
Dated: 2023

- (1) John Edmund Mansell
- (2) Rosemary Keeber
- (3) Janet Patricia Tindall
- (4) Taylor Wimpey UK Limited
- TO
- (5) Charnwood Borough Council
- (6) Leicestershire County Council

Deed of Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990

Relating to the property known as land North of Barkby Road, Syston, Leicestershire

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THIS DEED OF UNILATERAL UNDERTAKING is made on
2023

GIVEN BY

- (1) JOHN EDMUND MANSELL of Homestead Farm, 1447 Melton Road, Queniborough, Leicester LE7 3FP (the "First Owner");
 - (2) ROSEMARY KEEBER of 19 High Street, Evington, Leicester LE5 6FH and JANET PATRICIA TINDALL of 131 Glapthorn Road, Oundle, Peterborough PE8 5BA (the "Second Owner"); and
 - (3) TAYLOR WIMPEY UK LIMITED (Co. Registration. No. 01392762) of Gate House, Turnpike Road, High Wycombe, HP12 3NR (the "Developer")
- ("the Parties")

TO:

- (4) CHARNWOOD BOROUGH COUNCIL of Southfield Road, Loughborough, Leicestershire LE11 2TX (the "Borough Council");
- (5) LEICESTERSHIRE COUNTY COUNCIL of County Hall, Glenfield, Leicester, Leicestershire, LE3 8RA ("the County Council");

RECITALS

- (A) The Borough Council is a local planning authority for the purposes of the 1990 Act for the administrative area within which the Site is situated.
- (B) The County Council is the local highway authority and is responsible for the provision of education, waste and library facilities for the administrative area within which the Site is situated.
- (C) The First Owner is the freehold owner of that part of the Site registered at the Land Registry under title number LT500054.
- (D) The Second Owner is the freehold owner of that part of the Site registered at the Land Registry under title number LT396844.
- (E) The Developer is the beneficiary of an option to purchase the Site from the First Owner and Second Owner dated 13th August 2003 (as amended).
- (F) The Developer submitted the Application to the Borough Council on 20th December 2021.
- (G) The Developer has now submitted the Appeal against non-determination to the Secretary of State.
- (H) The Borough Council resolved (in absentia) to refuse planning permission for the Application on 17th August 2023.
- (I) This Deed of Unilateral Undertaking is given by the Parties to the County Council and Borough Council with the intent that if the Appeal is allowed that the Development shall be subject to the obligations contained in this Deed and to ensure that the Owners and Developer's interests in the Site shall be bound by the planning obligations for the purposes of section 106 of the 1990 Act.
- (J) In the event that the Appeal is allowed and the Inspector considers that one or both of the obligations in this Deed shall apply, the Development shall be subject to the obligation(s) contained in this Deed which have been accepted by the Inspector and the Owners and Developer's interests in the Site shall be bound by the relevant planning obligation for the purposes of section 106 of the 1990 Act.

(K) The Parties to this Deed have given due consideration to the provisions of Regulation 122 of the CIL Regulations (to the extent relevant to the obligations in this Unilateral Undertaking) and the advice contained at paragraph 57 of the NPPF and are satisfied that the planning obligations secured pursuant to this Unilateral Undertaking are:

- (i) necessary to make the Development acceptable in planning terms;
- (ii) directly related to the Development; and
- (iii) fairly and reasonably related in scale and kind to the Development.

NOW THIS DEED WITNESSES as follows:-

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following words and expressions have the following meanings:

"1990 Act"	the Town and Country Planning Act 1990 and any statutory amendment, variation, substitution or re-enactment thereof together with all other statutory powers and acts pursuant to which the Parties hereto shall be empowered to enter into this Deed
"Appeal"	the appeal lodged by the Developer to the Secretary of State under reference number APP/X2410/W/23/3325902 against the Borough Council's non-determination of the Application
"Application"	the application for outline planning permission and assigned the reference number P/21/2639/2 by the Borough Council for permission to carry out the Development upon the Site
"Barkby Road Access"	means the site access junction shown indicatively on drawing no 20060-02 Rev F
"Barkby Road Roundabout"	means a roundabout that may be constructed in the future to replace the Barkby Road Access
"Barkby Road Roundabout Land"	means the land shown shaded pink on Plan 3 (or such other area in the control of the Owners as may be agreed between the Owners and the County Council)
"Chargee"	any mortgagee or charge (other than a Chargee of a Registered Provider) of any Completed Dwelling and any receiver or manager (including an administrative receiver) appointed by such mortgagee or charge pursuant to the Law of Property Act 1925 or otherwise and the successors in title to all of the foregoing
"CIL Regulations"	the Community Infrastructure Levy Regulations 2010 (as amended)
"Commencement of Development Date" and "Commenced"	the date of Commencement of Development
"Commencement of Development"	the earliest date on which any of the material operations (as defined by Section 56(4) of the 1990 Act) pursuant to the implementation of the Development is begun save that irrespective of the

provisions of section 56(4) of the 1990 Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development:

