

DATED 31st March 2023

WEALDEN DISTRICT COUNCIL (1)
-and-
HILLREED DEVELOPMENTS LIMITED (2)
-and-
BURWELL GRANGE LIMITED (3)

**PLANNING OBLIGATION BY
DEED OF AGREEMENT**
pursuant to Section 106 of
the Town and Country Planning Act 1990
as amended
relating to the development of
Land at Burfield Valley, Hailsham, East
Sussex
Planning Ref: WD/2018/0122/MAJ



Legal Services Manager
Wealden and Rother Shared Legal Service
Wealden District Council
Council Offices
Vicarage Lane, Hailsham
East Sussex
BN27 2AX

PLANNING OBLIGATION BY DEED OF AGREEMENT

THIS DEED of AGREEMENT is dated the 31st day of March 2023

BETWEEN:

- (1) **WEALDEN DISTRICT COUNCIL** of the Council Offices, Vicarage Lane, Hailsham East Sussex, BN27 2AX ("**the Council**"); and
- (2) **HILLREED DEVELOPMENTS LIMITED** (Company Registration Number 02951327) whose registered office is at Persimmon Homes Limited, Persimmon House, Fulford, York, YO19 4FE ("**the Owner**");
- (3) **BURWELL GRANGE LIMITED** (Company Registration Number 04196815) whose registered office is at 100 High Street, Whitstable, Kent, England, CT5 1AT ("**the Mortgagee**")

INTRODUCTION:

- (A) The Owner has the freehold interest in the Application Site which forms part of land registered at the Land Registry under Title Number ESX251982.
- (B) For the purposes of the 1990 Act the Council is the local planning authority for the area in which the Application Site is situated.
- (C) The Mortgagee holds a charge over the Application Site by a charge dated 1 June 2001 and referred to in Entry No. 6 of the Charges Register in Land Registry title number ESX251982.
- (D) Persimmon Homes (South East) Limited (Company Registration Number 02044246) whose registered office is at Persimmon House, Fulford, York, YO19 4FE is the sister company of the Owner and has made the Application to the Council.
- (E) The Owner, the Mortgagee and the Council have agreed to enter into this Deed to secure the planning obligations set out herein.
- (F) The Owner and the Mortgagee are agreeable as hereinafter provided for their interests in the Application Site to be bound by the provisions of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

- 1.1 For the purposes of this Deed the following expressions shall have the following meanings:

"1990 Act" means the Town & Country Planning Act 1990 (as amended).

"agreed" or **"approved"** means agreed or approved in writing and given for the purpose of this Deed.

"Application" means the application for planning permission for the Development bearing reference number WD/2018/0122/MAJ.

"Application Site" means the land against which this Deed may be enforced at Burfield Valley, Hailsham, East Sussex shown edged in red on the Site Plan.

"Casual and Informal Children's Playing Space Contribution" means the sum of FORTY THREE THOUSAND TWO HUNDRED AND SEVENTY FOUR POUNDS AND NINETY FIVE PENCE (£43,274.95) payable to the Council as a contribution towards casual and informal children's playing space in Hailsham or adjoining Parishes in lieu of on site provision subject to Indexation in line with clause 11 of this Deed.

"Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out save that a material operation shall not include operations in connection with any archaeological investigations site or soil investigations remedial action in respect of any contamination or the erection of hoardings and fences and **"Commence Development"** **"Commenced"** and **"Commence the Development"** shall be construed accordingly.

"Contributions" means the Casual and Informal Children's Playing Space Contribution, the Equipped Children's Playing Space Contribution and the Youth and Adult Playing Space Contribution.

“Development” means the development of the Application Site for the residential development comprising 35 apartments, communal amenity space, hard and soft landscaping, and on-site parking and turning pursuant to the Planning Permission and any development in respect of which details have been submitted to and approved by the Council pursuant to the Planning Permission.

“Due Date” means the date specified or the occurrence of an event triggering the making of a payment or the undertaking of an act or the cessation of an activity under the terms of this Deed.

“Dwelling” means any unit(s) of self contained residential accommodation within the meaning of Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 including any flat apartment or maisonette comprised in the Development.

