

## Land on Kelshall Road, Therfield

### *Note on existing S106 Agreement dated 6 August 1993 and proposed deed of variation and new S106 Agreement*

- 1.1 This note has been written by Temple Bright LLP for the benefit of Quanta Homes 6 Limited (“Quanta”).
- 1.2 Quanta are to submit a planning application for the redevelopment of the land on Kelshall Road, Therfield Property registered at the Land Registry under title number HD307468 (the “**Site**”). The Site is owned by Graham Bullard and Jean Margaret Bullard (the “**Owner**”). The application is to seek permission to redevelop the Site to erect three residential dwellings (the “**Development**”).
- 1.3 The Site is subject to an agreement made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended). The agreement is dated 6 August 1993 made between (1) David Miller and (2) North Hertfordshire District Council (the “**Original Agreement**”) and remains extant.
- 1.4 The Original Agreement defines the land that is bound by it as: “*land (the Land) situate at Tuthill Farm, Kelshall Road, (Therfield, Royston, Hertfordshire and shewn edged red on the attached plan for the purposes of identification only*”. No colour version of the plan attached to the Original Agreement is available and the extent of the “Land” that is bound by the Original Agreement is not clear. An extract of the plan attach to the Original Agreement is shown at Schedule 1. Therefore it is possible that the “Land” as defined in the Original Agreement is greater than the Site as owned by the Owner.
- 1.5 James William Croucher is the registered freehold proprietor of the land to the south of the Site as registered at HM Land Registry Title Number HD312324. There is a strip of land along the southern boundary of the Site where there is existing landscaping and it is possible that the Original Agreement binds part of the land which is outside of the Site and owned by Mr Croucher where this landscaping is located (i.e. the strip of landscaping forms part of the “Land” bound by the Original Agreement). Mr Croucher has confirmed that he is willing to enter into a deed of variation to consent to the Original Agreement being varied and to confirm that any restrictions in the Original Agreement that do bind his land relating to existing landscaping on his land, will continue to do so.
- 1.6 The Original Agreement includes restrictions on the use of the Land in connection with the existing use of the Land (as defined in the Original Agreement). The implementation of the planning permission for the Development will create a new chapter in the planning history of the Site and the restrictions in the Original Agreement relating to the previous use are to be varied and/or released insofar as they relate to the Site.

- 1.7 The planning application relates to the Site (as owned by the Owner) and does not include any land owned by Mr Croucher as no development is proposed on the land owned by Mr Croucher. Any obligations in the Original Agreement relating to landscaping in relation to the land owned by Mr Croucher will continue to bind.
- 1.8 This note sets out the legal position and procedure in order to document the variation of the Original Agreement through the application process for the Development.

## **2. LEGAL POSITION**

- 2.1 The power to modify or discharge any section 106 agreement by agreement is provided by Section 106A the Town and Country Planning Act 1990:

*“S106A(1) planning obligation may not be modified or discharged except—*

*(a) by agreement between the appropriate authority (see subsection (11)) and the person or persons against whom the obligation is enforceable”.*

- 2.2 The parties to the contract (i.e. for the Original Agreement, the Owner(s) of the “Land” and the Council) can lawfully agree to discharge an agreement at any time. There is a requirement that the discharge is documented through an instrument executed as a deed (Section 106A(2)).
- 2.3 There is nothing in the Original Agreement which could be interpreted as prohibiting or limiting the right of any person to apply to develop the Site in any way which is authorised by a planning permission to be granted subsequent to the conclusion of the Original Agreement. Nor is there any form of prohibition or restriction that fetters the power of the Council to grant any new planning permission.

## **3. PROCEDURE**

- 3.1 There are no additional procedural requirements or statutory tests required by law for the discharge or modification of any section 106 agreement where it is agreed between the parties to that contract<sup>1</sup>.
- 3.2 The discharge or modification of the Original Agreement can be agreed as part of the application process and the permission for the Development should not be granted until it is completed. The Council’s reasonable legal fees will need to be paid prior to completion.