- (a) trial holes or other operations to establish the ground conditions of the Site, site survey work, or works of remediation
- (b) archaeological investigations on the Site
- (c) any works of demolition, site clearance and site set-up
- (d) the laying of services
- (e) the Site access works to basecourse;
- (f) any structural planting or landscaping works
- (g) ecological or nature conservation works and surveys associated with the Development
- (h) construction of boundary fencing or hoardings

and "Commence Development" shall be construed accordingly

"Decision Letter"

a letter issued by the Inspector determining the Appeal

"Deed"

this unilateral undertaking

"Development"

development of the Site in accordance with the Application for up to 195 dwellings with all matters reserved except access

"Dwellings"

all or any of the dwellings to be constructed on the Site as part of the Development pursuant to the Permission and "Dwelling" shall be construed accordingly

"Implementation"

the date upon which the Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56(4) of the Act and "Implement" shall be construed accordingly

"Index Linked"

the changes in the applicable Index between the date of this Deed and the date of actual payment of a relevant contribution or the date of the relevant payment being achieved (whichever is the later)

"Index"

the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as agreed or in default of agreement such Index as shall be determined by an Arbitrator appointed by the President of the RICS for the purposes of this Deed in all cases to ensure as

nearly as possible that the sums of money involved shall fluctuate in accordance with the general level of the building industry costs

“Inspector”

a representative of the planning inspectorate appointed by the Secretary of State to determine the Appeal

“Local Highways Mitigation Contribution”

has the means as defined in the S.106 Agreement

“Local Sustainable Travel Mitigation”

the mitigation of the impacts of the Development (cumulatively with other residential developments) on the local highway and transport network in Syston comprising sustainable public transport improvements

“Local Sustainable Travel Mitigation Contribution”

the sum of One Hundred and Ninety Six Thousand Six Hundred and Fifty Pounds (£196,650.00) Index Linked payable to the County Council for the provision of the Local Sustainable Travel Mitigation works

“Nominated Officer”

the senior officer of the Borough Council responsible for development management or such other officer of the Borough Council as notified to the Owners

“Occupation”

occupation of any of the Dwellings forming part of the Development excluding occupation for construction or for fitting out or for marketing or repair or security and “Occupy”, “Occupier” and “Occupied” shall be construed accordingly

“Owners”

the First Owner and the Second Owner which shall include their successors in title and any person deriving title through or under the First Owner and the Second Owner

“Permission”

planning permission granted by the Planning Inspectorate pursuant to the Appeal and to include any permission granted pursuant to an application pursuant to Section 73 of the 1990 Act in accordance with the provisions in clause 7.8 of this Deed

“Plan 1”

the plan entitled ‘Site Location Plan’ with drawing reference P20-3155 001 C-01 appended to this Deed at **Schedule 1**

“Plan 2”

the plan entitled ‘Barkby Road Roundabout Safeguarded Land Plan’ with drawing reference 20060-11 appended to this Deed at **Schedule 1**

“Secretary of State”

the Minister for the Department for Levelling Up, Housing and Communities (DLUHC)

“Site”

the land North of Barkby Road, Syston, Leicestershire as shown edged in red on Plan 1

“S.106 Agreement”

means the bilateral agreement made pursuant to 1990 Act between (1) the Borough Council and (2) the County Council and (3) John Edmund Mansell and (4) Rosemary Keeber and (5) Janet Patricia Tindall

and 6) Taylor Wimpey UK Limited, and completed by the parties for the purposes of the Appeal

“Working Day(s)”

any day(s) upon which clearing banks in the City of London are open to the public and for the avoidance of doubt such day(s) shall not include any Saturday or Sunday New Year's Day Good Friday Easter Monday Christmas Day and Boxing Day.

