

DATED

12 July

2024

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

THE ROYAL BRITISH LEGION (2)

SUPPLEMENTAL AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990
in respect of Land at Royal British Legion Social Club, Watts Dyke, Llay in the
County Borough of Wrexham

Linda Roberts
Chief Officer Governance & Customer
Guildhall
Wrexham
LL11 1AY
(Ref: WCBC – NR/214368)

THIS AGREEMENT is made on the 12 day of July 2024
BETWEEN:-

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham LL11 1AY ("the Council")
- (2) **THE ROYAL BRITISH LEGION** a body corporate incorporated by Royal Charter and a registered charity (registered under charity number 219279) of Haig House, 199 Borough High Street, London SE1 1AA ("the Owner")

RECITALS

- (A) The Owner and the Council have agreed to the preparation of this Supplemental Agreement which is made under Section 106 of the Town and Country Planning Act 1990 ('the Act') and is supplemental to the Main S106 Agreement.
- (B) The Owner is the owner of the Site registered at the Land Registry under Title Number CYM488124.
- (C) The Main s106 Agreement regulates development carried out or to be carried out under the Existing Permission (as hereinafter defined).
- (D) A clause was omitted from the Main s106 Agreement.
- (E) The Council is the Local Planning Authority for the purposes of Section 106 of the Act in respect of the Land.
- (F) The Owner and the Council have agreed to the preparation of this supplemental agreement.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 1.1.1 In this Supplemental Agreement expressions shall where the context admits have the same meaning as expressed in the Main S106 Agreement and in the event of conflict the provisions of this Supplemental Agreement shall prevail.
- 1.1.2 In this Supplemental Agreement unless the contrary intention appears the following terms shall have the following meanings:

"the Permission"

means the planning permission granted by the Council on 15 October 2019 under code number P/2018/0933.

"Main s106 Agreement"

means the Agreement dated 11th October 2019 made between the Council and the Owner

"Supplemental Agreement"

means this agreement

1.2 Interpretation

- 1.2.1 A reference in this Supplemental Agreement to an Act of Parliament or to any order regulation statutory instrument or the like shall include a reference to any amendment or re-enactment of the same.
- 1.2.2 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.
- 1.2.3 Any heading or side notes are for ease of reference only and shall not affect the construction of this Supplemental Agreement.
- 1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 1.2.5 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council the successors in title to their statutory functions.

2. FORMAL REQUIREMENTS

- 2.1 The Council enters into this Supplemental Agreement in pursuance of its powers under Section 106 of the 1990 Act Section 2 of the Local Government Act 2000 and Section 111 of the Local Government Act 1972 and all other enabling powers in that regard
- 2.2 The obligations imposed by this Supplemental Agreement relate to the Site and are binding on the Owner and its successors in title pursuant to Section 106 of the 1990 Act
- 2.3 The obligations contained in this Supplemental Agreement are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable as such by the Council as local planning authority
- 2.4 This Supplemental Agreement is a Local Land Charge for the purposes of the Local Land Charges Act 1975 and will be registered as such by the Council

3. OPERATIVE PROVISIONS

The parties agree that the Main s106 Agreement shall henceforth be read and construed and take effect subject to the following additions:

- 3.1 The addition of a new definition in clause 1 of the 106 Main Agreement as follows:

"Affordable Housing Commuted Sum" means the amount (if any) calculated pursuant to paragraph 1 of Part 8 of the Fifth Schedule."

- 3.2 The addition of a new Part 8 to the Fifth Schedule of the 106 Main Agreement as follows:

Part 8 - Calculation of "Affordable Housing Commuted Sum"

1. Should the Affordable Housing Scheme pursuant to planning condition 13 of the Permission result in the requirement for a fraction of an Affordable Housing Unit (being less than one Affordable Housing Unit) (the "**Partial Affordable Housing Unit**") then within 30 days of the date of first Occupation of the last Affordable Housing Unit within the Site the Owner shall pay an Affordable Housing Commuted Sum in lieu of provision of Affordable Housing in respect of that Partial Affordable Housing Unit (only) which shall be calculated by the Owner and notified in writing to the Council in accordance with the following formula:

$$D/N \times Y = \text{Affordable Housing Commuted Sum}$$

Where

D = total value of discount for Affordable Housing Units constructed on the Site

N = total number of Affordable Housing Units constructed on the Site

Y = The fraction represented by the Partial Affordable Housing Unit

By way of a worked example:

If the Site had 50 dwellings in total and the Affordable Housing requirement is 25% that would equate to a requirement for 12.5 Affordable Housing Units of which 12 would be constructed and 0.5 would be a commuted sum payable in lieu

