

DATED 23 February

2022

**(1) ROBERT HITCHINS LIMITED**

**-and-**

**(2) CHELTENHAM BOROUGH COUNCIL**

**AGREEMENT**

**pursuant to s.106 Town and Country Planning Act 1990  
in relation to land at Oakley Farm, Priors Road, Cheltenham  
PLANNING APPLICATION REFERENCE 20/01069/OUT  
PLANNING APPEAL REFERENCE APP/B1605/W/21/3273053**

**(Affordable Housing)**

**One Legal  
Tewkesbury Borough Council  
Council Offices  
Gloucester Road  
Tewkesbury**

THIS DEED is made the 23 day of February 2022

BETWEEN:

- (1) **ROBERT HITCHINS LIMITED** (Company Registration Number 0686734) whose registered office is at The Manor, Boddington, Cheltenham, Gloucestershire GL51 0TJ (“the Owner”); and
- (2) **CHELTENHAM BOROUGH COUNCIL** of Municipal Offices 77 Promenade Cheltenham Gloucestershire GL50 1PJ (“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 and is also the Housing Authority for the purposes of the Housing Act 1996 and is entitled to enforce the planning obligations contained in this Agreement
3. The Owner is registered as the proprietor of the freehold of the Site with absolute title at the Land Registry under title number GR215822
4. The Owner has appealed to the Secretary of State against the Council’s non determination of the Application
5. The Owner enters into this Agreement with the intent that any objections of the Council to the grant of planning permission are overcome

### NOW THIS DEED WITNESSES AS FOLLOWS:

#### 1. DEFINITIONS

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

- 1.1. “Act” means the Town and Country Planning Act 1990 or any re-enactment or modification thereof for the time being in force
- 1.2. “Affordable Housing” means affordable housing as that term is defined in Annex 2 of the National Planning Policy Framework dated July 2021 as updated from time to time or as

defined in any government documentation that shall supersede it

**1.3. "Affordable Housing Land"**

means the land within the Site upon which the Affordable Housing is to be constructed including all curtilages and communal areas associated with it

**1.4. "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 England; or
- (c) a body approved or accredited by Homes England or equivalent successor body whose terms of approval or accreditation have been evidenced to the satisfaction of the Council (acting reasonably and without delay) in writing; or
- (d) any other body previously agreed in writing by the Council (acting reasonably and without delay)

**1.5. "Affordable Housing Scheme"**

means a scheme to provide the Affordable Housing Units on the Site to be submitted to the Council pursuant to paragraph 1 of the First Schedule (and which may be amended by written agreement between the Owner and the Council provided that such scheme remains in accordance with approval of relevant Reserved Matters Application) and such scheme shall detail the location design property type size standard accessibility standards phasing and tenure of the each of the Affordable Housing Units within the Site and shall be identified on a plan of the Site and shall accord with the table within paragraph 5.1 of the First Schedule (subject to any amendments agreed to that table at the Reserved Matters Stage or otherwise by the Owner and the

Council); and shall be in accordance with the Clustering Strategy

**1.6.** "Affordable Housing Units"

means those Dwellings provided/to be provided as Affordable Housing comprising the Affordable Rented Units and Social Rented Units and the Shared Ownership Units together with:

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

and "Affordable Housing Unit" shall be construed accordingly

**1.7.** "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) of up to 80% of local Open Market Rents and using the Royal Institution of Chartered Surveyors approved valuation methods and not to exceed the Local Housing Allowance levels or the equivalent replacement assessment

**1.8.** "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

**1.9.** "Application"

means the application for outline planning permission submitted to the Council for the Development and allocated reference number 20/01069/OUT and currently subject to appeal to the Secretary of State under Planning Appeal Reference APP/B1605/W/21/3273053

**1.10.** "Approved Purchaser(s)"

means a person or persons in need of a Shared Ownership Unit and who are registered with the Help to Buy Agent and whose needs are not met by the market (or as otherwise approved in writing by the Council) and

who shall occupy the Shared Ownership Unit as their principal or main home and who have a Local Connection

- 1.11. "Building Regulations" means the statutorily approved regulations that are used to approve the standards of buildings in England and Wales of 2010 as amended or subsequently revised or replaced
- 1.12. "Capital Funding Guide" means the Homes England Guidance published 4 November 2016 as updated 16 July 2021 and subsequently or any replacement therefore
- 1.13. "Cat 2 " means Affordable Housing that complies with the discretionary Building Regulations as set out in Approved Document M4(2) Cat 2 (access to and use of buildings) of the Building Regulations 2010 standard current at the time of submission of the relevant application for Building Regulations approval
- 1.14. Cat M4(3)(2)(b) means Affordable Housing provided that complies with the discretionary Building Regulations standard for wheelchair user dwellings as set out in Approved Document M4(3)(2)(b) (access to and use of buildings) of the Building Regulations 2010 standard current at the time of submission of the relevant application for Building Regulations approval
- 1.15. "Clustering Strategy" means in relation to the Affordable Housing Units the location of the said Units in evenly dispersed locations across the Development with each cluster of Affordable Housing Units not exceeding ten (10) units unless otherwise agreed in writing by the Council and no group of Affordable Housing Units will be located contiguously to any other group of Affordable Housing Units (unless otherwise agreed in writing between the Owner and the Council)
- 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, investigations for the purpose of assessing ground conditions archaeological investigations 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 during construction including the provision of site compounds and "Commence Development" shall be construed accordingly