2. INTERPRETATION

- 2.1 Any covenant by the Developer or the Owners, not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person but only where knowledge of the actions of the other person is reasonably to be inferred.
- 2.2 Any references to any particular statute include any statutory extension, modification, amendment or re-enactment of such statute and also include any subordinate instruments, regulations or orders made in pursuance of it.
- 2.3 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 2.4 Where reference is made to a clause, Part, plan, paragraph, recital or Schedule such reference (unless the context requires otherwise) is a reference to a clause, Part, plan, paragraph, recital or Schedule of or to (or in the case of plans attached to) this Deed.
- 2.5 In this Deed the singular includes the plural and vice versa and masculine includes the feminine and vice versa.
- 2.6 Any obligation herein to construct, complete or undertake any building or engineering operations or Commence any element of the Development however expressed shall be deemed to mean construct, complete, undertake or Commence the same to the reasonable satisfaction of the Borough Council.
- 2.7 Without prejudice to **clause 3.2** where more than one person is obliged to observe or perform an obligation contained in this Deed, the obligation may be enforced against all such persons jointly or against each of them individually and may be carried out by one or more of them.

3. PLANNING OBLIGATIONS

- 3.1 This Deed is made and entered into pursuant to the 1990 Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 (as amended) and Section 1 of the Localism Act 2011 (as amended) and all other enabling powers and both the positive and restrictive covenants and undertakings herein on the part of the Owners in respect of the Site are entered into with the intent that the same shall be enforceable without limit of time not only against the Owners but also against their successors in title and assigns and any person corporate or otherwise claiming through or under the Owners an interest or estate created hereafter in the Site (or any part or parts thereof) as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person provided that:
- 3.2 no party hereto shall be liable for a breach of covenant or undertaking relating to any part of the Site in which it has no interest at the date of this Deed or which occurs once it has parted with all interests relating to that part of the Site but without prejudice to liability for any breach occurring at a time when the party held an interest in the relevant part of the Site; and

3.3 the obligations contained in this Deed shall not be binding upon any and all statutory undertakers who have as part of their statutory undertaking any interest in the Site nor the mortgagee or chargee of any such persons nor any receiver appointed by a mortgagee or chargee of any such persons; and

3.4 the obligations contained in this Deed shall not be binding upon any freehold leasehold owner-occupiers or tenants of Dwellings nor against those deriving title from them and shall not be binding upon any mortgagee of an owner-occupier save that this clause shall not apply to the restrictions on the use of the Affordable Dwellings.

4. **ENTRY INTO FORCE**

This Deed takes effect immediately apart from the covenants and the planning obligations in the Schedules to this Deed which shall only come into effect upon the of the Permission and Commencement save unless they are expressed to come into effect before Commencement in which case they take effect upon the grant of the Permission.

5. **LOCAL SUSTAINABLE TRAVEL CONTRIBUTION TRIGGER**

5.1 In the event that the Inspector confirms in the Decision Letter that the covenant to make payment of the Local Highways Mitigation Contribution contained at Paragraph 9, Part 12 of Schedule 2 of the S.106 Agreement:

5.1.1 is not reasonably required in delivery of the Development and should be removed from the S.106 Agreement pursuant to the provisions of clause 5 of the S.106 Agreement then the obligation to pay the Local Sustainable Travel Mitigation Contribution contained at Paragraph 1, Part 1 of Schedule 2 of this Deed shall apply

OR

5.1.2 is reasonably required in delivery of the Development then the obligation to pay the Local Sustainable Travel Mitigation Contribution contained at Paragraph 1, Part 1 of Schedule 2 of this Deed shall not apply.

6. **NO ENCUMBRANCE**

The Owners hereby covenants to the Borough Council and the County Council that in the event the Permission is Implemented they will not knowingly enter into any covenant or Deed relating to any part of the Site whose effect would be to preclude the carrying out of the planning obligations and covenants contained in this Deed.

7. **GENERAL PROVISIONS**

7.1 It is hereby undertaken and declared that:

7.1.1 the covenants on behalf of the parties hereto to be observed and performed under this Deed shall be treated as Local Land Charges and registered by the Borough Council in the Local Land Charges Register for the purposes of the Local Land Charges Act 1975 (as amended) and

7.1.2 nothing in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Borough Council and the County Council in the exercise by them of their statutory functions and the rights powers duties and obligations of the Borough Council and the County Council under private or public statutes bye-laws orders and regulations may be as fully and effectively exercised as if they were not a party to this Deed.

