIS**

**3.1** This Agreement is entered into as a Deed pursuant to section 106 of the Act. To the extent that the obligations fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council

**3.2** To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into

pursuant to powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers

- 3.3** The covenants, restrictions and requirements imposed upon the Owners under this Agreement create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority

**4. CONDITIONALITY**

This Agreement shall be (save for Clauses 6.1, 6.2, 6.3, 6.5 6.6, 12 and 13 which shall be of immediate effect) conditional on and shall only take effect on the grant of the Planning Permission and Commencement of Development

**5. THE OWNERS' COVENANTS**

To the extent that it affects their respective interest in the Site, the Owners covenant with the Council as set out in the Second Schedule

**6. MISCELLANEOUS**

- 6.1** The Owners shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement

- 6.2** No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

- 6.3** The Owners hereby consent to the registration of the Agreement as a local land charge and as a notice on the Title Numbers referred to at recital 3

- 6.4** Any notices required to be given under this Agreement shall be in writing and shall be delivered personally or sent by pre-paid recorded delivery post to the principal address or registered office (as appropriate) of the relevant party and shall be deemed to have been served as follows:

6.4.1 If personally delivered, at the time of delivery; and

6.4.2 If sent by recorded delivery post, 48 hours after the envelope was delivered into the custody of the postal authority within the United Kingdom

- 6.5** Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 6.6** This Agreement shall cease to have effect if it (insofar only as it has not already been complied with) shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development or development of the Site is undertaken pursuant to another planning permission (other than the Planning Permission) granted after the date of this Agreement in so far as it has not already been complied with or should have been complied with
- 6.7** Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or any other one relating to the Development) granted (whether or not on appeal) after the date of this Agreement
- 6.8** Nothing in this Agreement shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act in the exercise of its functions as either a local planning authority, local housing authority, local waste collection authority or other authority.
- 6.9** Following the date of this Agreement the Owners shall not create or grant any rights, easements or privileges over any land which may become subject to an Offer to Transfer, and which would be incompatible with its intended use once transferred, unless the Council's (or the intended transferee's) prior written consent is obtained

**7. WAIVER**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of

this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

**8. CHANGE IN OWNERSHIP**

The Owners will each give to the Council immediate written notice of any change in ownership of any of their respective interests in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan Provided That this obligation shall not apply to any transfers of individual Dwellings nor any transfer to a statutory undertaker or service or utility company

**9. INDEXATION**

Any Contribution referred to in this Agreement shall be increased or decreased by an amount equivalent to the increase or decrease in the Index from the date hereof until the date on which such sum is payable

**10. INTEREST**

If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment

**11. VAT**

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

**12. JURISDICTION**

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

**13. DELIVERY**

The provisions of this Agreement (save this clause) shall be of no effect until it

has been dated

**14. EXCLUSIONS/LIABILITY FOR BREACH OF COVENANTS**

14.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site or that part of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT the reservation of any rights of access and/or to lay or maintain equipment shall not constitute an interest in the Site for the purpose of this Clause 14.1

14.2 This Agreement shall not be enforceable against:

14.2.1 any residential owner-occupiers or tenants of the Open Market Units nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing (save for those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged) ;

14.2.2 save for the obligations in the Second Schedule and those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged, any residential owner-occupiers or tenants of the Affordable Housing Units nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing

14.2.3 any statutory undertaker or service company who acquires an interest in the Site for the purposes of its undertaking; or

14.2.4 save for the obligations in the Second Schedule and those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged, any Affordable Housing Provider so far as they are only an owner of any of the

Affordable Housing Units and/or the Affordable Housing Land and not an owner of any other part of the Site nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing

**15. WARRANTY**

The Owners hereby warrant to the Council that as at the date hereof they have not leased mortgaged charged or otherwise created any interest in their respective interests in the Site other than those already identified in the recitals of this Agreement.