**1.15. "Development"**

means residential development of up to 250 residential dwellings, associated infrastructure, ancillary facilities, open space and landscaping. Demolition of existing buildings. Creation of new vehicular access from Harp Hill as set out in the Application

**1.16. "Dwelling"**

means a dwelling to be constructed pursuant to the Planning Permission and for the avoidance of doubt includes the Affordable Housing Units and the Open Market Units and "Dwellings" is to be construed accordingly

**1.17. "Eligible Person(s)"**

means a person or persons who either are:

- i) in need of an Affordable Rented Unit or a Social 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) approved in writing by the Council as someone otherwise in need of Affordable Housing

- 1.18.** "Expert" means the independent expert appointed for the purposes of clause 14
- 1.19.** "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
- 1.20.** "Help to Buy Agent" means the Government appointed Help to Buy Agent from time to time or any body exercising the functions that are now the duty of the Help to Buy Agent that holds the register for the occupation of (inter alia) Shared Ownership Units
- 1.21.** "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
- 1.22.** "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
- 1.23.** "Homes England" means the Homes England 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

1.24. "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

1.25 "Lettings Plan"

means a plan produced by the Council and agreed in writing with the Owner/Affordable Housing Provider setting specific lettings requirements in accordance with the Homeseeker Plus Policy in respect of the Affordable Rented Units and Social Rented Units

1.26. "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 thereof), 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, Tewkesbury 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 who is approved in writing by the Council in five (5) Working Days from receipt of their application on to the Homeseeker Plus Scheme or with the Help to Buy Agent as being in need of Affordable Housing and such consent shall not be unreasonably withheld or delayed



- 1.27 "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 Rented Units and Social Rented Units are located and which is used to calculate the maximum housing benefit entitlement for each tenant thereof or any scheme which supercedes it
- 1.28 "Monitoring Fee" Means the sum of one thousand pounds (£1000.00) to be paid by the Owners to the Council to monitor compliance with this Agreement and the provisions hereof
- 1.29 "National Rent Regime" means the Government Guidance on Target Rents as set out in their advice including the Rent Standards April 2020 updated 3 December 2020 and any update modified or replacement thereof
- 1.30. "Occupation(s)" 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 during construction and "Occupied" and "Occupier(s)" shall be construed accordingly
- 1.31. "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 as valued by a qualified valuer (who is a member of the Royal Institute of Chartered Surveyors) as being the open market rent using the Royal Institute of Chartered Surveyors approved valuation methods and "Open Market Rents" shall be construed accordingly
- 1.32. "Open Market Units" means the Dwellings forming part of the Development (and assuming no restriction on use as Affordable Housing) on the Site that are not Affordable Housing Units and "Open Market Unit" is to be construed accordingly

- 1.33.** "Open Market Valuation" means the valuation of the price properly obtainable for the Dwelling (and assuming no restriction on use as Affordable Housing) on a sale at arms' length of the freehold or a long leasehold interest (as applicable) of it as would be achieved if on the open market (without restrictions on price or occupation) between a willing vendor/lessor and willing purchaser/lessee with vacant possession and free of any subleases or other encumbrances after proper marketing wherein the parties had acted knowledgeably prudently and without compulsion
- 1.34.** "Plan" means the plan attached to this Agreement marked 'Section 106 Plan (ref:333.L.1)'
- 1.35** "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
- 1.36.** "Reserved Matters Stage" means the stage of the planning process following grant of outline planning permission that deals with some or all of the outstanding details of the outline application proposal and "Reserved Matters" "Reserved Matters Application" and "Reserved Matters Approval" shall be construed accordingly
- 1.37.** "Sales Plan" means for the Shared Ownership Units a plan produced by the Owner/Affordable Housing Provider and agreed in writing by the Council setting out the price of each Shared Ownership Unit and the method of marketing the Shared Ownership Units to Approved Purchasers
- 1.38.** "Service Charge" means a reasonable charge made to the Occupiers of individual Dwellings or in the case of the Affordable Rented Units, Social Rented Units and the Shared Ownership Units a charge made to the Affordable