“Equipped Children’s Playing Space Contribution” means the sum of FORTY ONE THOUSAND FIVE HUNDRED AND TWENTY SIX POUNDS AND FORTY SEVEN PENCE (£41,526.47) payable to the Council as a contribution towards equipped children’s playing space in Hailsham or adjoining Parishes in lieu of on site provision subject to Indexation in line with clause 11 of this Deed.

“Indexation” means that when a sum is payable under this Deed it is increased in accordance with the provisions of Clause 11 to reflect changing costs and “Index Linked” shall be construed accordingly.

“Inflation Index” means the “all items” index figure of the Retail Prices Index published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Retail Prices Index shall no longer be published or its name or methodology be materially altered.

“Payment Notice” means a notice in the form set out in Appendix 1.

“Planning Permission” means the planning permission(s) to be granted by the Council pursuant to the Application and to any application submitted in amendment to the Planning Permission and for the avoidance of doubt shall include any permission granted pursuant to an application to amend or vary the Planning Permission pursuant to Section 73 of the 1990 Act unless the Council decides that a new agreement under section 106 of the 1990 Act is required.

"Site Plan" means the plan with drawing number 672-PL-004 Rev A showing the Application Site edged red attached to this Deed at Appendix 2 and titled Location Plan.

"Youth and Adult Playing Space Contribution" means the sum of THIRTY THOUSAND ONE HUNDRED AND TWENTY POUNDS AND FIFTY THREE PENCE (£30,120.53) payable to the Council as a contribution towards youth and adult playing space in Hailsham or adjoining Parishes in lieu of on site provision subject to Indexation in line with clause 11 of this Deed.

1.2 CONSTRUCTION OF THIS DEED

- 1.2.1 Words importing the masculine include the feminine and vice versa.
- 1.2.2 Words importing the singular include the plural and vice versa.
- 1.2.3 Words importing persons include companies and corporations and vice versa.
- 1.2.4 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.
- 1.2.5 Any reference to a Clause, Paragraph, Schedule, Annex or Plan is to one in or attached to this Deed.
- 1.2.6 Any reference to a colour or letter is to be on the plans attached to this Deed.
- 1.2.7 Any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 1.2.8 References to any party to this Deed 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 statutory functions as local planning authority.
- 1.2.9 This Deed is a planning obligation for the purposes of Section 106 of the 1990 Act.

2 LEGAL BASIS

- 2.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling the Council to enter into this Deed and to the extent that this Deed includes planning obligations for the purposes of Section 106 of the 1990 Act then those obligations relate to the Application Site and are enforceable by the Council as the local planning authority for the area within which the Application Site is situated (subject to Clause 8).
- 2.2 The various covenants restrictions requirements stipulations and other obligations imposed on the Owner contained in this Deed are entered into under the provisions and powers referred to in Clause 2.1 and are planning obligations for the purposes of Section 106 of the 1990 Act whether expressed to be planning obligations or not

and are enforceable by the Council as local planning authority against the Owner and any person deriving title from the Owner and shall run with the Application Site and shall bind the Owner its successors in title and assigns (subject to Clause 8).

- 2.3 The obligations in this Deed comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 2.4 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
- 2.5 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

3 CONDITIONALITY

This Deed shall come into effect immediately upon completion of this Deed save for the provisions of Clauses 4 Owner's Covenants, 5 Council's Covenants and 11 Indexation which are conditional upon the grant of the Planning Permission.

4. THE OWNER'S COVENANTS

- 4.1 The Owner covenants with the Council to fully comply with and to perform the obligations contained herein and in Schedule 1 of this Deed in accordance with the requirements and timescales contained therein.
- 4.2 The Owner covenants with the Council that the Development and use of the Application Site shall be in strict accordance with this Deed.

5 THE COUNCIL'S COVENANTS

The Council covenants with the Owner to fully comply with and perform the obligations contained herein and in Schedule 2 of this Deed in accordance with the requirements contained therein.