**16. DISPUTE RESOLUTION**

16.1 In the event of any dispute or difference relating to any matter contained in this Agreement any party to the dispute (including successors in title to the parties to this Agreement) may, by serving notice of the same on the other party or parties, require it to be referred for determination by an Expert (who will act as an expert not an arbitrator) appointed under clause 16.2 below, acting in accordance with clauses 16.3 to 16.9

16.2 If the parties do not make the appointment of the Expert by agreement within 14 days of service requiring reference of the dispute, the Expert shall be nominated upon the application of either party by the President (or other officer to whom the making of such appointment is for the time being delegated) of the Law Society and the Expert shall be an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than 10 years

16.3 Unless the Expert shall direct to the contrary, not more than 28 days after his appointment the parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon

16.4 The Expert shall be at liberty to visit the Site relevant to the dispute unaccompanied and to call for such written evidence from the parties as he



may require

- 16.5 The Expert shall not, unless he directs to the contrary, hear oral representations from any party to the dispute
- 16.6 The Expert shall fully consider all submissions and evidence when making his decision
- 16.7 The Expert shall give his decision in writing and shall give reasons
- 16.8 The Expert shall use reasonable endeavours to give his decision and the reason for it as speedily as possible and in any event within 42 days of his appointment.
- 16.9 The Expert's decision (save in the case of manifest or legal error) including his decision as to costs shall be final and binding. The Expert's fees shall be payable by the parties in such proportions as he shall determine and in default of such determination equally between them.

**17. SECTION 73 VARIATION**

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the Act in respect of the conditions relating to the Planning Permission, save and in so far as the Agreement has been amended by way of a deed of variation prior to the grant of such planning permission, references in this Agreement to the Application shall (save for the purposes of the definition of Planning Permission in relation to clauses 4.1, 6.6 and 6.7) be deemed to include any such subsequent planning applications as aforesaid and this Agreement shall henceforth take effect and be read and construed accordingly.

**18. COMMUNITY INFRASTRUCTURE LEVY REGULATIONS**

- 18.1 Subject always to clause 6.5 above, in the event that the Secretary of State expressly states in his decision letter that any individual planning obligations (or relevant part of a planning obligation) within this Agreement is irrelevant or is

not required in order to grant the Planning Permission or is not compliant with either regulation 122 or regulation 123 of the CIL Regulations and accordingly states that he attaches no weight to that obligation (or part of the obligation as appropriate) then that planning obligation or those planning obligations (or relevant part of those planning obligations as appropriate) will cease to have effect from the date of the decision letter and will not be enforceable against the Owners by the Council unless the decision or such part of the decision (as applicable) has been overturned subsequent to a legal challenge to the decision (whether a challenge by the Council or otherwise)

18.2 If after the date of this Agreement the Community Infrastructure Levy applies to the Development and the terms of the law as enacted means that the Community Infrastructure Levy applies so that additional financial payments are required to be paid in respect of the Development, then the Council and the Owners agree that they will each use reasonable endeavours to agree variations to this Agreement so that the Owners would not (in both paying the Community Infrastructure Levy and complying with the planning obligations in this Agreement) pay twice in respect of a matter that has been or is to be funded pursuant to this Agreement

**19. THE COUNCIL'S COVENANTS**

The Council covenants with the Owners as set out in the Third Schedule

**20. EVIDENCE OF COMPLIANCE**

In addition and without prejudice to the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation to the Site or otherwise the Owners shall if and when required by the Council from time to time provide the Council (without charge and within ten Working Days) with such information including any copies of any documents as the Council may reasonably request for the purpose of ascertaining whether there has been

compliance with or any breach of the requirements of this Agreement and the Schedules hereto

**21. COUNTERPARTS**

This Agreement may be entered into in the form of two or more counterparts each executed by one or more of the Parties but taken together shall constitute one instrument

**IN WITNESS** whereof the parties hereto have executed and delivered this Deed on the day and year first before written

## FIRST SCHEDULE

### Details of the Owners' Title and Description of the Site

TITLE NUMBER	TYPE OF INTEREST	REGISTERED PROPRIETOR	IDENTIFYING AREA
GR298992	Freehold	the First Owner	the land shown edged blue on the plan annexed hereto and marked 'Land Ownership Plan'
GR367399	Freehold	the Second Owner	the land shown edged green on the plan annexed hereto and marked 'Land Ownership Plan'