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<sup>1</sup> This is unlike the extensive procedure where there isn’t agreement with a Council to modify or discharge under Section 106A(3) and the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 SI 1992/2832 (“1992 Regulations”). These provisions and procedures do not apply to a S106 agreement modified or discharged by agreement.

- 3.3 The Original Agreement revoked an earlier planning agreement dated 15th September 1978. This revocation is to continue to apply and should be documented by modifying the Original Agreement.
- 3.4 The Original Agreement contains a restriction on part of the Land coloured red for that land not to be used for any purpose other than as a landscaped area. It is understood that all parties are desirous for this restriction to remain. The plan to the Original Agreement does not show any colours but it appears to relate to two areas. These are:
- (a) An area of land at the western end of the Site. This restriction will be re-imposed via a new S106 Agreement with the area of “Landscaped Land” shown hatched green on the plan proposed to be attached to the S106 Agreement at Appendix 2.
  - (b) A strip of land along the southern boundary of the Site where there is existing landscaping. This strip of land is outside of the Site. The restriction will be unaffected by the deed of variation and new S106 Agreement and the owner of that land (Mr Croucher) will enter into the deed of variation to consent to the Original Agreement being varied and to confirm that any restrictions that do bind his land relating to existing landscaping on his land, will continue to do so.

#### **4. A TERMS OF A DEED OF VARIATION AND A NEW S106 AGREEMENT**

- 4.1 The intention is to enter into a deed of variation and a new S106 Agreement. The deed of variation will allow for the new Development to be built out and the new S106 Agreement will ensure that the “Landscaped Area” within the Site is restricted to its use as such.

##### *Deed of Variation*

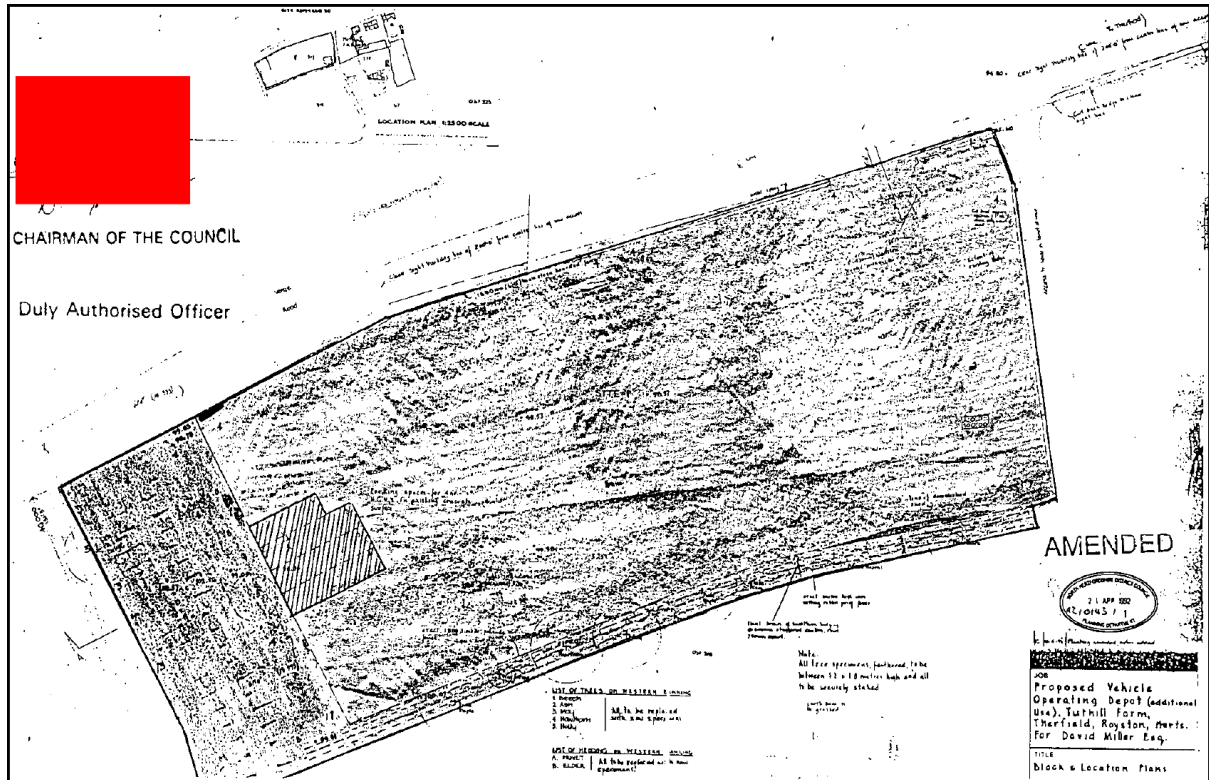
- 4.2 The deed of variation should secure the following:
- 4.2.1 The Original Agreement is to remain in full effect until commencement of the Development.
  - 4.2.2 During construction of the Development (between commencement and completion of the Development) the Council shall cease to enforce the provisions of the Original Agreement so that the Development can be constructed on the Site. During the construction period the Site shall only be used for the construction of the Development in accordance with the planning permission and any uses ancillary to the construction of the Development.
  - 4.2.3 Upon practical completion of the Development the Site shall be released from the covenants and obligations within the Original Agreement save in respect of clause 2 [revocation of agreement dated 15th September 1978] of the Original Agreement which clause 2 shall remain in effect.

