

DATED 17 November 2024

BETWEEN:

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) BDW TRADING LIMITED
- (4) MICHAEL JAMES LANGMEAD

s106A Second Deed of Variation

relating to a Deed dated 28 July 2022 made pursuant to Section 106 of the Town and Country Planning Act 1990 and relating to Land west of Tye Lane, Walberton, West Sussex (planning application ref: WA/68/20/OUT)

Modification Application Ref: WA/61/24/DOV

THIS DEED is dated

17 December

2024

Parties

- (1) **ARUN DISTRICT COUNCIL** of Bognor Regis Town Hall, Clarence Road, Bognor Regis, West Sussex PO21 1LD (**"the Council"**)
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex PO19 1RQ (**"the County Council"**)
- (3) **BDW TRADING LIMITED** (Company Registration No. 03018173) whose registered office is at Barratt House, Cartright Way, Forest Business Park, Bardon Hill, Coalville LE67 1UF (**"the Owner"**).
- (4) **MICHAEL JAMES LANGMEAD** of Hooe Farmhouse, Tye Lane, Walberton, Arundel, West Sussex BN18 0LU in his personal capacity and in his capacity as executor for the estate of Julia Bridget Langmead as trustees for The Michael James Langmead Lifetime Discretionary Trust and the Julia Bridge Langmead Lifetime Discretionary Trust (**"Chargee"**)

BACKGROUND

- A. The Council is the local planning authority for the purposes of s106 of the 1990 Act for the area within which the land is situated.
- B. The County Council is the local highway authority for the area within which the Land is situated.
- C. The Council and County Council are the authorities by whom the planning obligations contained in this Deed are enforceable.
- D. The various parts of the registered titles which made up the Land at the time that the Original Undertaking was submitted have been transferred to the Owner by way of a registered transfer dated 2 June 2023 and given a new title number by the Land Registry. The Owner is now the freeholder owner of the whole of the Land registered at the Land Registry under title number WSX440840.
- E. The Chargee has an interest in the Land by way of a Registered Charge dated 2 June 2023.
- F. The Original Permission was granted at appeal on 22 July 2022.
- G. A Unilateral Undertaking dated 28 July 2022 (**"the Original Undertaking"**) pursuant to Section 106 of the Town and Country Planning Act 1990 was submitted to the Council and the County Council in relation to an application to develop the Land in accordance with the permission granted with reference WA/68/20/OUT (**"the Original Permission"**).
- H. The Original Undertaking was varied by way of a Deed of Variation dated 18 January 2024 (**"the First Deed of Variation"**) pursuant to Section 106A of the Town and Country Planning 1990 entered into between the Parties following an application pursuant to Section 73 of the 1990 Act with planning application reference W/6/23/PL (**"the S73 Application"**) which deed sought to incorporate the S73 Application into the definition of Application in the Original Undertaking, to vary the triggers for the provision of the public open space and play area land to a phased basis, to amend the location plan and to update the phasing plan associated with the Original Undertaking.
- I. A Non Material Amendment to the Original Permission was granted pursuant to section 96A of the Town and Country Planning Act 1990 by the Council on 8 May 2024 and

given reference WA/34/24/NMA ("the NMA") which provided for the relocation of the construction compound by way of an amendment to the wording of condition 5 to the Original Permission, as a result of which the triggers for the provision of the Affordable Housing on the Land was required.

- J. An application to vary the Original Undertaking in the manner set out herein regarding modifications to Schedule 1, Paragraph 4, Part B (Affordable Housing) and Schedule 1, Part C (First Homes Provisions) of the Original Undertaking was submitted by the Owner and validated by the Council on 11 July 2024 and given reference WA/61/24/DOV ("the Modification Application").
- K. Without prejudice to the terms of the other covenants contained in the Original Undertaking or the First Deed of Variation, as a result of the variations sought by the NMA and the Modification Application, the parties wish to further vary the Original Undertaking as set out in this Deed with effect from the date of this Deed ("the Second Variation Date")
- L. This Deed is made under section 106A of the 1990 Act and is supplemental to the Original Undertaking and the First Deed of Variation and is made with the intention that it binds all owners' interests in the Land and their successors in title.

AGREED TERMS

1. Interpretation and Effect

In this Deed, expressions defined in the Original Undertaking and used in this Deed have the meaning set out in the Original Undertaking (save as expressly varied by the provisions of this Deed). The rules of interpretation set out in the Original Undertaking apply to this Deed.

2. Statutory Provision

This Deed is made pursuant to the provisions of sections 106 and 106A of the 1990 Act.

3. Variation

With effect from the Variation Date the parties agree that the Original Undertaking be varied as set out in clauses 3.1 to 3.4 below.

3.1. The definition of Application be amended to:

"means the application for the Development submitted by or on behalf of the Developer to the Council to which the Council has allocated reference number WA/68/20/OUT together with the applications to the Council with the reference numbers WA/6/23/PL and WA/34/24/NMA"

3.2. At the end of the definition of Affordable Housing in Part B of Schedule 1, the words "and for the avoidance of doubt specifically excludes First Homes for the purpose of paragraph 8 (mortgagee exclusion provisions)" shall be inserted.

3.3. Part B, paragraph 4 of Schedule 1 shall be deleted and replaced with the following:

"The Developer shall not Occupy more than 95% (ninety five per cent) which is equivalent to seven (7) of the Market Residential Units until 100% (one hundred per cent) of the Affordable Housing Units have been constructed and made ready for occupation."

3.4. In Part C of Schedule 1, the following additional definitions shall be inserted:

"Additional First Homes Contribution"	means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.8, 6.9 or 8 of this Part, the lower of the following two amounts: (a) 30% (thirty per cent) of the proceeds of sale; and (b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.
"Affordable Dwellings"	means a Dwelling to be provided as Affordable Housing together with rights and easements over the Site to provide access to the Dwelling and such entrance way corridors parking areas and other ancillary areas as are necessary for the enjoyment of such a Dwelling including car parking in accordance with this Schedule
"Cluster"	shall mean a group of First Homes which does not exceed seven (7) houses and which have contiguous boundaries with another group of First Homes
"Compliance Certificate"	means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 6.2 of this Part applies the Eligibility Criteria (Local)
"Development Standard"	means a standard to fully comply with the following:- (a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015; (b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time; (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited; and (d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings) and the same may be amended by written agreement of the Parties in accordance with paragraph 5.1 of this Part

"Disposal"	means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than: (a) a letting or sub-letting in accordance with paragraph 7 of this Part (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner (c) an Exempt Disposal and "Disposed" and "Disposing" shall be construed accordingly
"Exempt Disposal"	means the Disposal of a First Home in one of the following circumstances: (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 8 of this Part shall apply to such sale) Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 7 of this Part
"Mortgagee"	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home
"Practical Completion"	means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied
"SDLT"	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
"Secretary of State"	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function

3.5. The following paragraphs shall replace paragraphs 2 and 3 of Part C, Schedule 1:

1. OBLIGATIONS

Unless otherwise agreed in writing by the Council, the Owner for and on behalf of itself and its successors in title to the Land with the intention that the following provisions shall bind the Land and every part of it into whosoever's hands it may come covenants with the Council as below save that

1.1 paragraphs 2, 3, 4 and 5 of this Part shall not apply to a First Homes Owner;

1.2 paragraphs 6 and 7 of this Part apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and

1.3 Paragraph 8 of this Part applies as set out therein.

2. QUANTUM OF FIRST HOMES

2.1 Ten(10) of the Dwellings on the Land shall be identified reserved and set aside as First Homes in accordance with the Affordable Housing Scheme and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

3. CLUSTERING

3.1 The First Homes shall not be visually distinguishable from the Market Residential Units based upon their external appearance;

3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Market Residential Units but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted

3.3 Clusters of houses shall not contain in excess of 7(seven) First Homes in each Cluster.

4. TYPE AND DISTRIBUTION

4.1 The mix of First Homes provided within the Land shall be in accordance with the Affordable Housing Scheme

5. DEVELOPMENT STANDARD

All First Homes shall be constructed to:-

5.1 the Development Standard current at the time of the relevant reserved matters approval; and

5.2 no less than the standard applied to the Market Residential Units.

6. DELIVERY MECHANISM

6.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

6.1.1 the Eligibility Criteria (National); and

6.1.2 the Eligibility Criteria (Local) (if any).

6.2 If after a First Home has been actively marketed for three (3) months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 6.1.2 of this Part shall cease to apply.

6.3 Subject to paragraphs 6.6 to 6.10 of this Part, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% (fifty per cent) of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee

6.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

6.4.1 The Council has been provided with evidence that:

6.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 6.2 of this Part applies meets the Eligibility Criteria (Local) (if any)

6.4.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

6.4.1.3 the transfer of the First Home includes:

a) a definition of the "Council" which shall be Arun District Council

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 6.1-6.9 of Part C, Schedule 1 of the S106 Deed (as varied) a copy of which is attached hereto as the Annexure."

c) A definition of "S106 Deed (as varied)" means the Unilateral Undertaking and Deed made pursuant to Section 106 of the Town and Country Planning Act 1990 dated 28 July 2022 between (1) the Council (2) the County Council (3) Michael James Langmead (4) Judith Anne Walker and (5) BDW Trading Limited together with the First Deed of Variation dated 18 January 2024 and the Second Deed of Variation dated []

d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annexure

6.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 6.3 and 6.4.1 of this Part have been met.

- 6.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"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 certificate signed by Arun District Council of Bognor Regis Town Hall, Clarence Road, Bognor Regis, West Sussex PO21 1LD or their conveyancer that the provisions of clause [xxx] (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

- 6.6 The owner of a First Home (which for the purposes of this clause shall include the Developer and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

6.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with paragraphs 6.1 and 6.2 of this Part (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 6.3 and 6.4.1 of this Part; or

6.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 6.6.1 of this Part before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.