## SECOND SCHEDULE

### The Owners' Covenants with the Council

#### AFFORDABLE HOUSING OBLIGATIONS

1. Prior to Commencement of Development and not less than 15 Working Days prior to submitting the first application for a ARM to submit to the Council for approval the proposed Affordable Housing Scheme (Whole Site)
2. In respect of each Phase to submit a draft Affordable Housing Scheme (Phase) for that Phase to the Council for approval in writing not less than 15 Working Days prior to submitting the application for an ARM for such Phase and in any event prior to the Commencement of Development of the Phase
3. That the Affordable Housing Scheme (Whole Site) may be amended at any time by agreement with the Council
4. That thirty-five per cent (35%) of the Dwellings to be constructed as part of the Development shall be as Affordable Housing Units
5. That the Affordable Housing Units on any Phase shall not be Occupied until they are transferred to an Affordable Housing Provider in accordance with paragraph 11 below
6. That at least sixty per cent (60%) of the General Affordable Housing Units shall be provided as Affordable Rented Units and that the remaining General Affordable Housing Units shall be provided as Intermediate Housing Units, unless otherwise agreed in writing with the Council and that the mix of the General Affordable Housing Units to be provided on the Site shall (subject to any amendments agreed with the Council) be as identified in the table below, and for the avoidance of doubt unless otherwise agreed, not less than 7.5% of the total affordable 1 bed properties shall comprise either bungalows or ground floor apartments and not less than 15% of the total affordable 2 bed

flat/bungalows shall comprise either bungalows or ground floor apartments: -

Type	Affordable Units (%)	Minimum Floor Area (SQ GIA)
1 bed flat/bungalow	40	45
2 bed flat/bungalow	10	62
2 bed house	15	70
3 bed house	25	82
4 bed house	10	96

7. To ensure integration of the General Affordable Housing Units with the Open Market Units to the extent that the General Affordable Housing Units shall be generally indistinguishable in appearance from the Open Market Units and shall be provided in accordance with the Clustering Requirements
8. That five per cent (5%) of the Affordable Housing Units shall be constructed to the Accessible and Adaptable Homes Standard with the remaining Affordable Rented Units being constructed to the mandatory building regulations standards as at the time of registration
9. Prior to the Commencement of Development of any Phase the Owners shall market the Affordable Housing Units within that Phase to Affordable Housing Providers and such marketing shall include marketing the Affordable Housing Units within the Phase to the Preferred Providers (unless otherwise agreed in writing with the Council).

- 10.** Unless otherwise agreed, not to cause or permit the Occupation of more than 50% of the Open Market Units on any Phase until 50% of the Affordable Housing Units on that Phase have been completed and made available for Occupation and transferred in accordance with paragraph 13 below nor unless otherwise agreed with the Council to allow more than 75% of the Affordable Housing Units on any Phase to be occupied unless 50% of the Market Housing shall have been completed and ready for Occupation and not to cause or permit the Occupation of more than 90% of the Open Market Units on any Phase until all of the Affordable Housing Units on that Phase have been completed and made available for Occupation and transferred on the terms set out in paragraph 11 below
- 11.** Excluding Affordable Housing Units made available as Discounted Homes for Sale which the Owners will sell directly to an Approved Purchaser the Owner shall sell and transfer the Affordable Housing Units to the Affordable Housing Provider on the following terms and conditions:
- 11.1**
- i. at a cost that will ensure that the Affordable Rented Units will be let at Affordable Rents and that the Intermediate Housing Units will be let or sold as Affordable Housing
  - ii. a good and marketable freehold title to the General Affordable Housing Land has been deduced and the General Affordable Housing Land will be transferred with full title guarantee (save that the transferor shall not be liable under the covenants implied by section 2 and 3 of the Law of Property (Miscellaneous Provisions) Act 1994 by reason of the General Affordable Housing Land being transferred subject to disclosed subjections and all matters imposed and rights conferred by or under any

statute and for the purposes of such Act all matters then recorded in registers open to public inspection shall be considered within the actual knowledge of the transferee) or in any case where the transferor only holds the legal interest to be transferred as a trustee or trustees, with limited title guarantee and with vacant possession free of any registered charges (save for this Agreement)

- iii. on the Standard Conditions of Sale (current at time of transfer) which shall apply insofar as the same are not inconsistent with the expressed terms in this Agreement; and
- iv. on the terms as set out in the Deed of Covenant (General Affordable Housing) (as applicable)

**11.2** Provision has been made for a vehicular access foul and surface water sewers and water electricity and telecommunications services and all other services necessary for the occupation of each Affordable Housing Unit linking in each case to estate roads sewers and services systems to be constructed and laid as part of the remainder of the Site and connected ultimately to highways and sewers maintainable at public expense (where required) and the transfer shall include all necessary easements to be in place to use and maintain the same

- 12.** Other than in respect of any Intermediate Affordable Housing delivered as Discounted Homes for Sale, not to permit the letting and management of the Affordable Housing Units otherwise than by an Affordable Housing Provider
- 13.** Not to permit the letting and Occupation of any Affordable Housing Unit otherwise than in accordance with paragraph 15 below and:



- 13.1** in respect of the Intermediate Housing Units, other than by Approved Purchasers
  - 13.2** in respect of the Affordable Rented Units, other than to an Eligible Person
- 14.** Not to permit the letting of each of the Affordable Rented Units to an Eligible Person unless:
  - 14.1** On the first letting of each of the Affordable Rented Units the Council shall at all times be entitled to nominate the Eligible Person for 100% of the Affordable Rented Units; and
  - 14.2** On subsequent re-lettings of the Affordable Rented Units the Council shall at all times be entitled to nominate the Eligible Person for 75% of the Affordable Rented Units subsequently rented, unless otherwise agreed in writing between the Council and the Affordable Housing Provider, with the remainder lettings made by the Affordable Housing Provider in accordance with the requirements of this Agreement
- 15.** Not to permit the Affordable Housing Units to be used for any other purpose than as Affordable Housing in accordance with this Agreement
- 16.** That if at any time prior to the entering into contract with the Affordable Housing Provider the originally agreed Affordable Housing Provider shall no longer wish to be or is not capable for any reason of so being the Affordable Housing Provider for those Affordable Housing Units the Owners shall (immediately they are so aware) arrange for an alternative Affordable Housing Provider to be appointed in their place and as so soon as is reasonably practical arrange for them to take a novation of any (or enter into new contracts if applicable) development agreement or Deed of Covenant (General Affordable Housing) and all other relevant rights and duties of the

original Affordable Housing Provider

17. Unless otherwise agreed in writing with the Council, no Service Charge will apply to the Affordable Rented Units unless all elements of the Service Charge are eligible for Local Housing Allowance or equivalent
18. Not to permit the Occupation and management of the Affordable Housing Units otherwise than through an Affordable Housing Provider and not until the Affordable Housing Provider has entered into the Deed of Covenant (General Affordable Housing) (unless otherwise agreed in writing with the Council)
19. The covenants contained in this Agreement shall not be binding on a Lender of the whole or any part of the Affordable Housing Land (“the Mortgage Land”) or a bona fide purchaser for value thereof from such a Lender (except in the case of a purchaser which is an Affordable Housing Provider) or the successors in title of such purchaser PROVIDED that the following procedure is observed:-
  - 19.1 The Lender shall give notice in writing (“the Lender’s Notice”) to the Council and the Preferred Provider(s) of its intention of exercising any power of sale or leasing and shall offer the Mortgage Land to Affordable Housing Providers at a consideration representing in the Lender’s opinion the open-market value thereof at the date of the notice subject to any leases or tenancies subsisting and shall use reasonable endeavours over a period of one month from the date of such notification to dispose of the Mortgage Land to an Affordable Housing Provider (including the Preferred Provider(s))
  - 19.2 If the Lender after making every reasonable effort to the reasonable satisfaction of the Council:
    - 19.2.1 over the period of one month to dispose of the Mortgage

Land to an Affordable Housing Provider (whether a Preferred Provider or otherwise) as outlined in 19.1 fails to find an Affordable Housing Provider that is willing to proceed with the purchase the Lender may sell the Mortgage Land upon the open market free of any restrictions; or

19.2.2 after finding an Affordable Housing Provider that has indicated that it is willing to proceed with the purchase the Affordable Housing Provider has failed (despite the Affordable Housing Provider and the Lender acting reasonably) to complete the transfer of the Mortgage Land within (3) three months of the Lender's Notice the Lender may sell the Mortgage Land upon the open market free of any restrictions

PROVIDED THAT at all times the rights and obligations in this Schedule shall not require the Lender (or any successors in title thereto) to act contrary to their duties under the charge or mortgage and the Council must give full consideration to protecting the interest of the Lender or any receiver appointed thereby (or any successors in title thereto) in respect of monies outstanding under the charge or mortgage

- 20.** The covenants in this Schedule shall not be binding on:
- 20.1 any person exercising a statutory right or any equivalent voluntary right introduced by the relevant Affordable Housing Provider, through a scheme under Part 4 of the Housing and Planning Act 2016 to acquire any of the Affordable Housing Units;
  - 20.2 any person or occupier who staircases out to 100% ownership of any Intermediate Housing Unit;
  - 20.3 any person exercising a statutory right to buy introduced in favour of

the occupiers of the Affordable Housing Units or similar statutory right introduced in favour of occupiers of the Affordable Housing Units;

and

20.4 any successor in title to the persons in 20.1 to 20.3

21 Prior to the commencement of any advertising of any of the Discounted Homes for Sale within a Phase the Owners or the Affordable Housing Provider(s) of that Phase shall agree with the Council a Sales Plan Discounted Homes