- 4.2.4 The deed of variation will confirm that the covenants contained in the Original Agreement (except as varied by the deed of variation) are to continue in full force and effect. This will mean that the land owned by Mr Croucher that is currently bound by the Original Agreement, will continue to be bound.

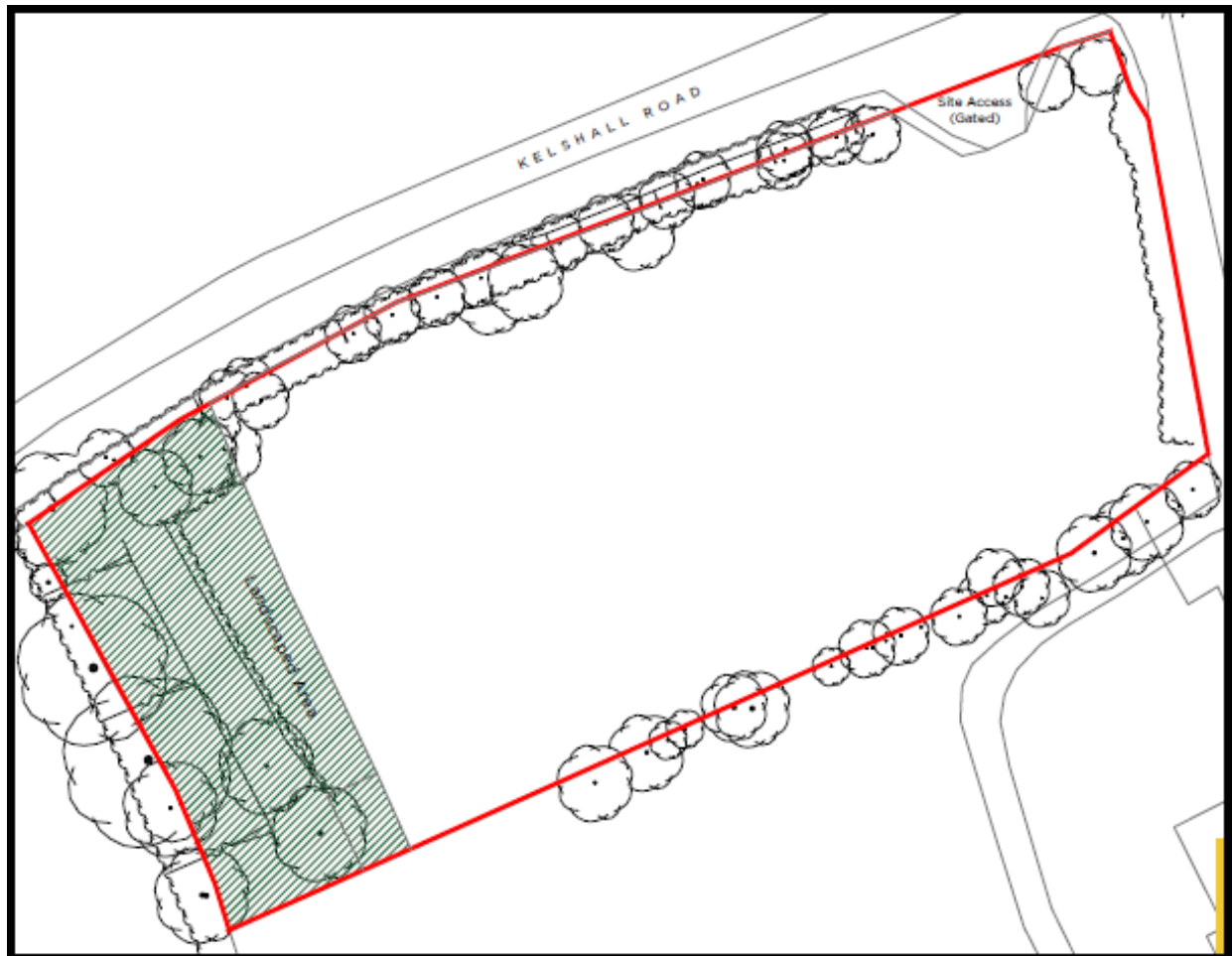
*New S106 Agreement*

- 4.3 The new S106 Agreement will take effect from the practical completion of the Development. It will secure that part of the Site is to be used for landscaping only. The Owner (and therefore any successors in title) shall covenant not to use the Landscaped Land for any use or purpose other than as a landscaped area. The area of “Landscaped Land” is shown hatched green on the plan proposed to be attached to the S106 Agreement. The proposed plan is appended to this note at Appendix 2.
- 4.4 Drafts of the proposed deed of variation and new S106 agreement are attached as appendix 3 and 4 respectively to this note. These are based on the template draft that is available on the Council’s website.

## Appendix 1: extract of plan identifying the “Land” in the Original Agreement



**Appendix 2: extract of plan of 'Landscaped Area' for proposed 106 agreement**



**Appendix 3: draft of proposed deed of variation**



**DATED**

**202**

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**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**and**

**GRAHAM BULLARD AND JEAN MARGARET BULLARD**

**and**

**QUANTA HOMES 6 LIMITED**

**and**

**JAMES WILLIAM CROUCHER**

**DEED**

Under Section 106 and Section 106A of the Town &  
Country Planning Act 1990

Land at Relating to land at Kelshall Road, Therfield,  
Hertfordshire

Legal Services

North Hertfordshire  
District Council

Council Offices, Gernon  
Road Letchworth Garden  
City Hertfordshire SG6 3JF

(Ref:        /LL        )



**THIS DEED OF VARIATION** is made the

day of 202

**BETWEEN:**

- 1 **NORTH HERTFORDSHIRE DISTRICT COUNCIL** of Council Offices Gernon Road Letchworth Garden City Hertfordshire SG6 3JF (the "**Council**");
- 2 **GRAHAM BULLARD** and **JEAN MARGARET BULLARD** of 1 The Grange, Therfield, Royston SG8 9QG (the "**First Owner**"); and
- 3 **QUANTA HOMES 6 LIMITED** (Co. Regn. No. 10553092) whose registered office is at Chester House, 81-83 Fulham High Street, Fulham, England, SW6 3JA (the "**Developer**")
- 4 **JAMES WILLIAM CROUCHER** of 101 The Tene, Baldock, Hertfordshire SG6 2NU (the "**Second Owner**")

together the "Parties".

**RECITALS**

- A The Council is the local planning authority for the Land and for the purposes of the Act.
- B The Council is a principal council for the purposes of the Local Government Act 1972.
- C The First Owner is the registered freehold proprietor of the part of the Land known as the Site registered at HM Land Registry under Title Number HD307468 free from encumbrances that would prevent the First Owner from entering into this Deed.
- D The Second Owner is the registered freehold proprietor of part of the Land registered at HM Land Registry under part of Title Number HD312324.
- E The Developer has an interest in the Site under an option to purchase the Land under Title Number HD307468 in an option agreement dated [ ].
- F On [ ] the Developer submitted the Application to the Council for Planning Permission for the Development.

- G The Land is subject to an Original Agreement that binds the Land and contains planning obligations for the purposes of section 106 of the Act.
- H The Council is disposed to grant planning permission in respect of the Development and has agreed to release the First Owner from the restrictive and other covenants in the Original Agreement insofar as they relate to the Site in order to enable the Development to go ahead.
- I The Second Owner consents to the variation of the Original Agreement.

#### **OPERATIVE PROVISIONS:**

#### **WORDS AND EXPRESSIONS**

1. In this Deed the following expressions shall have the following meanings unless inconsistent with the text:

***"Act"***

means the Town and Country Planning Act 1990 as amended;

***"Application"***

means the application for detailed planning permission for the Development submitted to the Council with the application plans and other materials on [ ] and allocated reference number[ ];

***"Commencement"***

means the carrying out by any person (which for the avoidance of doubt may or may not be a Party to this Deed or their agents or representatives) of a material operation comprised in the Development within the meaning of Section 56 of the Act

***"Construction Period"***

means the period of construction of the Development between Commencement of Development and Practical Completion of the Development;

***"Development"***

means [ ]

***"Dwelling"***

means an individual residential unit permitted as part of the Development and "Dwellings" shall be construed accordingly;

***"Land"***

the land known as land at Kelshall Road, Therfield as bound by the original Agreement;

***"Original Agreement"***

means the Agreement made pursuant to Section 106 of the Act between the Council and David Miller dated 6th August 1993;

***"Practical Completion"***

means the issue of a certificate of practical completion by the First Owner's architect certifying the completion of any part of the Development so that such part can be used for the purpose and operate in the manner for which it was designed and "Practically Complete" and "Practically Completed" shall be construed accordingly;

***"Planning Permission"***

means the planning permission granted by the Council in pursuance of the Application;

***"Site"***

means that part of the Land that is registered at HM LandRegistry under Title Number HD307468 as shown on the plan appended to this Deed at Schedule Two

2. Where the context provides:
  - 2.1 words of the masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice versa;
  - 2.2 references to any Party means a party to this Deed and in the case of the First Owner and the Second Owner shall include its successors in

title and assigns and any persons deriving title through or under them and in the cases of the Council and shall include successors to their respective functions;

- 2.3 where a Party includes more than one person any obligations of that Party shall be joint and several;
- 2.4 any reference to any statute or any section of a statute includes any statutory re-enactment or modification;
- 2.5 any reference to clauses and schedules are references to clauses and schedules to this Deed;
- 2.6 headings in the Deed shall not form part of or affect its construction;
- 2.7 where a Party is required to give consent or approval by any specific provision of this Deed such consent or approval shall not be unreasonably withheld or delayed;
- 2.8 any provision of this Deed which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Deed; and
- 2.9 any covenant by the First Owner and the Second Owner not to do any act or thing includes a covenant not to permit, allow or suffer the doing of that act or thing.

### **3. STATUTORY PROVISIONS AND COVENANTS**

- 3.1 This Deed and the covenants within it are made pursuant to section 106 and section 106A of the Act. To the extent that they fall within the terms of section 106 and section 106A of the 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 against the First Owner and the Second Owner and each of their successors in title and assigns to each and every part of the Land and any person deriving title to each and every part of the Land through or under the First Owner and the Second Owner.
- 3.2 To the extent that any of the obligations 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 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers.
- 3.3 Unless the context otherwise requires the terms and expressions shall have the meanings prescribed by the Original Agreement.

- 3.4 The parties confirm that the covenants contained in the Original Agreement except as varied by this Deed are to continue in full force and effect.

#### **4. LEGAL EFFECT AND CONDITIONALITY**

- 4.1 The provisions of clauses [ ] and [ ] shall come into effect immediately upon completion of this Deed.
- 4.2 Save for clause 4.1, this Deed is conditional upon:
- a) the grant of the Planning Permission; and
  - b) the Commencement of the Development
- 4.3 For the avoidance of doubt the Parties agree that the Original Agreement (save as otherwise agreed in writing by the Council) shall remain in full effect until Commencement of Development.
- 4.4 Subject to clause 4.5, upon Commencement of Development the Council shall cease to enforce the provisions in the Original Agreement in relation to the Site during the Construction Period of the Development PROVIDED THAT the Site shall only be used for the construction of the Development in accordance with the Planning Permission and any uses ancillary to the construction of the Development.
- 4.5 Upon Practical Completion of the Development the Council releases the First Owner and their successors in title to the Site from the covenants and obligations within the Original Agreement save in respect of clause 2 [revocation of agreement dated 15<sup>th</sup> September 1978] of the Original Agreement which clause 2 shall remain in effect.

#### **5. EXERCISE OF THE POWERS OF THE COUNCIL**

Nothing in this Deed whether express or implied shall prejudice or affect the rights discretion powers duties and obligations of the Council under any statute, bye-law, statutory instrument, order or regulation in the exercise of its functions as local planning authority or principal council.

#### **6. WAIVER**

No waiver whether expressed or implied by the Council of any breach or default by the First Owner or the Second Owner in performing or observing any of the covenants in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing or from acting upon any subsequent breach or default of any of the covenants.

## **7. CONSENTS**

- 8.1 The Developer consents to the execution of this Deed and acknowledges that the Site shall be bound by the restrictions and covenants contained in this Deed and agrees its rights in relation to the Land shall be deferred and that planning obligations in favour of the Council shall have priority and it is acknowledged that the Developer enters into this Deed in order to give consent to its terms only and will not be bound by its terms unless it acquires a freehold or long leasehold interest in the Site.

## **8. SUCCESSORS IN TITLE**

No person shall be liable for breach of any covenants or obligations in this Deed occurring after the date on which they have parted with their interest in the Land or any part to which such breach relates PROVIDED THAT they will remain liable for any breach occurring before that date. Neither the reservation of rights nor the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause.

## **9. PLANNING PERMISSION**

- 10.1 This Deed shall cease to have effect if the Planning Permission is quashed, revoked, expires, is modified by any statutory procedure without the consent of the First Owner or is otherwise withdrawn;

## **10. COSTS**

11.1 The Developer shall pay the Council's reasonable legal costs plus disbursements incurred in connection with the preparation negotiation and completion of this Deed immediately upon completion.

## **11. REGISTRATION OF THIS DEED**

This Deed shall be registrable as a local land charge following completion by the Council as local planning authority

## **12. THIRD PARTIES**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a Party hereto or a successor in title to a Party hereto.

## **13. NOTICE**

13.1 The First Owner shall give the Council prior written notice of:

- (a) the Commencement of the Development;
- (b) the Practical Completion of each Dwelling;
- (c) the Practical Completion of the Development; and

13.2 The First Owner and the Second Owner shall give the Council prior notice of any change of any interests in the Land (as applicable to their respective interests) occurring before the completion of the Development such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of Land purchased by reference to a plan.

## **14. SERVICE OF NOTICES AND DOCUMENTS**

Any notice required or authorised to be given by any Party shall be in writing

in the form of proforma set out in Schedule Three and shall contain the Application reference number [ ] and reference to the date of this Deed and shall be sufficiently given if sent by first class post or facsimile to the following persons

The Council                      Planning Control and Conservation Manager North  
Hertfordshire District Council Council Offices Gernon  
Road Letchworth Garden City Hertfordshire SG6 3JF [ref  
xxx]

The First Owner                      [tbc]

The Second Owner                      [tbc]

