

DATE:

2024

RICHARD WAYNE SCATES AND LISA DEBORAH SCATES

**Planning obligation by deed of unilateral undertaking under the Town and
Country Planning Act 1990 section 106**

IN FAVOUR OF BASILDON BOROUGH COUNCIL

relating to

**Land East and West of Mascot, Windsor Road, Bowers Gifford, Essex
SS13 2LH, Title numbers EX572947 + EX905836 + EX420854**

within the definition "Affordable housing for rent" under clause (a) of Annex 2 to the NPPF and Shared Ownership Housing within and as anticipated by the definition "Other affordable routes to home ownership under clause (d) of Annex 2 to the NPPF provided to eligible households whose needs are not met by the market, where eligibility is determined with regard to local incomes and local house prices and which remains at an affordable price for future eligible households

'The Affordable Housing Scheme'

means the scheme to be prepared in liaison with the Council which shall include details of:

- (i) the timing of the construction of the Affordable Housing,
- (ii) the arrangements for the transfer of the Affordable Housing to a Registered Provider, and
- (iii) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing, and
- (iv) the occupancy criteria to be used for determining the identity of the occupiers of the Affordable Housing and the means by which such occupancy criteria shall be enforced

'The Affordable Housing Units'

means the Two Dwellings to be constructed on the Site which shall be constructed for

Affordable Housing in accordance with the approved Affordable Housing Scheme for occupation only.

Close Family Connection

means mother, father, sister, brother or adult children or other extended family members on condition that they are providing support to the Person with Disabilities.

“Commencement of the Development”

means the implementation of the Planning Permission by the carrying out of a material operation described in Section 56 of the Act and “Commence the Development” shall exclude operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, however the temporary display of site notices or advertisements shall not be a material operation

“Development”

means the development proposed in the planning application submitted to the Council relating to the Site with the Council’s reference of 22/00848/FULL | Development of 2no. Affordable Houses

“Dwelling”

means any residential unit of accommodation built pursuant to the Planning Permission or to any related planning permission granted by virtue of s73 of the Act.

“Index”

means the lower of Retail Price Index and Building Construction Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors (if such Index is at the relevant time no longer published) such other

	comparable index or basis for indexation as the Council may specify.
“Index-Link(ed)”	means increase(d) to reflect any increase in the Index during the period from and including the date of this Undertaking to and including the date of actual payment
Monitoring Fee	Means the monitoring fee of £200 Index Linked payable by the Owner to the Council in accordance with this Undertaking.
‘The NPPF’	means the National Planning Policy Framework issued by the Department for Communities and Local Government and dated February 2019
“Notice of Commencement”	means notice in writing to advise the Council of the expected date of the Commencement of Development
“Person with disabilities”	a person who has a physical or mental impairment, and that impairment has a substantial and long-term adverse effect on that person’s ability to carry out normal day-to-day activities. These persons include, but are not limited to, people with ambulatory difficulties, blindness, learning difficulties, autism, and mental health needs.
“Plan”	means the Plan of the site as annexed to this Undertaking.
“Planning Permission”	means the planning permission for the Development at the Site
“RAMS Contribution”	means a contribution of £313.52 (three hundred and thirteen pounds and fifty-two pence) (Index Linked) to be spent on Special Protection Areas, Special Areas of Conservation and Ramsar sites designated to protect internationally important numbers of breeding and non-breeding birds primarily waders & wildfowl and their coastal

"Registered Provider "	habitats. means a registered provider of social housing within the meaning of Section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) or a charitable organisation or other similar body to the above <i>approved by the Council in writing.</i>
"Site"	means Land East and West of Mascot, Windsor Road, Bowers Gifford, Essex, SS13 2LH Title number EX572947, EX905836 and EX420854

1.2 Where the context so requires:

- (a) A reference in this Undertaking to an Act of Parliament or any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same.
- (b) Words importing the masculine gender include the feminine gender and vice versa. Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing *corporations and vice versa.*
- (c) Any headings or side notes are for ease of reference only and shall not affect the construction of this Undertaking.
- (d) Where a party includes more than one person any obligations of that party shall be joint and several

2. INTERPRETATION AND LEGAL EFFECT

2.1 This Undertaking is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling acts and binds the Owner's interest in the Site and are enforceable by the Council against the Owner in respect of which:

- (a) The Owner owns the freehold title to the Site.
- (b) The Council is the Local Planning Authority entitled to enforce the provisions of this Undertaking.
- (c) This Undertaking is entered in respect of the Site with the intent that it shall bind the Owners freehold interest in the Site.
- (d) This Undertaking shall be binding on all successors and assigns in title of the Owner and any persons claiming under or through them.

- (e) This Undertaking has been executed as a Deed and the Owner shall supply a copy of it to the Council so that it may be registered by the Council against the Site as a Local Land Charge and entered into the planning register maintained by the Council under the Act
- 2.2 Nothing in this Undertaking is or amounts to or shall be construed as a planning permission or approval.
- 2.3 This Undertaking is made and creates planning obligations under section 106. *of the Act and to the extent that the covenants restrictions and requirements in this Agreement are not made under section 106 of the Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.*
- 2.4 The Undertaking is conditional upon the grant of the Planning Permission.
- 2.5 This Undertaking shall come into effect on the Commencement of Development except for clause 4.4 which shall take effect on the signing and delivery of this Undertaking.

3. NOTICES

- 3.1 All notices given or served or required to be given or served under this Undertaking shall be given or served as follows:
 - (a) by personal delivery by hand (in which case service is immediate)
 - (b) by first class post (in which case service is takes place on the second day after posting) to the address of the recipient party as first given herein at the head of this Undertaking
- 3.2 The address for service of notices for the Council shall be at the Council's address at the head of this Undertaking and notices shall be marked for the attention of the Council's s106 Monitoring Officer.

4. THE OWNERS' COVENANTS

- 4. The Owner covenants:
 - 4.1. To serve on the Council a Notice of Commencement not less than four weeks before the expected date of Commencement of the Development
 - 4.2 To pay a RAM'S contribution of £156.76 Index Linked to the Council prior to the Commencement of the Development for each Dwelling to be constructed that represents one aspect of the costs of mitigation to any protected habitats site under the Recreational Disturbance Avoidance Mitigation Strategy of the Council for the purposes of the Conservation and Habitats Regulations 2017.

- 4.3 The Owner shall not Commence or allow Commencement of the Development unless and until the said RAMS Contributions has been paid to the Council in full.
- 4.4 To prepare in liaison with the Council an Affordable Housing Scheme for the Site and not to permit or allow the Commencement of Development until the Affordable Housing Scheme in relation to the Development has been approved in writing by the Council.
- 4.5 Upon Completion of the Development to arrange in liaison with the Council for the sale of the freeholds of the completed Affordable Housing Units to a Registered Provider

5. PROVISIONS OF IMMEDIATE EFFECT

- 5.1 The Owners shall upon signing of this Undertaking pay the Council's legal fee, Monitoring Fee, and administrative costs in connection with the preparation and completion of this Undertaking.
- 5.2 Nothing in this Undertaking shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 5.3 This Undertaking is a local land charge and the owner consents to it being registerable as such.
- 5.4 The Owner agrees to give the Council prompt written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Undertaking have been discharged such notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.
- 5.5 This Undertaking shall cease to have effect (with the exception of Clause 6.1 of this Undertaking) (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 any statutory procedure or expires prior to the Commencement of Development.
- 5.6 No person shall be liable for breach of any of the planning obligations or other provisions of this Undertaking after it shall have parted with its interest in the Site or in the part in respect of which such breach occurs.
- 5.7 Nothing in this Undertaking prohibits or limits the right to develop any part of the Site in accordance with a planning permission (other than in accordance with a Planning Permission granted) granted before or after the date of this Undertaking.

6. JURISDICTION

This Undertaking is to be governed by and interpreted in accordance with the law of England and Wales; and the courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Undertaking.

IN WITNESS whereof the Owners have executed this Undertaking the day and year first before written

SIGNED as a deed by

MR RICHARD WAYNE SCATES

In the presence of

Witness Signature

Witness Name (in block capitals)

Holly COOLEE

Witness Address

Summerfold, Osborne Road Basildon
SS13219

Witness Occupation

Health care

SIGNED as a deed by

MR LISA DEBORAH SCATES

In the presence of

Witness Signature

Witness Name (in block capitals)

Holly COOLEE

Witness Address

Summerfold, Osborne Road Basildon
SS13219

Witness Occupation

Health care