7.2 The Parties covenant to observe and perform their respective obligations on their respective parts as set out in the schedules hereto.

- 7.3 Nothing in this Deed shall be construed as granting permission to the Developer and/or the Owners or their agents or servants from time to time to carry out works on a highway.
- 7.4 The Owners covenant to give the Borough Council and the County Council written notice of any change in their respective freehold ownership of the whole or of any part of its or their interest in the Site until all obligations under this Deed have been discharged and that such notice shall be provided to the Borough Council and the County Council as soon as reasonably practicable after such changes have occurred. Such written notice shall give the Borough Council details of the name and address of the current and new owners of such interest together with details of the Site to which each of their respective interests apply save that this clause shall not apply to the Disposal of individual Dwellings.
- 7.5 The Owners warrant that they are the owners of the Site registered at HM Land Registry under title number LT5000054 and LT396844 with full power to enter into this Deed and there is no other person or body with an interest in the Site whose consent is necessary to make this Deed binding on all interests in the Site.
- 7.6 The Developer covenants that it will give the Borough Council and the County Council written notice upon its being registered as a freehold owner in respect of part or all of the Site and will provide the Borough Council and the County Council with Land Registry office copy entries of its resultant interest in each of the titles referred to.
- 7.7 The notices and Land Registry office copy entries referred to in **clause 7.6** shall be provided within ten (10) Working Days of the exercise of the options and of registration of the relevant titles respectively.
- 7.8 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment or variation to the Permission and planning permission is granted pursuant to Section 73 of the 1990 Act then this Deed shall apply in full force in respect of that planning permission unless:
- 7.8.1 the Borough Council in their absolute discretion requires a separate Deed under Section 106 and/or Section 106A of the 1990 Act to amend planning obligations contained in this Deed or to secure new planning obligations relating to the new planning permission; or
- 7.8.2 the Owners reasonably requires a separate Deed under Section 106 of the 1990 Act to amend planning obligations contained in this Deed or to secure new planning obligations relating to the new planning permission.

8. **NO WAIVER**

No waiver (whether express or implied other than by deed) by the Borough Council or the County Council (as the case may be) of any breach or default by the Owners in performing or observing any of the covenants, undertakings, obligations or restrictions contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Borough Council or the County Council (as the case may be) from enforcing any of the said covenants, undertakings, obligations or restrictions or from acting upon any subsequent breach or default in respect thereof by the Owners.

9. **INTEREST**

Without prejudice to any other right, remedy or power herein contained or otherwise available to any party if any payment of any sum by the Owners referred to herein shall have become due but shall remain unpaid for a period exceeding fourteen 14 days the Owners shall pay to the payee interest thereon at the interest rate of 4% per annum above the base lending rate of the National Westminster Bank plc from the date when the same became due until payment thereof.

10. **SEVERABILITY**

Each clause, schedule or paragraph shall be separate, distinct and severable from each other to the extent only that if any clause, schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause, schedule or paragraph be valid shall apply without prejudice to any other clause, schedule or paragraph contained herein.

11. **MODIFICATIONS TO BE NOTED**

In the event of the planning obligations contained in this Deed being modified a note or memorandum thereof signed by the Borough Council, the County Council, the Developer and the Owners shall be endorsed upon this Deed provided always that any modification of the obligations contained in this Deed shall be in accordance with section 106A of the 1990 Act and shall be by deed.

12. **NOTICES**

12.1 Any notice to be served in accordance with this Deed shall be validly served if served in accordance with section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Act 1962 at the respective addresses cited in this Deed except that any notice to be served on the Borough Council shall be addressed to the Nominated Officer and on the County Council shall be addressed to the Team Manager, Planning Obligations and Systems Team, Planning and Historic and Natural Environment, Chief Executives Department and in either case shall quote the reference in the Application.

12.2 Any such notice or other communication, if so addressed, shall be deemed to have been received as follows:

12.2.1 if delivered by hand, upon delivery at the relevant address; and

12.2.2 if sent by first class post, at 09:00 hours on the 2nd Working Day after the date of posting;

except that where any such notice or other communication is or would otherwise be deemed to be received after 17:00, such other notice or other communication shall be deemed to be received at 09:00 on the next following Working Day.

