

Draft Section 106 Agreement

HEREFORESUBMITTED BY AOL
PLANNING DEPARTMENT
DOW CHEMICAL COMPANY

19 JUN 2013

To: _____
Ack'd _____ File _____

This draft document may be amended, replaced or withdrawn at any time by the Council without notice.

THIS DEED dated

is made BETWEEN:-

1. THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of Brockington 35 Hafod Road Hereford HR1 1SH ("the Council")
2. ALISON MIRANDA LEWIS of Ash Farm, Much Birch, Herefordshire ("the Owner")
3. ~~MG PROPERTY CONSULTANTS LTD (Company registration number 08017410) of Q1, Quadrant Way, Hardwicke, Gloucester GL2 2RN ("the Developer")~~

WHEREAS:-

1. The Council is empowered by Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") to enter into an agreement with any person interested in land in its area for the purpose of restricting or regulating the development or use of that land.
2. The Owner is the [registered proprietor with title absolute] [owner in fee simple in possession] [free from encumbrances] of the Land described in the First Schedule to this Deed ("the Land").
3. The Owner [Developer] has by its agent submitted to the Council the application for planning permission described in the Second Schedule to this Deed ("the Application").
4. The Council [acting by its planning committee] has [resolved to delegate] [delegated] authority to its officers for the grant of the Permission (subject to conditions) and subject to the completion of this Deed for the purpose of restricting or regulating the development or use of the Land.
5. The Council is the local planning authority by whom the restrictions and obligations contained in this Deed are enforceable.
6. The Developer has an interest in the Land for the purposes of Section 106 of the Act by virtue of a Conditional Contract to purchase the land.

THIS DEED 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 powers and enactments which may be relevant for the purposes of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Land and WITNESSES as follows:-

1. Words and Expressions

In this Deed the following words and expressions shall where the context so admits have the following meanings:-

- 1.1 The expressions "the Owner", the "the Council" and "the Developer" shall include their respective successors in title and assigns.
- 1.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1.3 Words of the masculine gender include the feminine and neuter genders and all references in this Deed to a person or persons shall include corporations and ~~unincorporated associations and all other legal entities.~~
- 1.4 Where there are two or more persons included in the expression "the Owner" covenants expressed or implied to be made by Owner shall be deemed to be made by such persons jointly and severally.
- 1.5 Words denoting an obligation on a party to do any act include an obligation to procure that it be done.
- 1.6 Words placing a party under a restriction include an obligation not to permit infringement of that restriction.
- 1.7 References to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force.
- 1.8 "Affordable Housing" is housing provided to eligible households whose needs are not met by the Open Market. Eligibility is determined with regard to local incomes and local house prices. Affordable Housing should remain at an affordable price for future eligible households or the subsidy recycled for alternative Affordable Housing provision. The definitions for all types of Affordable Housing in Herefordshire are contained in the technical data which supports the Council's 'Planning Obligations Supplementary Planning Document' published in April 2008.
- 1.9 "Affordable Housing Units" means (unless otherwise agreed in writing by the Council) the 12 residential units and ancillary areas comprised within the Development and intended for occupation as Affordable Rented Housing identified as plots 1-12 on the drawing numbered 52394/DO1/H forming part of the Application and "Affordable Housing Unit" shall mean any one of such units.
- [1.10 "Affordable Rented Housing" is let by local authorities or Registered Providers to persons who are eligible for Social Rented Housing. Affordable Rented Housing is subject to rent controls that require a rent of no more than 80% of the Open Market rent (including service charges, where applicable).]
- 1.11 "Code for Sustainable Homes" means the national standard for the sustainable design and construction of new homes as defined by the Department of Communities and Local Government.
- 1.12 "Commence Development" and "Commencement of Development" mean to commence the Development pursuant to the Permission by the carrying out of a Material Operation.

- 1.13 "Design and Quality Standards" means the requirements and recommendations for all new homes as defined by the Homes and Communities Agency 'design and quality standards April 2007'.
- 1.14 "Development" shall mean the development of the Land disclosed by the Application.
- 1.15 "Herefordshire Allocations Policy" shall mean the Council's Policy for the allocation of Affordable Housing in the administrative area of the Council which under the Housing Act 1996 as amended by the Homelessness Act 2002 and the Localism Act 2011 the Council has a duty to provide.
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- 1.16 "Herefordshire Local Housing Allowance" means the arrangements in effect now or at any time in the future to calculate housing benefit for people who rent from a private landlord.]
- 1.17 "Home Point" means the agency or body (or any successor agency or body) that on behalf of the Council holds the common housing register and operates a choice based lettings system (or any subsequent lettings system) through which Affordable Housing in the administrative area of the Council is advertised.
- 1.18 "Intermediate Rent" means housing at a rent above the level charged for Social Rented Housing but below Open Market rents. In Herefordshire the Intermediate Rent is set at a maximum of 80% of the Herefordshire Local Housing Allowance."
- 1.19 "Lifetime Homes Standard" means the principles developed by the Joseph Rowntree Foundation establishing 16 design criteria (revised July 2010) intended to maximise good housing design and make homes adaptable for lifetime use.
- 1.20 "Material Operation" has the meaning given by Section 56 (4) of the Act.
- 1.21 "Occupy" "Occupied" and "Occupation" means the first occupation of the Development for residential purposes but excluding occupation for the purposes of construction and fitting out.
- 1.22 "Permission" shall mean the planning permission subject to conditions [to be] granted by the Council permitting the Development pursuant to the Application
- 1.23 "The Plan" means the plan attached to this deed.
- 1.24 "Registered Provider" means a registered provider of Affordable Housing under Part 2 of the Housing and Regeneration Act 2008 being a preferred development partner listed (or intended for listing) in the Council's 'provision of affordable housing technical data' which supports the supplementary planning document Planning Obligations April 2008 (or any subsequent or updated document), or ~~any such other Registered Provider as may previously be agreed with the Council~~ in writing such agreement not to be reasonably withheld.

2. Covenant

- 2.1 The Owner for the purposes of Section 106 of the Act with the intention of binding the Land agrees and covenants with the Council to observe the

restrictions and perform the obligations set out in the Third Schedule to this Deed.

2.2 The Council covenants with the Owner that the Council will comply with the obligations on its part set out in the Fourth Schedule to this Deed

3. Agreement and Declarations

IT IS HEREBY AGREED AND DECLARED that

3.1 The restrictions and obligations in the Third Schedule to this Deed are planning obligations enforceable by the Council in accordance with the provisions of Section 106(3) of the Act against the Owner and his successors in title to the Land.

3.2 With the exception of this paragraph 3.2 and paragraphs 5, 6, 7, 9 and 13, delivery and any other relevant paragraphs of this Deed which have effect on the date of this Deed none of the terms or provisions of this Deed will have operative effect unless and until the date that the Permission is issued by the Council.

3.3 If the Permission shall expire before Commencement of Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect insofar only as it has not already been complied with and without prejudice to the validity of anything done or payments or contributions made or expended whilst this Deed is in force.

3.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.

3.5 If any provision or part provision of this Deed:

3.5.1 shall be held by any court or competent authority to be invalid illegal or unenforceable the validity legality or enforceability of the remaining provisions shall not in any way be deemed to be affected or impaired; and

3.5.2 if any invalid illegal or unenforceable provision or part provision of this Deed would be valid legal and enforceable if some part or parts of it were amended the parties shall amend such provision(s) so that as amended it is legal valid and enforceable and so far as possible achieves the original intentions of the parties.

3.6 The Owner and the Developer shall not be entitled to any costs or compensation whatsoever from the Council arising from the agreement restrictions and obligations contained in this Deed.

3.7 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Party) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from such act.

3.8 No person shall be liable for a breach of a covenant contained in this Deed after parting with all interest in the Land or the part of the Land in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

- 3.9 The restrictions and obligations in the Third Schedule to this Deed shall not be enforceable against owner-occupiers of the Open Market Units nor against those deriving title from them except for the restriction on residential occupation in paragraph 1.2 of the Third Schedule to this Deed.
- 3.10 The obligation contained in paragraph 2 of the Third Schedule to this Deed shall not apply to or be enforceable against any Registered Provider or their mortgagees or chargees with a legal interest in the Affordable Housing Units or occupiers thereof.
- 3.11 The headings in this Deed are for convenience only and shall not be taken into account in the construction and interpretation thereof.
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4. Reservations

For the avoidance of doubt nothing in this Deed shall prevent the Council from exercising any of its statutory powers or functions in relation to the development of the Land.

5. Local Land Charge Provisions

- 5.1 this Deed is a local land charge and shall be registered by the Council as such.
- 5.2 on the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge;
- 5.3 following the performance and full satisfaction of all the terms of this Agreement or if this deed is determined pursuant to clause 3.3 the Council will on the written request of the Owner record such performance or determination in the Local Land Charges Register in respect of this deed.

6. Costs

On or before the date of this Deed the Owner shall pay to the Council its reasonable and proper costs in the preparation and completion of this Deed and an administration fee of £[] towards the cost to the Council of monitoring the obligations in this Deed.

7. Notices and Notice of Commencement of Development

- 7.1 A notice under this Deed is valid only if it is given by hand sent by recorded delivery or document exchange or sent by fax provided that a confirmatory copy is given by hand or sent by recorded delivery or document exchange on the same day and it is served at the address shown in this Deed for the receiving party or at any address specified in a notice given by that party to the other parties.
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- 7.2 A notice sent to the Council:

7.2.1 in relation to any matters arising from sub-paragraphs 1.4; 1.5; 1.6 and 1.8 of the Third Schedule of this Deed shall be addressed to the Housing Manager (Development) Homes and Community Services, Herefordshire Council, PO Box 4, Plough Lane, Hereford HR4 0XH ; or

7.2.2 in relation to any matters arising from all other obligations in this Deed shall be addressed to the 'Planning Obligations Manager,' Planning Management Team, Herefordshire Council, Blue School House, Blue School Street, Hereford HR1 2ZB quoting reference [].

7.3 A notice:

7.3.1 sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post or on the third working day after posting if sent by second class post;

7.3.2 sent through a document exchange is to be treated as served on the first working day after the day on which it would normally be available for collection by the recipient;

7.3.3 sent by fax is to be treated as served on the day on which it is successfully sent or the next working day where the fax is sent successfully after 1600 hours or on a day that is not a working day whenever and whether or not the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail or the document exchange undelivered

7.4 The Council's Planning Obligations Manager shall be given 14 days prior notice of Commencement of Development.

8. Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the obligations or other terms of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the obligations or other terms of this Deed or from acting upon any subsequent breach or default by the Owner.

9. Arbitration

In the event of any dispute or difference arising out of this Deed between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) which is not resolved within 14 days such dispute or difference shall at the request of any party be referred for arbitration under the Arbitration Act 1996 to a sole arbitrator to be agreed between the parties or in the absence of agreement within fourteen days after any party has given to the other(s) a written request to concur in the appointment of an arbitrator to be appointed at the request of any party by the President or Vice President of the Chartered Institute of Arbitrators and in these respects these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996.

10. Warranty as to title

The Owner warrants to the Council that the title details referred to in recital 2 and the First Schedule are complete and accurate in every respect and that no person other than the Owner [and] [the Developer] [and the Mortgagee] [has] [have] any legal or equitable interest in the Land.

11. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12. Interest

If any payment due under the terms of this Deed is paid late interest calculated at the rate of 4% above the National Westminster Bank plc base rate from time to time will be payable from the date payment is due to the date payment is made.

13. Jurisdiction

This Deed is governed by and in accordance with the law of England.

[14. Developer's Consent and Acknowledgement

The Developer hereby consents to the execution of this Deed and acknowledges that the Land shall be bound by the restrictions and obligations contained in this Deed and that the Developer's interest in the Land referred to in recital 6 takes effect subject to this Deed].

[15. Mortgagee's Consent and Acknowledgement

The Mortgagee consents to the execution of this deed and acknowledges that the Land shall be bound by the restrictions and obligations contained in this deed and that the security of the charge over the Land referred to in recital [7] takes effect subject to this deed.].

IN WITNESS of which this instrument has been duly executed as a deed by the parties and delivered on the date set out above

FIRST SCHEDULE

(the Land)

The freehold land known as Land at Tump Lane, Much Birch, Herefordshire registered under title number [] or [more particularly described in [] and shown edged red on the Plan.

SECOND SCHEDULE

(the Application)

An application for planning permission for [“

made under the Council's reference [] and validated
by the Council on []

THIRD SCHEDULE

(Restrictions and Obligations)

The Owner covenants with the Council that no dwellings erected or to be erected on the Land will be Occupied except in accordance with the following restrictions and obligations:

1. Affordable Housing

1.1 To construct or procure the construction of the Affordable Housing Units at no cost to the Council in accordance with the Permission; and

1.1.1 the Design and Quality Standards 2007 (or to such subsequent design and quality standards of the Homes and Communities Agency as are current at the date of construction);

1.1.2 the Lifetime Homes Standard [*need to list negotiated exclusions where appropriate*]; and

1.1.3 a minimum of level 3 of the Code for Sustainable Homes as updated by the technical guide issued in November 2010 assessed against the building regulations (2010) or any subsequent building regulations that come into force prior to the Commencement of Development and Development; and

1.1.4 independent certification of compliance with sub-paragraphs 1.1.1, 1.1.2 and 1.1.3 above shall be given to the Council before the Occupation of the final dwelling within the Development.

1.2 The transfer of the Affordable Housing Units to the Registered Provider shall include the following provisions:-

~~1.2.1 the grant to the acquiring Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units.~~

1.2.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development.

1.3 the Affordable Housing Units must at all times be let and managed [or co-owned] by a Registered Provider in accordance with the guidance issued from time to time by the Homes and Communities Agency (or any successor agency) with the

intention that the Affordable Housing Units shall not be used for any purpose other than the provision of Affordable Housing in the tenure(s) specified in definition 1.9 of this deed (unless otherwise agreed in writing by the Council) to persons who are:

1.3.1 registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and

1.3.2 satisfy the requirements of paragraph 1.5 below.

*1.4 The Affordable Housing Units must be advertised through Home Point unless otherwise agreed by the Council and allocated in accordance with the Herefordshire Allocation Policy for occupation as a sole residence to a person or persons one of whom has:-

1.4.1 a local connection with the parish of Much Birch; or

1.4.2 in the event of there being no person having a local connection to the parish of Much Birch a person with a local connection to one of the following parishes: Much Dewchurch, Aconbury, Little Birch, Llandinabo ; or Llanwarne

1.4.3 in the event of there being no person with a local connection to a relevant parish referred to in sub-paragraphs 1.5.1 and 1.5.2 above any other person who has a local connection to the County of Herefordshire of a type described in sub-paragraphs 1.6.1 to 1.6.5 below and is eligible under the allocations policies of the Registered Provider if the Registered Provider can demonstrate to the Council that after 20 working days of any of the Affordable Housing Units becoming available for letting the Registered Provider having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraphs 1.5.1 or 1.5.2 above.

** instead of a parish local connection the Council may require a wider Herefordshire connection depending on the location of the development - see alternative paragraphs at the end of this document*

1.5 For the purposes of sub-paragraphs 1.5.1 or 1.5.2 of this schedule 'local connection' means having a local connection to one of the parishes specified above because that person:

1.5.1 is or in the past was normally resident there; or

1.5.2 is employed there; or

1.5.3 has a family association there; or

1.5.4 a proven need to give support to or receive support from family members;
or

1.5.5 because of special circumstances

1.6 For the purposes of paragraph 1.6 of this schedule

- 1.6.1 "normally resident" shall be established by having resided in one of the parishes specified in sub-paragraphs 1.5.1 or 1.5.2 of this schedule for 6 out of the last 12 months or 3 out of the last 5 years.
- 1.6.2 "employed" shall mean in the employ of another (or a formal offer of such employment) not being of a casual nature but shall not exclude part-time employment of 16 hours or more per week or self employment.
- 1.6.3 "family association" shall mean where a person or a member of his household has parents, adult children, brothers or sisters currently residing in one of the parishes specified in sub-paragraphs 1.5.1 or 1.5.2 above and who have been resident for a period of at least 12 months and that person indicates a wish to be near them.
- 1.6.4 "support" shall mean a proven need to provide or receive personal and physical care to enable a person or a family member to live independently in the community and includes people who are in need of such support but are not normally resident but have long standing links with the local community.
- 1.6.5 "special circumstances" shall not normally apply but amount to circumstances which in the view of the Council may give rise to a local connection.
- 1.7 The provisions of paragraphs 1.4, 1.5, 1.6 and 1.7 of this schedule shall not be binding on nor enforceable against
- 1.7.1 any mortgagee or chargee of the Registered Provider of the land or any part thereof which exercises its power of sale appointment of a receiver or power of entry as mortgagee or chargee or its successors in title deriving title under such mortgagee or chargee shall not be bound by any of the restrictions provisions or obligations set out in this Schedule if the mortgagee or chargee shall have complied with its obligations pursuant to Sections 144 to 154 of the Housing and Regeneration Act 2008 and no proposals for the future ownership and management of the Land by a Registered Provider shall have been agreed by the mortgagee or chargee within the moratorium period determined in accordance with Sections 145 to 147 of the said Act and thereupon (for the avoidance of doubt) the covenants in this Third Schedule shall be deemed to be extinguished in respect of the Land or any relevant part thereof; or
- 1.7.2 any mortgagee or chargee of an Affordable Housing Unit designated for Shared Ownership ("SO Unit") shall prior to seeking to dispose of any SO Unit pursuant to any default under the terms of the mortgage or charge shall give not less than 20 working days' prior notice to the Council and to the Registered Provider with an interest in the SO Unit of its intention to dispose and:
- 1.7.2.1 in the event that the Registered Provider responds within 20 working days from receipt of the notice indicating that arrangements for the transfer of the SO Unit can be made in such a way as to safeguard it as Affordable Housing then the mortgagee or charge shall co-operate with such arrangements and use its best endeavours to secure such transfer

1.7.2.2 if the Registered Provider does not serve its response to the notice served under paragraph 1.8.2 within the 20 working days then the mortgagee or chargee shall be entitled to dispose free of all the restrictions set out in paragraph 1 of the Third Schedule which shall from the time of completion of the disposal cease to apply

1.7.2.3 if the Registered Provider cannot within 60 working days of the date of service of its response under paragraph 1.8.2.1 secure a binding contract for sale then provided that the mortgagee or charge shall have complied with its obligations under paragraphs 1.8.2.1 the mortgagee or charge shall be entitled to dispose free of all the restrictions set out in paragraph 1 of the Third schedule which shall from time of completion of the disposal cease to apply

Provided That at all times the rights and obligations in this paragraph 1.8.2 shall not require the mortgagee or charge to dispose of the SO Unit for any sum less than the monies outstanding pursuant to the mortgage or charge; or]

1.7.[3] any occupier of an Affordable Housing Unit who has exercised a statutory right to buy or acquire (or any subsequent or substituted contractual right) the whole of the freehold estate in an Affordable Housing Unit nor any mortgagee or such occupier or their respective successors in title.

EXECUTED AS A DEED when
THE COMMON SEAL OF
THE COUNTY OF HEREFORDSHIRE
DISTRICT COUNCIL
was hereunto affixed BY ORDER

Authorised Officer

[EXECUTED AS A DEED by affixing
THE COMMON SEAL of
[name of company]

in the presence of]

[SIGNED AS A DEED by
[*name of company*]
acting by a director and its secretary or two directors]

[SIGNED AS A DEED by

In the presence of:

Witness signature:

Name (capitals):

Address:

[SIGNED AS A DEED by

as attorney on behalf of

In the presence of:

Witness signature:

Name (capitals):

Address:

Other attestation clauses to be confirmed by the applicant as required. If the deed is to be signed by an attorney a certified copies of the power should also be supplied

Dated

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

- and -

[]

[- and -]

[]

DEED OF PLANNING OBLIGATION
made under the provisions of
Section 106 Town and Country Planning Act 1990 (as amended)
relating to

[]

Herefordshire

Legal Services
Legal and Democratic
Herefordshire Council,
Brockington,
35 Hafod Road,
Hereford, HR1 1SH.

* Affordable Housing - Herefordshire Connection. Alternative paragraphs 1.5 to 1.7.2 Schedule 3.

[1.5 The Affordable Housing Units must be advertised through Home Point unless otherwise agreed by the Council and allocated in accordance with the Herefordshire Allocation Policy for occupation as a sole residence to a person or persons one of whom has:-

1.5.1 a local connection to the administrative area of the Council; or

1.5.2 in the event of there being no person with a local connection to the administrative area of the Council any other person ordinarily resident within the administrative area of the Council who is eligible under the allocations policies of the Registered Provider if the Registered Provider can demonstrate to the Council that after 20 working days of any of the Affordable Housing Units becoming available for letting the Registered Provider having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraph 1.5.1 above.

1.6 For the purposes of sub-paragraphs 1.5.1 and 1.5.2 of this schedule 'local connection' means having a local connection to the administrative area of the Council because that person:

1.6.1 is or in the past was normally resident there; or

1.6.2 is employed there; or

1.6.3 has a family association there; or

1.6.4 a proven need to give support to or receive support from family members;
or

1.6.5 because of special circumstances

1.7 For the purposes of paragraph 1.6 of this schedule

1.7.1 "normally resident" shall be established by having resided in the administrative area of the Council for 6 out of the last 12 months, or 3 out of the last 5 years.

1.7.2 "employed" shall mean in the employ of another (or a formal offer of such employment) not being of a casual nature but shall not exclude part-time employment of 16 hours or more per week or self employment.

1.7.3 "family association" shall mean where a person or a member of his household has parents, adult children, brothers or sisters currently residing in the administrative area of the Council and who have been resident for a period of at least the last 12 months and that person indicates a wish to be near them.

1.7.4 "support" shall mean a proven need to provide or receive personal and physical care to enable a person or a family member to live independently in the community and includes people who are in need of such support but are not normally resident but have long standing links with the local community.

1.7.5 "special circumstances" shall not normally apply but amount to circumstances which in the view of the Council may give rise to a local connection.]