22 Prior to the commencement of advertising of any of the Shared Ownership Units within a Phase the Owners or the Affordable Housing Provider(s) of that Phase shall agree with the Council a Sales Plan Shared Ownership

**THIRD SCHEDULE**

**Deed of Covenant (General Affordable Housing)**

*THIS DEED OF COVENANT IS MADE THE DAY OF 20[ ]*

*BETWEEN*

- (1) **THE COUNCIL FOR THE BOROUGH OF TEWKESBURY of Council Offices  
Gloucester Road Tewkesbury GL20 5TT ('the Council')**
- (2) ..... **[AFFORDABLE HOUSING PROVIDER]**  
**whose registered office is at ..... ("the Landlord")**

**RECITALS**

This Deed is entered into by the Landlord in order to comply with paragraphs 13.1 and 20 of the Second Schedule of the Deed dated [*reference to 106 Agreement*]

**THIS DEED WITNESSES** as follows:-

**1. Definitions**

In this Deed:

“the S106 Agreement” an Agreement made under s106 of the Town and Country Planning Act 1990 and made between the Council (1) and Robert Hitchens Limited (2) and Boddington Estates Limited (3)

"the Affordable Housing Land"	means the area or areas of land in the Section marked on the Plan a copy of which is annexed to the Deed upon which Affordable Housing Units shall be constructed which shall be Fully Serviced sites in accordance with all necessary consents and permissions
"Affordable Housing Provider"	as defined in the S106 Agreement
"the Affordable Housing Units"	as defined in the S106 Agreement
"Affordable Rented Units"	as defined in the S106 Agreement
"Approved Purchasers"	as defined in the S106 Agreement
"the Developer"	means [ ] or their successors in title
"the Dwellings"	means the units of affordable housing to be built on the Affordable Housing Land
"Eligible Persons"	as defined in the S106 Agreement
"Exempt Disposal"	means a disposal by way of mortgage or charge or a sale by a mortgagee or chargee in possession of any Affordable Housing Unit(s) or any receiver appointed by any such mortgagee or chargee and any successors in title thereof of the Affordable Housing Units and purchasers of Intermediate Housing Units or persons exercising the right to buy or right to acquire of any Rented Units.
"Final Staircasing"	means the final disposal by the Landlord to the lessee of an Intermediate Housing Unit

“Fully Serviced”	of 100% of the equitable estate in that unit as defined in the S106 Agreement
“Homeseeker Plus Policy”	as defined in the S106 Agreement
“Homeseeker Plus Scheme”	as defined in the S106 Agreement
“Homes and Communities Agency”	as defined in the S106 Agreement
“Homes and Communities Agency Model Lease”	means a model lease for an Affordable Housing Provider issuing a Shared Ownership Lease in respect of homes funded by the Homes and Communities Agency
“Intermediate Housing Unit”	as defined in the S106 Agreement
“Lettings Plan”	means a local lettings plan in accordance with Homeseeker Plus Policy in respect of the Affordable Rented Units which identifies how the lettings will seek to incorporate the following objectives: <ul style="list-style-type: none"> <li>• a balanced mix of applicants drawn from all ages and economic status including working and transfer applicants</li> <li>• encourage a diverse range of customers economically</li> <li>• provide opportunities for applicants in waiting lists bands silver and bronze who would not normally have the chance of a new home</li> </ul>
“Local Connection”	as defined in the S106 Agreement
“Local Housing Allowance”	as defined in the S106 Agreement

“Open Market Rent”	as defined in the S106 Agreement
“Sales Plan Discounted Homes”	as defined in the S106 Agreement
“Sales Plan Shared Ownership”	as defined in the S106 Agreement
“Service Charge”	as defined in the S106 Agreement

1. The Council is a Local Housing Authority under the Housing Act 1985
2. In consideration of the Developer transferring the Affordable Housing Land to the Landlord the Landlord **COVENANTS** with the Council in the following terms:
  - 2.1. That it will not knowingly permit the disposal of any Dwelling to be otherwise than strictly in accordance with the terms of this Deed
  - 2.2. Subject to the other terms of this Deed that the Dwellings shall at all times be let and managed or sold by the Landlord for the purposes set out in this Deed by and in accordance with the objects of the Landlord and as regards the Affordable Rented Units the Homeseeker Plus Scheme or such published housing waiting list and allocation system as may be adopted by the Council and agreed with the Landlord from time to time or otherwise agreed between the Council and the Landlord
  - 2.3. That the Landlord shall let not less than 60% of the Affordable Housing Units as Affordable Rented Units and up to 60% of the Affordable Housing Units as Intermediate Housing Units in accordance with the Second Schedule of the S106 Agreement
  - 2.4. That the Council (as a Local Housing Authority) shall at all times be entitled to nominate Eligible Persons for 100% of the Affordable Rented Units on first letting and then nominate an Eligible Person or Persons for 75% of the Affordable Rented Units on subsequent lettings, unless otherwise agreed with the Council, with the remainder lettings made by the Landlord in accordance with the requirements of this Deed the S106 Agreement
  - 2.5. That the Landlord request from the Council nominations of persons eligible for



accommodation in accordance with Clauses 2.6 below

- 2.6** Subject to Clause 2.5 above the Landlord shall ensure that the Affordable Rented Units shall be allocated (unless the Council directs otherwise) to Eligible Persons with priority allocation being given to those persons and families with a Local Connection
- 2.7** Subject to Clause 2.6 above that the Landlord shall allocate, sale or let any Intermediate Housing Units to Approved Purchasers with a Local Connection
- 2.8** Not to dispose of the Landlord's interest in the Affordable Housing Land or any part thereof (other than by an Exempt Disposal) without the written consent of the Council (such consent not to be unreasonably withheld or delayed in the case of a disposal to another Affordable Housing Provider) and the Landlord shall forthwith apply to Land Registry for the following restriction to be imposed in the Proprietorship Register of the Landlord's title:

*“No disposition of the registered estate (other than a charge by the proprietor of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction) is to be registered without a written consent signed on behalf of the Council or a certificate by a conveyancer that the disposition is an “Exempt Disposal” as defined in a deed of covenant dated [ ] made between the Council for the Borough of Tewkesbury (1) and [ ](2)”*

- 2.9** Prior to disposal of the Affordable Housing Land or any part thereof (other than an Exempt Disposal) to procure that the purchaser/lessee thereof enters into a direct covenant with the Council to observe and perform the covenants set out in this Deed (including the covenant contained in this Clause 2.9)

3. In consideration of the Landlord entering into this Deed the Council acknowledges that the Landlord has satisfied the obligations set out in the Second Schedule at paragraphs 11.1 and 18 of the S106 Agreement and covenants with the Landlord (which expression shall include its successors in title) in the following terms:
  - 3.1 Upon notification of the Landlord of Final Staircasing to provide the requisite Land Registry form so as to enable the removal from the Title Register of the restriction pursuant to the provisions of Clause 2.8
  - 3.2 Save for the consent required in Clause 2.8 wherever consent is required in this Deed such consent shall not be unreasonably withheld or delayed
4. For the avoidance of doubt in the event of conflict between the S106 Agreement and the terms of this Deed the provisions of the S106 shall prevail
5. If the Landlord at any time while having a legal interest in the Affordable Housing Units ceases to be approved or accredited by the Homes and Communities Agency or its equivalent successor body it shall give notice immediately in writing to the Council of the cessation of accreditation or approval

**IN WITNESS** of which this Deed has been executed and delivered on the above date

**EXECUTED AS A DEED** )  
**By affixing** )  
**THE COMMON SEAL OF THE COUNCIL** )  
**FOR THE BOROUGH OF TEWKESBURY** )  
 in the presence of:- )

**Borough Solicitor**

**EXECUTED AS A DEED** )  
**By affixing** )  
**THE COMMON SEAL OF** )  
**{.....} HOUSING** )  
**ASSOCIATION LIMITED** )  
in the presence of:- )

**Director**

**Secretary**

**EXECUTED** as a **DEED** by  
**ROBERT HITCHINS LIMITED**  
acting by two directors or  
one director and its secretary

**Director**

**Director/Secretary**

**EXECUTED** as a **DEED** by  
**BODDINGTON ESTATES LIMITED**  
acting by two directors or  
one director and its secretary

**Director**

**Director/Secretary**

**THE COMMON SEAL OF THE COUNCIL  
FOR THE BOROUGH OF TEWKESBURY**  
was hereto affixed in the presence of:

Authorised Signatory