12.3 The Owners shall give to the Borough Council and the County Council advance written notice of at least twenty-eight 28 days of the intended Commencement of Development Date and shall notify the Borough Council immediately as soon as the Development has been Commenced.

12.4 The Owners shall give to the Borough Council and the County Council advance written notice of the anticipated date of first Occupation of the first Dwelling no later than ten (10) Working Days prior to such anticipated date of Occupation.

12.5 The Owners shall give written notice to the Borough Council of the anticipated dates of the relevant triggers set out in Parts 1-8 of Schedule 2 no later than 10 (ten) Working Days prior to each respective anticipated date.

12.6 The Owners shall give written notice to the County Council of the anticipated dates of the relevant triggers set out in Parts 9-13 of Schedule 2 no later than 10 (ten) Working Days prior to each respective anticipated date.

13. **DEED GOVERNED BY ENGLISH LAW**

This Deed is subject to and will be construed in all respects in accordance with the provisions of English law.

14. **THIRD PARTIES**

Without prejudice to the definitions of the "Borough Council", the "County Council", the "Developer" and the "Owners" given in **clause 1.1** hereof it is not intended that this Deed should give rights hereunder to a third party arising solely by virtue of the Contracts (Rights of Third Parties) Act 1999 (as amended).

15. **TERMINATION**

The obligations on the Owners contained in this Deed will cease if the Permission is quashed or revoked or withdrawn or expires prior to Implementation of the Development.

16. **DEVELOPER'S ACKNOWLEDGEMENT**

16.1 The Developer acknowledges that this Deed shall bind the Site by the restrictions and obligations contained in this Deed provided that it shall not be bound by any of the provisions of this Deed (other than **clauses 7.6, 7.7** and **13**) unless or until it becomes a successor in title to the Owners.

17. **VERIFICATION**

The Developer and the Owners shall permit the Borough Council and their authorised employees and agents upon reasonable notice and subject to their compliance with relevant health and safety requirements to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

This document is executed as a deed and delivered on the date stated at the beginning of this document.

SCHEDULE 1

Plans

SCHEDULE 2

Part 1 Sustainable Travel

The Owners' Covenants to the County Council

The Owners hereby covenant to the County Council as follows:

1. The Owners covenant to pay the Local Sustainable Travel Mitigation Contribution to the County Council as follows:
 - 1.1 50% within 3 months of the Commencement of Development; and
 - 1.2 50% on the first anniversary of the payment made pursuant paragraph 1.1 above
 - 1.3 Not to Occupy or permit Occupation of the relevant Dwellings until the respective instalments of the Local Sustainable Travel Mitigation Contribution has been paid to and received by the County Council in accordance with this Deed.
 - 1.4 FOR THE AVOIDANCE OF DOUBT the Owners acknowledge and accept that the Local Sustainable Travel Mitigation Contribution may be aggregated from time to time by the County Council in response to other local highway and transport network measures in Syston to be secured in connection with further residential development within the locality of the Site.

Part 2 Barkby Road Roundabout

1. The Owners covenant to the County Council to reserve and safeguard the Barkby Road Roundabout Land in accordance with the emerging Local Plan Policy DS3 (HA1 and HA3).
2. The Owners covenant to the County Council to submit for its written approval a detailed plan showing the extent of the Barkby Road Roundabout Land required for the Barkby Road Roundabout prior to Commencement of Development.
3. The Owners covenant to enter into a Section 38 and Section 278 Agreement to secure such parts of the Barkby Road Roundabout Land required for the Barkby Road Roundabout in accordance with the emerging Local Plan Policy DS3 (HA1 and HA3) and that such part of the Barkby Road Roundabout Land required for the Barkby Road Roundabout shall be transferred or dedicated pursuant to the relevant Section 38 and Section 278 Agreement.

Signed as a deed by)
TAYLOR WIMPEY UK LIMITED)
by its attorney)
in the presence of)

Signature of attorney

Signature of attorney

Signed as a deed by)
JOHN EDMUND MANSELL)
in the presence of:)

Signature of individual

Witness Signature:

Witness Name:

Witness Address:

Signed as a deed by)
ROSEMARY KEEBER)
in the presence of:)

Signature of individual

Witness Signature:

Witness Name:

Witness Address:

Signed as a deed by)
JANET PATRICIA TINDALL)
in the presence of:)

Signature of individual

Witness Signature:

Witness Name:

Witness Address: