

Dated

2025

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

AND

BLOOR HOMES LIMITED

**PLANNING OBLIGATION BY AGREEMENT PURSUANT TO SECTION 106
OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND ASSOCIATED POWERS**

**RELATING TO
LAND OFF CLUBTAIL DRIVE HEREFORD**

Herefordshire Council

Legal Services

Plough Lane

Herefordshire

HR4 0LE

Council's Legal Ref: 104169

Council's Planning Ref: P243045/F

THIS DEED is made the _____ day of _____ 2025

BETWEEN

- (1) **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Plough Lane Offices, Plough Lane, Hereford HR4 0LE (the **Council**);
- (2) **BLOOR HOMES LIMITED** incorporated and registered in England and Wales with company number 02162561 whose registered office is at Ashby Road, Measham, Swadlincote, Derbyshire, DE12 7JP (the **Owner**)

BACKGROUND

- A.** For the purposes of the 1990 Act the Council is the local planning authority for the area within which the Site is situated and the party who is entitled to enforce the obligations contained in this Deed.
- B.** The Owner is the freehold owner of the Site free from encumbrances and which is registered at HM Land registry with title absolute under title numbers HE57799 and HE68092.
- C.** The Owner submitted the Planning Application to the Council for permission to develop the Site for the purposes and in the manner described in the Planning Application.
- D.** The Council is minded to grant Planning Permission subject to conditions and the prior completion of this Deed.
- E.** The Council has considered the provisions of the development plan and taken into account material planning considerations affecting the site and considers that in the interests of the proper planning of its area the Development of the Site ought to be only permitted subject to the terms of this Deed and for that purpose the parties are expressly willing to enter into this Deed.

F. The Owner has agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Deed and that they may be enforced by the Council against the Owner and its respective successors in title.

G. THIS DEED is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 as amended, Section 1 of the Localism Act 2011 as amended 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 Site.

THIS DEED WITNESSES AS FOLLOWS:-

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 For the purposes of the recitals and the covenants in this Deed the following words and expressions have the following meanings:

“Act”	means the Town and Country Planning Act 1990 (as amended);
“Affordable Housing”	means 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 descriptions of all types of Affordable Housing in Herefordshire are contained in the Technical Data;
“Affordable Housing Units”	means the 31 Affordable Private Rented Units and ancillary areas to be constructed on the Site pursuant to the Planning Permission and to the Development Standard and “Affordable Housing Unit” means any one of the said dwellings;
“Affordable Private Rented Housing”	means housing let as part of a Build to Rent scheme that is owned and managed by the Defence Infrastructure Organisation to persons

	who are eligible for Affordable Housing and Affordable Private 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) for which guideline target rents are determined through the Armed Forces Pay Review Body and “Affordable Private Rented Unit” means any Affordable Housing Unit designated for Affordable Private Rented Housing;
"Armed Forces Pay Review Body"	means the non-departmental public body established to review and recommend the pay and terms and conditions of employment of the armed forces;
"Armed Forces Member"	means a serving member of the Royal Navy the Royal Marines the British Army or the Royal Air Force;
"Build to Rent"	has the meaning given to it in Annex 2 of the National Planning Policy Framework;
"Commencement Notice"	means a written notice to be in the form set out in Third Schedule to be served by the Owner on the Council;
"Commencement Date"	<p>means the carrying out in relation to the Development of any material operation (as defined within section 56(4) of the 1990 Act) on the Site pursuant to the Planning Permission but (for the purposes of this Agreement) excluding operations consisting of:</p> <ul style="list-style-type: none"> - site clearance, - demolition work, - environmental site investigations, - archaeological investigations, - site survey works; - investigations for the purpose of assessing ground conditions, - preparatory and remedial work in respect of any decontamination or other adverse ground conditions; - erection of any temporary means of enclosure and the temporary display of site notices or advertisements. <p>The words “Commence”, “Commenced” “Commencement” shall be construed accordingly;</p>

“Defence Infrastructure Organisation”	means the part of the Ministry of Defence responsible for providing, managing and maintaining the infrastructure that supports the armed forces;
“Development”	means the development of the Site as authorised by the Planning Permission for the erection of 31 key worker dwellings including access;
“Development Standards”	<p>means a standard to fully comply with the following:</p> <ul style="list-style-type: none"> (a) “Technical housing standards – nationally described space standards” published by the Department for Communities and Local Government in March 2015 (b) All national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited (d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings);
“Interest”	means interest at 4.5% above the base lending rate of National Westminster Bank PLC from time to time;
“Local Connection”	means an Armed Forces Member based in the County of Herefordshire;
“Military Housing”	<p>means housing that is:</p> <ul style="list-style-type: none"> • owned by the Defence Infrastructure Organisation, Ministry of Defence or any other organisation which is responsible for the provision of built estate for Armed Forces Members. • to be exclusively used and Occupied by Armed Forces Members (and which shall not include dependent children);
“Occupation”	means occupation for residential purposes for which Planning Permission has been granted but not including occupation by personnel engaged in the construction, fitting out or occupation for

	marketing or display purposes and for security purposes and “Occupied” “Occupy” and “Occupier” shall be construed accordingly;
“Open Market”	means the open market for the sale or letting of housing by a person or body other than: (a) a local housing authority; (b) a Registered Provider; or (c) any other person or body offering housing accommodation to the public at less than the prevailing market sale/rent price;
“Plan”	means the plan annexed hereto;
“Planning Application”	means the application for planning permission under the Planning Reference and validated by the Council on 5 December 2024, for planning permission for the full permission for the Development;
“Planning Obligations Manager”	means the Council employee who manages, implements and monitors Section 106 agreements;
“Planning Permission”	means the planning permission under the Planning Reference subject to conditions which may be granted in respect of the Planning Application;
“Planning Reference”	means planning reference P243045/F ;
“Reasonable Endeavours”	means that the party under the obligation shall not be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject hereto such party shall be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable;
“Site”	means the land at Clubtail Drive Hereford shown edged red on the Plan against which this Deed may be enforced and registered at HM Land Registry under title numbers HE57799 and HE68092;

“Supplementary Planning Document “	means the Supplementary Planning Document dated 1 April 2008 which is the Council's guidance for planning obligations in Herefordshire, for all those involved in the submission and determination of planning applications;
“Technical Data”	means the data updated annually by the Council entitled ‘Provision of Affordable Housing Technical Data to Support the Affordable Housing Supplementary Planning Document June 2021 (or any technical data published by the Council in support of any replacement planning policy document);
“Working Day(s)”	Mondays to Fridays (excluding days that in England are public holidays) inclusive.

1.2 In this Deed:

- 1.2.1 the clause headings in this Deed are for convenience only and do not affect its interpretation;
- 1.2.2 unless otherwise indicated references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 a reference to any legislation or legislative provision is a reference to:
- (a) legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by subsequent legislation; that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and
 - (b) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision whether before or after the date of this Deed;
- 1.2.4 the headings in this Deed are inserted for convenience only and shall not affect the construction or interpretation of this Deed;
- 1.2.5 where the agreement, approval, consent or an expression of satisfaction is required by the Owner under the terms of this Deed from the Council; that agreement, approval, consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed;

- 1.2.6 references to the Site include any part of it;
- 1.2.7 references to any party in this Deed include the successors in title of that party and assigns and any person deriving title through or under that party. In addition, references to the Council include any successor to its functions as local planning authority exercising planning powers under the Act;
- 1.2.8 “including” means “including, without limitation”;
- 1.2.9 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.10 where two or more people form a party to this Deed the obligations of that party will be joint and several and may be enforced against them all jointly or against each of them individually;
- 1.2.11 if any provision of this Deed is held by a Court of competent jurisdiction to be illegal unlawful invalid or unenforceable then to the extent possible the offending provision(s) will be severed from the Deed and the legality lawfulness validity and enforceability of the remainder of the Deed shall be unaffected and continue in full force and effect;
- 1.2.12 words importing the singular shall include the plural and vice versa;
- 1.2.13 words importing the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.3 Without prejudice to the terms of any other provision contained in this Deed the Owner shall pay all costs, charges and expenses (including without prejudice to legal costs and Surveyor’s fees) reasonably incurred by the Council for the purpose of or incidental to the enforcement of any right or power of the Council or any obligation of the Owner arising under this Deed;
- 1.4 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 as amended, by any person not a party to it and the terms of this Deed may be varied by a deed agreed between the parties without the consent of any third party being required;

- 1.5 No party will be liable for any breach of the terms of this Deed occurring after the date on which they part with their entire interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any breaches of this Deed occurring before parting with such interests. Neither the reservations of any rights nor the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this sub-clause;
- 1.6 This Deed shall not be enforceable against a statutory undertaker, service company, or any other entity to whom any part of the Site may be transferred, let or otherwise disposed of for the provision of service media, electricity sub-stations, pumping stations, gas governor stations or similar matters, after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker service company, or other such entity;
- 1.7 No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default; and
- 1.8 Entry into this Deed does not constitute a transaction for a chargeable consideration for which Stamp Duty Land Tax is required.

2. EFFECT OF THIS DEED

- 2.1 This Deed is made pursuant to section 106 of the Act and to the extent that they fall within the terms of section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 2 of the Local Government Act 2000, section 1 Localism Act 2011 and all other enabling powers, with the intend to bind the Owners and successors in title.

- 2.3 The covenants, restrictions and requirements of the Owner contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by them in the Site and their respective successors and assigns.
- 2.4 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.5 This Deed will be registered as a local land charge by the Council.

3. MISCELLANEOUS

- 3.1 Nothing in this Deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Deed, whether or not pursuant to an appeal.
- 3.2 Nothing in this Deed shall be construed as a grant of planning permission.
- 3.3 Unless expressly agreed otherwise in this Deed, the covenants in this Deed shall be enforceable without any limit of time against the Owner and any successors in title to the Site and assigns of the Owner in an interest or estate to the Site or any part or parts of the Site as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

4. COMMENCEMENT

The provisions of this Deed shall have immediate effect on the date upon which it is completed.

5. OBLIGATIONS OF THE OWNER

The Owner covenants with the Council as set out in the First and Second Schedules of this Deed.

6. TERMINATION OF THIS DEED

6.1 This Deed will cease to have effect (insofar only as it has not already been complied with) if:

6.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn prior to the Commencement Date so as to render this Deed or any part of it irrelevant, impractical or unviable or;

6.1.2 the Planning Permission expires prior to the Commencement Date.

6.2 The Council shall upon receipt of a written request by the Owner and without unreasonable delay at any time after this Deed has come to an end under clause 6.1 or the obligations contained in the Schedules hereto have been discharged issue written confirmation thereof and note all related entries in the Register of Local Land Charges provided that the Owner has adequately set out the basis for making such a request.

7. NOTICES

7.1 A notice under this Deed is valid only if it is given by hand or sent by recorded delivery 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.

7.2 A notice sent to the Council:

7.2.1 in relation to any matters arising from this Deed shall be addressed to the Planning Obligations Manager Development Management Team, Herefordshire Council, Plough Lane, Hereford, HR4 0LE quoting the Planning Reference.

7.3 A notice:

7.3.1 if delivered by hand, it to be treated as served on signature of a delivery receipt or at the time the notice or document is left at the address provided that, if delivery occurs:

- (a) before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day; and
- (b) if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

7.3.2 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;

8. CHANGE IN OWNERSHIP

8.1 At the time of execution of this Deed, the Owner warrants that no person other than the Owner has any legal or equitable interest in the Site.

8.2 The Owner agrees to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company address or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

9. ENFORCEMENT

9.1 This Deed is to be governed by and interpreted in accordance with the law of England;

9.2 The Courts of England are to have jurisdiction in relation to any disputes between the parties out of or related to this Deed. This clause operates for the benefit of the Council who retains the right to sue the Owner and enforce any judgment against the Owner in the courts of any competent jurisdiction.

10. DISPUTE

Any dispute or disputes between any of the parties to this Deed arising out of the provisions of this Deed (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) shall be referred to a single arbitrator to be agreed between the parties or in default of agreement on the application of any party by the President of the Royal Institute of Chartered Surveyors in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment for the time-being in force.

11. COUNCIL'S COSTS

- 11.1 The Owner covenants and agrees with the Council that prior to completion of this Deed the Owner shall pay to the Council its reasonable and proper legal costs in connection with the preparation of this Deed, together with all disbursements, incurred in connection with the negotiation, preparation, completion and registration of this Deed; and
- 11.2 The Owner covenants and agrees with the Council that prior to Commencement to pay to the Council the Council's reasonable Planning Obligations Manager monitoring costs in the sum of 2% of the total Contribution.

12. LATE PAYMENT

Without prejudice to the Council's rights to enforce any breaches of this Deed (including by way of injunction) if any sum due to the Council from the Owner under this Deed is not paid on or before the date upon which it is due then Interest shall be payable from the due date of payment until the actual date of payment

13. COMMUNITY INFRASTRUCTURE LEVY

The terms of this Deed comply in all respects with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 in that the obligations contained herein are necessary to make the Development acceptable in planning terms, directly relate to the Development and fairly and reasonably relate in scale and kind to the Development.

14. VAT

- 14.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
- 14.2 The Owner hereby acknowledges and agrees that if at any time VAT is required to be paid in respect of the Site and the Contributions then to the extent that VAT had not been previously charged in respect of that payment the Council shall have the right to issue a VAT invoice to the Owner and the VAT shall be paid accordingly.

15. RIGHT OF ACCESS

Without prejudice to the Council's statutory right of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising under the Deed has been performed or observed.

16. 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 Site.

17. SECTION 73 VARIATION

17.1 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the 1990 Act and unless otherwise agreed between the parties, with effect from the date that the new planning permission is granted pursuant to Section 73 of the 1990 Act:

17.1.1 The obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Site granted pursuant to Section 73 of the 1990 Act and the Site itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the 1990 Act;

17.1.2 The definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the 1990 Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permission(s); and

17.1.3 This Deed shall be endorsed with the following words in respect of any future Section 73 application:

“The obligations in this Deed relate to and bind the Site in respect of which a new planning permission reference [] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)”

ALWAYS PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations insofar as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to Section 106 of the 1990 Act.

18 COUNCIL'S POWERS

Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes bye-laws statutory instruments orders and regulations in the exercise of their functions as local authority.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

FIRST SCHEDULE
(Commencement)

1. Notice of Commencement

The Owner hereby covenants as follows:

- 1.1 not less than five Working Days prior to Commencement Date to serve the Commencement Notice on the Council;
- 1.2 Not to permit or cause or allow the Commencement of Development until the Commencement Notice has been served upon the Council.

SECOND SCHEDULE

(Affordable Housing)

1. Affordable Housing

The Owner covenants and agrees with the Council:

- 1.1. Not to Commence Development unless and until the Owner has entered into a legally binding contract with the Defence Infrastructure Organisation to transfer the Affordable Housing Units to the Defence Infrastructure Organisation for use as Military Housing for Occupation by Armed Forces Members.
- 1.2. Following the Commencement of Development to construct or procure the construction of the Affordable Housing Units at no cost to the Council to the Development Standards and in accordance with the Planning Permission and to ensure the Occupation in accordance with the provisions of this Second Schedule.
- 1.3. Not to Occupy or cause or permit the Occupation of any of the Affordable Housing Units unless and until the Affordable Housing Units have been transferred by freehold transfer with title absolute and full title guarantee to the Defence Infrastructure Organisation subject to covenants by the Defence Infrastructure Organisation not to use the Affordable Housing Units other than as Military Housing for Occupation by Armed Forces Members in perpetuity.
- 1.4. The transfer of the Affordable Housing Units to the Defence Infrastructure Organisation shall include the following provisions:-
 - 1.4.1. the grant to the Defence Infrastructure Organisation of all rights of way access and passage of services and all other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units; and
 - 1.4.2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development.
- 1.5. not to let or manage or allow the Affordable Housing Units to be let or managed other than as Affordable Private Rented Housing Units for the purposes of providing Military Housing to Armed Forces Members who have a Local Connection and who are eligible for Affordable Housing in accordance with the allocation policies of the Defence Infrastructure Organisation.

THIRD SCHEDULE
Commencement Notice

TO: Planning Obligations Manager
Hereford Council
Plough Lane
Hereford
HR4 0LE

(“the Council”)

FROM:

(“the Owner”)

DEVELOPMENT: (*description of development and site name*):

RELEVANT PLANNING PERMISSION (*reference number*):

RELEVANT SECTION 106 AGREEMENT (*date and parties*):

(“the Section 106 Agreement”)

I/We Owner * hereby put the Council on notice that we intend to commence development on [{}] 20[{}]. This notice is the Commencement Notice served pursuant to the Section 106 Agreement.

DATED this day of 202[]

.....

Signed by the Owner or an authorised signatory of the Owner

ANNEX 1
SITE PLAN

IN WITNESS of which the parties have executed this Agreement as a Deed on the date first written above

EXECUTED AS A DEED when the)
COMMON SEAL of the)
COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL)
was hereunto affixed **BY ORDER**)

Authorised Signatory

EXECUTED as a **DEED** by
BLOOR HOMES LIMITED
acting by:

.....
Director

.....
Director / Company Secretary