- 6.7 Upon receipt of an application served in accordance with paragraph 6.6 of this Part the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

- 6.8 If the Council is satisfied that either of the grounds in paragraph 6.6 of this Part have been made out it shall confirm in writing within 28 (twenty eight) days of receipt of the written request made in accordance with paragraph 6.6 of this Part that the relevant Dwelling may be Disposed of:

6.8.1 to the Council at the Discount Market Price; or

6.8.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 6.10 of this Part which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.

- 6.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 6.6 above have been made out then it shall within 28 (twenty eight) days of receipt of the written request made in accordance with paragraph 6.6 above serve notice on the Owner setting out the further steps it requires the Owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If, at the end of that period, the Owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 6.6 above

following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.

- 6.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 6.8 or 6.9 above, the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.
- 6.11 Upon receipt of the Additional First Homes Contribution, the Council shall:
- 6.11.1 within 30 (thirty) working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.5 above where such restriction has previously been registered against the relevant title;
- 6.11.2 apply all monies received towards the provision of Affordable Housing.
- 6.12 Any person who purchases a First Home free of the restrictions in this Part pursuant to the provisions in paragraphs 6.9 and 6.10 herein shall not be liable to pay the Additional First Homes Contribution to the Council.

7. USE

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 7.1 – 7.4 below.

- 7.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 7.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
 - b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 7.3 A letting or sub-letting permitted pursuant to paragraph 7.1 or 7.2 of this Part must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 7.4 Nothing in this paragraph 7 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

8. MORTGAGEE EXCLUSION

The obligations in paragraphs 1-7 of this Part in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

- 8.1 such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 8.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 8.3 below;
- 8.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall, following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses, pay to the Council the Additional First Homes Contribution;
- 8.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
 - 8.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5 of this Part; and

8.4.2 apply all such monies received towards the provision of Affordable Housing

4. Covenant to the Council

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Undertaking as varied by this Deed.

5. Local Land Charge

This Deed shall be registered as a local land charge.

6. Third Party Rights

It is not intended that any person other than a party to this Deed and their successors shall have any right to enforce any of its terms.

7. Costs

The Owner shall pay the Council's and the County Council's reasonable and proper legal costs and disbursements in connection with the preparation, negotiation and completion of this Deed on completion of this Deed.

8. Notices

8.1. The address for any notice or other written communication is as specified above in the case of each party hereto or (at the option of the recipient) such address as may be specified for service from time to time provided that the same is within the United Kingdom or (at the option of the party giving notice or other communication) the last-known place of abode or business in the United Kingdom of the recipient.

8.2. Any notice or other written communication to be served or given by one party upon or to any other under the terms of this Deed shall be deemed to have been validly served or given if received by first class recorded post, by electronic mail or by recorded delivery post or other service which provides for delivery on the next business day or by hand to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing SAVE THAT where delivery is via electronic mail the sender must also deliver such notice or written communication by recorded delivery post PROVIDED THAT the notice or other written communication is sent to the email address stated and marked as follows for each recipient:

8.2.1. for the Owner to jason.shakespeare@bdwhomes.co.uk and marked for the attention of Jason Shakespeare

8.2.2. for the County Council at the address above and marked for the attention of the S106 Monitoring Team

8.2.3. for the Council at the address above or to planning@arun.gov.uk

8.2.4. for the Chargee at the address above

8.3. Unless the time of actual receipt is proven a notice demand or communication sent by the following means is to be treated as having been served:

8.3.1. in the case of electronic mail in the absence of evidence of a delay at the time the message was sent TOGETHER WITH confirmation of recorded delivery;

8.3.2. in the case of first class recorded post at the time delivery was signed for;

8.3.3. in the case of delivery by hand at the time delivery was made.

- 8.4. If a notice demand or any other communication is served after 4:00 pm on a Working Day or on a day that is not a Working Day it is to be treated as having been served on the next Working Day.

9. Governing law and Jurisdiction

- 9.1. This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- 9.2. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this document has been executed and delivered on the date first stated above.

Executed as a deed by [REDACTED]

and [REDACTED]

as attorneys pursuant to a Power of Attorney dated 24th April 2024 for and on behalf of

BDW TRADING LIMITED

[REDACTED]

Attorney

Signature of Witness

[REDACTED]

Name of Witness

Jasol Smokespace

Address

Logies Road, Titchfield Lane
Wickham, PO17 5JX

[REDACTED]

Attorney

Signature of Witness

[REDACTED]

Name of Witness

[REDACTED]

Address

60 Redington Lane, Folkestone
Kent CT1 1JF

SIGNED as a deed by
MICHAEL JAMES LANGMEAD
in the presence of:

Witness' signature

Name (capital letters) PETER CLEVELAND

Address ROWAN HOUSE

BAFFINS LANE, CHICHESTER

PO19 1UA

Executed as a deed by affixing the common
seal of WEST SUSSEX COUNTY
COUNCIL, in the presence of:

Authorised Officer

Name

Position

Executed as a deed by affixing the common
seal of ARUN DISTRICT COUNCIL, in the
presence of:

STINA AHMED - LAWYER

Authorised Officer

