

AS-CR120

DATED

6 March

2019
~~2018~~

SS

PINHOE QUARRY LLP (1)

and

EXETER CITY COUNCIL (2)

and

DEVON COUNTY COUNCIL (3)

DEED OF VARIATION

under S.106 and 106A of the

Town and Country Planning Act 1990 (as amended)

relating to land at

Pinhoe Quarry Harrington Lane

Pinhoe Exeter Devon

THIS DEED is made the 6 day of march

2019 ss
2018

BETWEEN

- (1) PINHOE QUARRY LLP (Registered Co. No. 0C337239) of Greendale Court, Clyst St Mary, Exeter, Devon EX5 1AW ("the Owner") and
- (2) EXETER CITY COUNCIL of Civic Centre Paris Street Exeter EX1 1JJ ("the City Council") and
- (3) DEVON COUNTY COUNCIL of County Hall Topsham Road Exeter EX2 4DQ ("the County Council")

BACKGROUND

- (a) The City Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (b) The County Council is the education and highway authority and one of the local planning authorities for the area in which the Site is situated.
- (c) The Owner is the registered proprietor of the Site with Title Absolute registered under Title Number DN289864 subject to the entries disclosed on the Charges Register of the said Title but otherwise free from encumbrances.
- (d) By the Original Agreement the Owner (1) the City Council (2) and the County Council (3) (together herein called "the Parties") agreed the planning obligations requirements and restrictions in the Original Agreement.
- (e) The Parties have agreed that the terms of the Original Agreement shall be varied as set out in the Schedule hereto.
- (f) This Deed is supplemental to and varies the Agreement

IT IS HEREBY AGREED AS FOLLOWS

1. Interpretation

- 1.1. In this Deed unless the context otherwise requires the following words and expressions shall have the following meanings:

"Original Agreement" means the agreement made between the Parties pursuant to Section 106 of the 1990 Act in relation to planning permission reference 10/2088/01 dated 3rd February 2012

"Westco" means Westco Properties Limited (Co. Regn. No 2677745.) of 72 Paris Street, Exeter, EX1 2JZ or any company with the same company registration number following a change of name

- 1.2. Unless expressly stated otherwise the words and expressions used in this Deed shall have the same meaning as defined by clause 1 of the Original Agreement.
- 1.3. Clause headings shall not affect the interpretation of this Deed.
- 1.4. Unless expressly stated otherwise in this Deed the terms, clauses, obligations, restrictions and requirements of the Original Agreement shall continue with full force and meaning save as amended, modified or discharged by the terms of this Deed as set out in the Schedule hereto.

2. Statutory Provisions

- 2.1. This Deed is made pursuant to Sections 106 and 106A of the Town and Country Planning Act 1990 and all other powers enabling with the intention that it binds the Owner's interest in the Property and that the planning obligations contained in the Agreement (as varied herein) be enforceable by the Council as local planning authority

3. Variation

The parties agree to vary the Agreement in the manner as set out in the Schedule to this Deed.

4. Agreement between the Parties

- 4.1. The Parties to this Deed hereby agree that the terms of the Original Agreement shall be varied as detailed in the Schedule hereto.
- 4.2. The Parties to this Deed hereby agree that the terms of the Original Agreement not varied as detailed in the Schedule hereto shall remain unamended and fully enforceable.
- 4.3. The Owner shall pay the reasonable legal costs of the City Council and the County Council incurred in the negotiation and completion of this Deed.

5. Conditionality

- 5.1. The provisions of this Deed shall take effect immediately on completion of this Deed.

IN WITNESS of which the Parties hereto have executed and delivered this Deed the day and
year first before written

SCHEDULE

Paragraph 1. Definitions

- 1 The word "Plan" is to remain and its meaning shall be deleted and replaced with the following:

"The plan entitled Pinhoe Quarry Exeter, Section 106 plan dated August 2017 with reference number 130803 L 01 03 A". A copy of the Plan is attached to this Deed at Annex A

2. After the definition of "Restricted Dwelling" there shall be inserted the following definition

"Section 73 Consent" means a planning permission granted pursuant to Section 73 of the 1990 Act for the development of the Site without complying with conditions subject to which the Planning Permission was granted

3. After paragraph 3.2 there shall be inserted:

"3.3 Subject to the proviso to this clause if any Section 73 Consent is granted after the date of this deed:

3.3.1 the obligations in this deed shall relate to and bind such Section 73 Consent; and

3.3.2 the definitions of Application, Development and Planning Permission shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself

PROVIDED THAT:

3.3.3 nothing in this clause shall fetter the discretion of the City Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

3.3.4 to the extent that any of the obligations in this deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and

3.3.5 the City Council reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the City Council (acting reasonably) considers it necessary to do so

4. Third Schedule Part A paragraph 1 shall be deleted and replaced with the following:

"1 In the event that Commencement of the Housing Development is by any party other than Westco a minimum of 15% of the total number of Dwellings to be constructed on the Site (that is 57 out of the 380 Dwellings) are hereby designated as Affordable Housing which shall not be occupied other than as Affordable Housing and by Specified Eligible Persons in accordance with the provisions of this Third Schedule but in the event Commencement of the Housing Development is by Westco 17% of the total number of Dwellings to be constructed on the Site (that is 65 units out of 380 Dwellings or equivalent pro rata number if fewer units are constructed) are hereby designated as Affordable Housing which shall not be Occupied other than as Affordable Housing and by a Specified Eligible Persons in accordance with the provisions of the Third Schedule.

5. Third Schedule Part A paragraph 3 shall be deleted and replaced with the following:

"3 In the event Commencement of the Housing Development is by any party other than Westco at least seventy per cent (70%) of the Affordable Housing designated by Paragraph 1 above shall be Social Rented Dwellings and any Affordable Dwelling which is not a Social Rented Dwelling shall be a Shared Ownership Dwelling and the breakdown of Social Rented Dwellings and Shared Ownership Dwellings is set out in Paragraph 4 (C) of this Third Schedule but in the event Commencement of the Housing Development is by Westco 75% of the Affordable Housing designated by Paragraph 1 above shall be Social Rented Dwellings and the breakdown of Social Rented Dwellings and Shared Ownership Dwellings in the event Commencement of the Housing Development is by Westco is set out in Paragraph 4(C) of this Third Schedule."

6. Third Schedule Part A paragraph 4 (c) shall be amended to read:

"(c) The type and tenure of individual Affordable Dwellings which shall (unless agreed in writing with the City Council's Assistant Director (Housing and Commercial Contracts) otherwise) be as follows:

Shared Ownership Dwellings

(30%) 17 x 3 bedroom houses

Social Rented Dwellings

(7%) 4 x 1 bedroom flats

(7%) 4 x 2 bedroom flats

(13%) 7 x 2 bedroom houses

(5%) 3 x 2 bedroom Wheelchair Accessible housing (bungalows) which shall be sold to the City Council for one pound (£1.00) per unit

(21%) 12 x 3 bedroom houses

(12%) 7 x 4 bedroom houses

(5%) 3 x 5 bedroom houses

UNLESS Commencement of the Housing Development is by Westco in which case the type and tenure of individual Affordable Dwellings shall (unless otherwise agreed in writing with the City Council's Assistant Director Housing and Commercial Contracts) otherwise) be as follow:

Social rented Dwellings

(12%) 8 x 1 bedroom flats

(9%) 6 x 2 bedroom flats

(18%) 12 x 2 bedroom houses

(5%) 3 x 2 bedroom Wheelchair Accessible housing (bungalows) which shall be sold to the City Council for one pound (£1.00) per unit

(23%) 15 x 3 bedroom houses

(8%) 5 x 4 bedroom houses

Shared Ownership Dwellings

(25%) 16 x 3 bedroom houses

7. Third Schedule Part A paragraph 5 shall be deleted.
8. Third Schedule Part A paragraph 7 shall be deleted and replaced with the following:
"7 Three (3) of the two bedroom houses provided as Social Rented Dwellings shall be provided as Wheelchair Accessible Housing in the form of bungalows and shall comply in all respects with the Wheelchair Accessible Design Standards (January 2011)

published by the City Council. The said three (3) Affordable Dwellings shall be agreed with the Assistant Director (Housing and Commercial Contracts) at the time of agreeing the Details and no more than 60% of the Open Market Dwellings within any Phase of the Housing Development within which any Wheelchair Accessible Housing is to be provided shall be Occupied until the Owner has irrevocably offered in writing to transfer the said Wheelchair Accessible Housing to the City Council for a Consideration of no more than One Pound (£1) for each of the said Wheelchair Accessible Housing Affordable Dwellings and on the basis that having irrevocably offered in writing to transfer the said Wheelchair Accessible Housing to the City Council the Owner proceeds expeditiously to effect the said transfer SAVE THAT should the City Council not accept the transfer of the Wheelchair Accessible Housing the Owner shall in that event nevertheless provide the said three (3) Social Rented Dwellings as Affordable Dwellings and as Wheelchair Accessible Housing on the same basis as the other Social Rented Dwellings must be provided in accordance with this Third Schedule.

9. Third Schedule Part B, para. 11.2 shall be deleted and replaced with the following:

"11.2 provide for the lessee to acquire an initial share of the equity in the Affordable Dwelling having a value not exceeding forty per cent (40%) of the Open Market Value of the Affordable Dwelling at that time (the "Maximum Initial Share") with the opportunity (but no obligation) for the purchaser to acquire additional equity shares;"

10. Third Schedule Part B paragraph 11.3 shall be amended to read:

"11.3 provide for an initial rent payable that does not exceed two point seven five percent (2.75%) of the Open Market Value of the equity retained by the landlord which rent may be increased no more than annually and by not more than the corresponding increase in the Retail Price Index plus 0.5% with any service charge not exceeding the maximum amount which an occupier of the Affordable Dwelling would be entitled to claim in respect of service charge under the Local Housing Allowance (or equivalent) regulations in force from time to time;"

11. Third Schedule Part B paragraph 12 shall be deleted

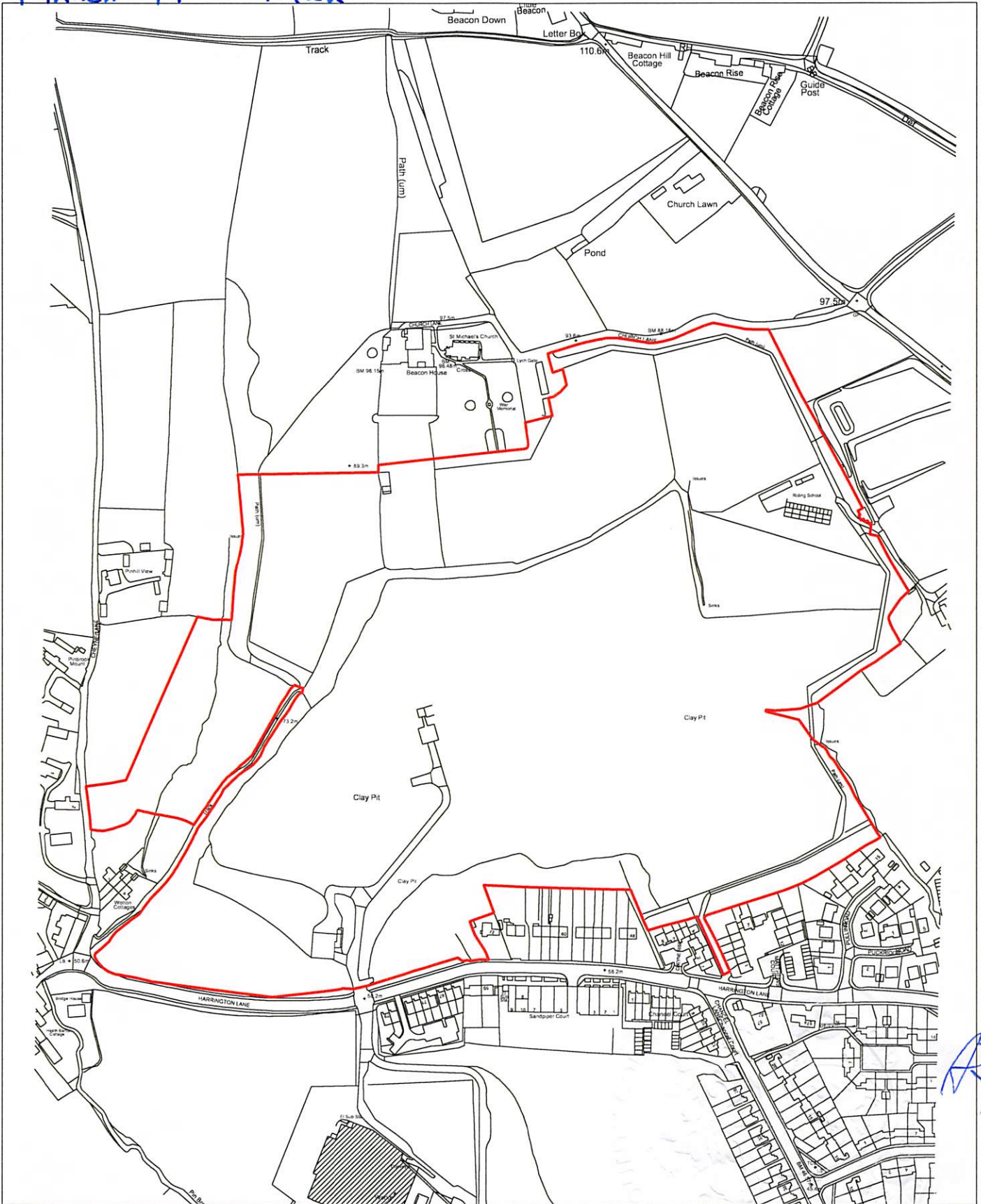
12. Third Schedule Part C shall be deleted and replaced with the following:

"Part C – Mortgagee Exclusion Clause

The provisions of this Third Schedule shall:

1. not be binding on a mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person

Annex A Plan



NOTES

Red line amendment, title block updated

Adam
John
Simon Cope



Pinhoe Quarry, Exeter
Section 106 Plan

130803 L 01 03

1:2500 @ A3

April 2018

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DRAWING STATUS Preliminary

CONTRACTORS MUST CHECK ALL DIMENSIONS ON SITE. ONE Y-CLIP OR ONE REDLINE LINE TO BE WORKED FROM THIS DRAWING. A COPYRIGHT

29 A 4



appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Dwelling(s) or any persons or bodies deriving title through such mortgagee or chargee or Receiver
PROVIDED THAT:

a. such mortgagee or chargee or Receiver shall first give written notice to the City Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwelling(s) to another registered provider or to the City Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

b. if such disposal has not completed within the three-month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the provisions of this Third Schedule which provisions shall determine absolutely;

2. Cease to apply to any part or parts of the Affordable Dwellings which are transferred or leased by any party referred to in paragraph ;above 1

3. Cease to apply to any Affordable Dwelling where an Affordable Housing Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable [including any such right arising from any voluntary scheme entered into by an Affordable Housing Provider

4. Cease to apply to any Affordable Dwelling where an Affordable Housing Provider sells to a tenant through Social HomeBuy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof

5. Not bind any shared ownership leaseholder nor any successor in title to such person.

6. Not bind any mortgagee or chargee or Receiver of any such shared ownership leaseholder referred to in paragraph 5 above nor any person deriving title through such persons.

SIGNED as a DEED by)

PINHOE QUARRY LLP)

Acting by two members)

First Member.....

(For and on behalf of Pinhoe Quarry LLP)

Idem DIRECTOR

Management Limited

Second Member.....

(For and on behalf of Pinhoe Quarry LLP)

Idem DIRECTOR

Wadsworth Park Limited

EXECUTED AS A DEED by

affixing THE COMMON SEAL of

EXETER CITY COUNCIL

in the presence of:

Simon G...

Corporate Manager Legal Services/Chief Legal Executive

Litigation Solicitor



EXECUTED AS A DEED by

Affixing THE COMMON SEAL of

DEVON COUNTY COUNCIL

in the presence of:

A/Endole

Authorised Signatory



DOCUMENT No 49580

A Duly Authorised Officer