

Private and Confidential

Dated **22 August** 2014

BOVIS HOMES LIMITED (1)

AND

ASHFIELD DISTRICT COUNCIL (2)

**DEED OF VARIATION PURSUANT TO SECTION 106A OF THE TOWN AND COUNTRY PLANNING ACT
1990**

relating to

Planning Agreement

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

relating to Land at Studfold Farm Kirkby in Ashfield

(Planning Application Number: V/2014/0314)



**Bovis Homes Limited
Legal Department
Northern Region
Dunston Hall
Dunston
Stafford
ST18 9AB
(Ref: JMM/N - 03/2014)**

DATE

2014

PARTIES

22 August.

- (1) **BOVIS HOMES LIMITED (COMPANY REGISTRATION NUMBER: 397634)** whose registered office is at The Manor House North Ash Road New Ash Green Longfield Kent DA3 8HQ (the "Owner"); and
- (2) **ASHFIELD DISTRICT COUNCIL** of Council Offices Urban Road Kirkby in Ashfield Nottinghamshire NG17 8DA (the "Council")

INTRODUCTION

- (A) The Council is the local planning authority for the purposes of the Act in respect of the Application Site and by whom the obligations in the Initial Agreement as amended by this Deed of Variation are enforceable.
- (B) The Owner is the proprietor of the freehold interest in the Application Site registered at the Land Registry under title number NT414412 and is in the process of developing the Application Site.
- (C) The Application Site has the benefit of planning permission under reference 2003/1094 which was submitted to the Council on 5th November 2003) (the "Initial Permission").
- (D) The Owner has now applied for a variation to the Initial Permission so as to substitute plots 156 – 159 inclusive (the "New Permission").
- (E) The Council will grant the New Permission subject to the entering into of an agreement under Section 106 of the Act which mirrors the Initial Agreement but which relates to the New Permission and have therefore agreed that the Initial Agreement should be varied by the completion of this Deed of Variation.

NOW THIS DEED WITNESSES AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed of Variation unless the context otherwise requires:

"Initial Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) Alan Sowter Edwin Sowter and Keith Sowter and (2) Ashfield District Council dated 11 February 2005 as varied by the Agreement dated 30th March 2007 and made between Bovis Homes Limited (1) and Ashfield District Council (2) relating to the Application Site;

"Initial Permission" means planning permission reference 2003/1094 for the development of the Application Site

"New Permission" means planning permission which may be granted on completion of this Deed of Variation pursuant to planning application reference V/2014/0314 for substitution of plots 156 – 159 (inclusive) contained in the Initial Permission

1.2 In this Deed, unless the context otherwise requires:

1.2.1 References to clauses paragraphs and schedules are references to those in the Initial Agreement; and

1.2.2 Words and phrases whose meanings are not defined or varied by this Deed of Variation have the same meanings as in the Initial Agreement.

1.3 This Deed varies the Initial Agreement which remains enforceable (as amended by this Deed and the Deed dated 30 March 2007) by the Council and which binds each and every part of the Application Site.

1.4 This Deed of Variation is entered into by the Parties pursuant to Section 106A of the 1990 Act and all other enabling powers

1.5 This Deed of Variation is conditional upon the grant of the New Permission

2. VARIATION TO THE INITIAL AGREEMENT

IT IS HEREBY AGREED between the Parties that from the grant of the New Permission the Initial Agreement shall be varied by this Deed of Variation and be construed as follows:

2.1 the definition of "the Application" at clause 1.4 of the Initial Agreement shall be amended by addition of the words "*and the full Planning Application dated [] June 2014 in respect of the substitution of plots 156 – 159 (inclusive) (Planning Application Reference: "V/2014/0314"*".

2.2 the wording of the definition "Planning Permission" shall be deleted and replaced with the wording, "*the relevant planning permissions for the Proposed Development that may be granted by the Council pursuant to the Application*";

2.3 the Parties agree that except as varied by this Deed of Variation and the Deed dated 30 March 2007 the Initial Agreement shall remain in full force and effect.

2.4 nothing in this Deed of Variation affects the Council's powers in respect of any antecedent breach or omission in relation to the Initial Agreement

3. REGISTRATION

This Deed of Variation shall be registered as a local land charge by the Council under the Local Land Charges Act 1975

4. THIRD PARTY RIGHTS

A person who is not named in this Deed of Variation does not have any right to enforce any term of this Deed under the Contracts (Rights of Third Parties) Act 1999 save in respect of successors in title

5. JURISDICTION

This Deed of Variation is governed by and interpreted in accordance with the laws of England and Wales

6. GENERAL

Nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Application Site in accordance with planning permission (other than the Initial Permission or the New Permission) granted (whether or not on appeal) after the date of this Deed

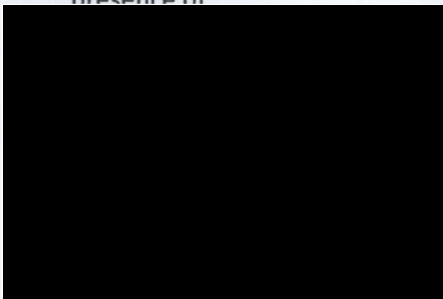
7 COSTS

The Owner shall on the completion of this deed pay the Council's legal costs incurred in the preparation and settlement of this Deed in the sum of £250.00

IN WITNESS whereof the Parties have executed this Deed of Variation the day and year first before written.

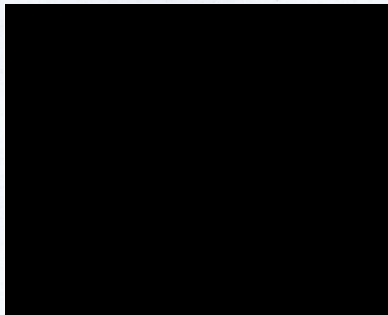
The parties have executed this Deed as a Deed and it is delivered on the date set out above

THE COMMON SEAL of)
ASHFIELD DISTRICT COUNCIL)
Was hereunto affixed in the)
presence of:)



The Common Seal of BOVIS HOMES LIMITED
Was hereto affixed in the presence of:

Authorised Signatory



Authorised Signatory