D would be calculated on the basis of the discount that the 12 Dwellings are sold to an RSL

Using an illustration market value of £150,000, if all 12 were sold at 30% discount then:

$$30\% \times £150,000 \times 12 = £540,000$$

$$D = £540,000$$

$$N = (£540,000/12) \text{ so is } £45,000$$

$$Y = 0.5$$

So the Affordable Housing Commuted Sum using these illustrative figures would be £45,000 x 0.5 = £22,500

2. Within 21 days of the amount of the Affordable Housing Commuted Sum being notified to the Council the Owner shall pay

the Affordable Housing Commuted Sum to the Council PROVIDED THAT it is a condition of the payment of the Affordable Housing Commuted Sum that such funds shall be used by the Council for the provision of Affordable Housing within the Wrexham County Borough Council administrative area within 5 years of receipt and FURTHER PROVIDED THAT any part of the Affordable Housing Commuted Sum that remains unspent by the Council after the period of 5 years from the date of receipt shall be refunded to the person that made the payment.

- 3.3 The addition of reference to the "Affordable Housing Commuted Sum" after each reference to "Affordable Housing Contribution" in each of paragraphs 1 and 2 of the Seventh Schedule

4 **CONTINUATION OF THE MAIN S106 AGREEMENT**

The parties agree that from the date hereof the Main S106 Agreement shall continue in full force and effect amended by clause 3 of this Supplemental Agreement of the 106 Main Agreement.

5 **AGREEMENTS AND DECLARATIONS**

- 5.1 Nothing contained or implied in this Supplemental Agreement shall prejudice or affect the discretions rights powers duties and/or obligations of the Council in the exercise of its functions as a local authority highway authority housing authority education authority and local planning authority and the discretions rights powers duties and/or obligations of the Council under all public and private statutes byelaws orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if this Supplemental Agreement had not been executed by the Council and in particular nothing in this Supplemental Agreement shall restrict the Council and/or any other local authority from exercising powers of compulsory purchase in respect of any part of the Land;
- 5.2 Unless the right of enforcement is expressly granted the parties to this Supplemental Agreement do not intend any of its terms to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Supplemental Agreement save for the avoidance of doubt it is declared that the exclusion of the application of the Contracts (Rights of Third Parties) Act 1999 shall not prevent any future successor in title to any of the parties to this Supplemental Agreement from being subject to or able to benefit from or to enforce any of the obligations benefiting such original party in this Supplemental Agreement including by any successor local planning authority to the Council exercising planning powers under the 1990 Act and the parties may rescind or vary this Supplemental Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided
- 5.3 If any of the terms obligations and/or covenants in this Supplemental Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable the same shall be severable from the remainder of this Supplemental Agreement and the remainder

of this Supplemental Agreement or the application of such terms obligations and/or covenants to parties or circumstances other than as to which such terms obligations and/or covenants is held invalid or unenforceable shall not be affected thereby and each of the other terms obligations and/or covenants of this Supplemental Agreement and the Planning Permission shall be valid and be enforceable to the full extent permitted by law

- 5.4 Each party to this Supplemental Agreement acknowledges that this Supplemental Agreement has not been entered into in reliance wholly or partly on any statement or representations made by or on behalf of the other party except any such statement or representation that is expressly set out in this Supplemental Agreement

6 RELEASE

The Owner shall have no liability for any breach of its obligations under this Deed which occurs after it has parted with its interest in the residential parts of the Development within the Site.

7 PAYMENT OF COSTS

The Council acknowledges payment on behalf of the Owner of the sum of £500.00 in respect of the Council's legal costs for the preparation and execution of this Supplemental Agreement

IN WITNESS whereof the Owner and the Council have executed this Supplemental Agreement as a **DEED** the day and year first before written

EXECUTED as a DEED on the date specified as the commencement of this Agreement

EXECUTED as a DEED by affixing

THE COMMON SEAL of

WREXHAM COUNTY BOROUGH COUNCIL

in the presence of:-



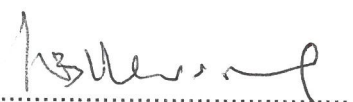
Chief Officer Governance & Customer

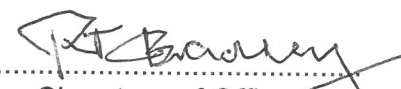


221/24

P0461/2024/0672

EXECUTED as a deed by THE)
ROYAL BRITISH LEGION acting)
by two authorised Officers in the)
presence of a witness)


.....
Signature of Officer


.....
Signature of Officer

Witness: 
Signature.....

Name..OLIVER RILEY.....

Address..7 SCHOOL STREET.....

BOLTON BL5 2BG.....

Occupation..DIRECTOR.....