6 MISCELLANEOUS

- 6.1 Prior to the date hereof the Owner shall pay to the Council the Council's proper and reasonable legal costs in connection with this Deed.
- 6.2 The Owner confirms and warrants to the Council that it has not leased mortgaged charged or otherwise created any interest in the Application Site other than the charge with the Mortgagee referred to in Recital (C) at the date of this Deed and that Recitals (A) and (C) of this Deed are correct and accurate in every respect.
- 6.3 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed is intended to confer any benefit upon or create rights in favour of any party other than the parties executing this Deed and their respective successors in title.
- 6.4 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 it is hereby AGREED AND DECLARED that the parties to this Deed (and their respective successors in title) may rescind or vary this Deed without the consent of any third party.
- 6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by a statutory procedure or expires prior to the Commencement of Development.
- 6.6 This Deed shall be registered as a local land charge by the Council.
- 6.7 The Owner hereby covenants with the Council for itself and its successors in title to the Application Site:
- (a) permission shall be granted to authorised officers of the Council upon reasonable notice and request and at reasonable times (except in an emergency) and subject to any instructions which any contractor may give to ensure safety for officers of the Council (or their nominated representatives) at their own or at the Council's risk to gain access to the Application Site in order to monitor compliance with this Deed; and
 - (b) where any steps required by this Deed to be taken are not taken, the Council may enter the Application Site and take the steps, and it will pay the Council's costs incurred in doing so.

- 6.8 All approvals certificates consents agreements satisfactions confirmations or calculations (or anything of a similar nature) that may be requested by the Owner and/or given by the Council or its officers in accordance with this Deed shall be in addition to any other approvals consents agreements or confirmations that may be required by the 1990 Act or by any other statute or regulations.
- 6.9 In the event that any part of this Deed may be subject to challenge review deletion or otherwise rendered invalid, illegal, unenforceable, null, void or voidable the balance of the said Deed shall remain in full force and effect.
- 6.10 Notices required to be given or served under this Deed shall be addressed to the parties at their addresses referred to in the introduction of this Deed.
- 6.11 Where payment of any sum payable as aforesaid is made after the Due Date interest shall be payable from the Due Date until the date of actual payment and shall be added to and form part of such sum at the rate of four per cent above the base rate for the time being of the Bank of England per annum.
- 6.12.1 Where this Deed imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Due Date if the notice of a Due Date is not given the Council shall be entitled in its absolute discretion to determine the Due Date and shall give notice to the Owner of its determination.
- 6.12.2 when making any and all payments due under this Deed to the Council, to attach a fully completed Payment Notice with each payment.
- 6.13 The Owner shall give to the Council seven (7) Working Days prior written notice of each and every Due Date including Commencement of Development.
- 6.14 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

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 Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from

enforcing any of the relevant covenants, terms or conditions or for acting upon any subsequent breach or default.

8. COVENANTS NOT BINDING

8.1. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Application Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.2. This Deed shall not be enforceable against or binding on:

- 8.2.1. any statutory undertaker who has an interest in the Application Site solely for the purposes of carrying out its statutory functions;
- 8.2.2. an individual owner, occupier or tenant or mortgagee (and their respective successors in title and assigns) of a Dwelling in their capacity as such.

9 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in freehold ownership of the whole or part of the Application Site occurring before all the obligations under this Deed have been discharged such notice shall 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 Application Site or unit of occupation purchased by reference to a plan save that this clause shall not apply to a transfer of an individual Dwelling to a private purchaser or to a statutory undertaker taking an interest in the Application Site for the purposes of carrying out its statutory functions.

10 DISPUTES

10.1 All differences and disputes which may arise between the parties hereto concerning this Deed may by agreement between the parties:

- (a) where the difference or dispute relates to the construction or interpretation of this Deed be referred to the determination (as an expert and not as an arbitrator) of an independent leading planning counsel agreed upon by the

parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute; or

- (b) where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise.

10.2 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them or it is considered by either party that the difference or dispute does not fall within Clauses 10.1(a) or 10.1(b), then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the South East of England or London to decide (as expert and not as arbitrator) unless the parties can agree on an appropriate expert (to act as expert and not as arbitrator).

10.3 Except as aforesaid any expert appointed pursuant to Clauses 10.1(a) or 10.1(b) or any other person shall:

- (a) on his appointment serve written notice thereof on the parties in dispute;
- (b) consider any written representations by or on behalf of those parties which are received by him within twenty working days of such service and immediately forward a copy of the written representation of one party to the other party;

- (c) allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty working days of receipt by the other party thereof;
- (d) have an unfettered discretion to determine the reference to him;
- (e) serve notice of his determination as soon as he has made it;
- (f) give full and clear reasons for his decision;
- (g) be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on him written notice in their opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert.

10.4 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

11 INDEXATION

The Contributions (or any part thereof) shall be Index Linked to the Inflation Index so that the sum actually payable shall be recalculated by the application of the following formula:

$$A = (B \times C) \div D$$

Where:

A is the recalculated sum actually payable on the date of payment of the said Contribution (or any part thereof)

B is the amount of the said Contribution specified in this Deed

C is the Inflation Index for the month preceding the relevant date of payment of the said Contribution (or part thereof)

D is the Inflation Index for the month preceding the date of this Deed

C divided by D is equal to or greater than 1

12 THE MORTGAGEE'S CONSENT

12.1 The Mortgagee hereby consents to the completion of this Deed and declares that from the date of this Deed their interest in the Application Site shall be bound by the terms of this Deed.

12.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Application Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

13 JURISDICTION

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

14 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

SCHEDULE 1

Playing Space Contributions

1. To pay the Casual and Informal Children's Playing Space Contribution, the Equipped Children's Playing Space Contribution and the Youth and Adult Playing Space Contribution to the Council prior to Commencement of the Development.
2. Not to Commence the Development until the Casual and Informal Children's Playing Space Contribution, the Equipped Children's Playing Space Contribution and the Youth and Adult Playing Space Contribution have been paid to the Council.

SCHEDULE 2

The Council's Obligations

The Council covenants with the Owner:

1. To use the Contributions towards casual and informal children's, equipped children's and youth and adult playing space in Hailsham or adjoining Parishes.
2. If any part of the sums comprising the Contributions paid to the Council have not been expended or committed to be spent by the Council within 10 years of the date of receipt by the Council, upon written request the Council shall repay any such unexpended or uncommitted sum to the party who made that payment

Appendix 1


Deed of Agreement Details	
Application Site address	
Application	
Date of original Deed of Agreement [under S106 of the Town and Country Planning Act 1990]	
Date of variation of original Deed of Agreement [where relevant]	
Parties to: 1. original Deed of Agreement 2. variation [where relevant]	

Payee Details	
Payee [name, address and reference]	
Payee's relationship to the Parties to the Deed of Agreement	

Appendix 2

Site Plan



A 01021		Ref No boundary updated		LN	JK
Rev.	Date	Amendment	By	Chk.	
Status		Planning			
 PERSIMMON Together we make a home					
Job	Proposed Apartment Block Reef Way Hallsham, BN27 1EW				
Title	Location Plan				
Drawn By	PVS	Date	January 2021		
Check	-	Scale	1:1250		
Auth.		@ A4			
Drawing No.					
672-PL-004 REV A					
672-CA-001 Site Plan.dwg					

EXECUTED as a DEED by affixing the
common seal of **WEALDEN DISTRICT
COUNCIL** in the presence of:



Authorised Signatory

SIGNED as a DEED by
HILLREED DEVELOPMENTS LIMITED,
acting by its attorneys [*M. L. CRICK*
C. B. LEWIS]
in the presence of a witness

Signature of attorney

Attorney

Full name (in block capitals) *MARTIN LLOYD CRICK*

Signature of witness

Witness

Full name (in block capitals) *RACHEL HEARNDEN*

Address *c/o 60 COLLEGE ROAD,
MAIDSTONE, KENT. ME156SJ.*

Signature of attorney

1ey

Full name (in block capitals).....CHRISTOPHER BRIAN LEWIS

Signature of witness

Witness

Full name (in block capitals).....RACHEL HEARNDEN

Address % 60 COLLEGE ROAD,
MAIDSTONE, KENT. ME15 6SJ.

SIGNED as a DEED by
BURWELL GRANGE LIMITED
acting by a director and its
secretary / two directors

Signature of director

Director

Full name (in block capitals) GRAEME WALL

Signature of director or secretary

Director / Secretary

Full name (in block capitals) CLAIRE WALL