## **17 MISCELLANEOUS**

- 17.1 Without prejudice to the Council's statutory rights the First Owner and the Second Owner hereby grants to the Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter any part of the Land to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed provided that the Council gives the Owner two days notice and complies with any reasonable on site health and safety requirements of the First Owner and Second Owner during any such inspection.
- 17.2 Nothing in this Deed shall be construed as affecting prohibiting or limiting any rights to develop any part of the Land in accordance with a planning permission (other than the Planning Permission subject to clause 18) granted whether before or after the date of this Deed by the Council or any other competent authority.
- 17.3 Where any approval, agreement, consent, confirmation or expression of satisfaction is required under the terms of this Deed the request for it shall be made in writing and where a request is made the approval, agreement, consent, confirmation or expression of satisfaction shall not be unreasonably withheld or delayed.



**18 SECTION 73**

18.1 In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the Act (or any re-enactment or replacement) in respect of the conditions in the Planning Permission references in this Deed to the Planning Application and the Planning Permission shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly.

**19 JURISDICTION**

19.1 This Deed is to be governed by and interpreted in accordance with the laws of England.

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

**20 EXECUTION**

The parties have executed this Deed as a deed and it is delivered on the date setout above.

**SCHEDULE ONE**

**DRAFT PLANNING PERMISSION**

## **SCHEDULE TWO**

The Site

### **SCHEDULE THREE**

#### **PROFORMA**

#### **EVENT NOTIFICATION AND PAYMENT**

#### **PURSUANT TO SECTION 106**

#### **AGREEMENT**

DATED .....

MADE BETWEEN .....

PLANNING PERMISSION REFERENCE.....

HCC DU REFERENCE .....

SITE ADDRESS .....

.....

.....

.....

.....SITE OWNER DETAILS

Name .....

Contact name .....

Address .....

.....

.....

.....Telephone nos.

Main .....

Mobile .....

Email .....

### **EVENTS BEING NOTIFIED**

Commencement Date – date : .....

Practical Completion of Dwelling (Number if relevant) – date:.....

Completion of Development – date: .....

**EXECUTED and DELIVERED** as a **DEED** on the date of this document

**EXECUTED** under the Common Seal  
of **NORTH HERTFORDSHIRE**  
**DISTRICT COUNCIL**

in the presence of:

Duly Authorised Officer

**EXECUTED AS A DEED** by )

**GRAHAM BULLARD** )

in the presence of )

Witness signature:

Address:

**EXECUTED AS A DEED** by **JEAN** )

**MARGARET BULLARD** )

in the presence of )

Witness signature:

Address:

**EXECUTED** as a **DEED** by

**QUANTA HOMES 6 LIMITED**

Acting by two Directors/a  
Directorand its Secretary

Director

Director/Secretary

**EXECUTED AS A DEED** by )

**JAMES WILLIAM CROUCHER** )

in the presence of )

Witness signature:

Address:



**Appendix 4: draft of proposed new 106 agreement**



**DATED**

**2021**

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**and**

**GRAHAM BULLARD AND JEAN MARGARET BULLARD**

**and**

**QUANTA HOMES 6 LIMITED**

**DEED**

Under Section 106 of the Town & Country Planning Act  
1990

Land at Relating to land at Kelshall Road, Therfield,  
Hertfordshire

Legal Services  
North Hertfordshire  
District Council  
Council Offices, Gernon  
Road Letchworth Garden  
City Hertfordshire SG6 3JF  
(Ref: /LL )

**THIS DEED** is made the                      day of                      2021

**BETWEEN:**

- 1      **NORTH HERTFORDSHIRE DISTRICT COUNCIL** of Council Offices Gernon Road Letchworth Garden City Hertfordshire SG6 3JF (the "Council");
  - 2      **GRAHAM BULLARD** and **JEAN MARGARET BULLARD** of 1 The Grange, Therfield, Royston SG8 9QG (the "Owner"); and
  - 3      **QUANTA HOMES 6 LIMITED** (Co. Regn. No. 10553092) whose registered office is at Chester House, 81-83 Fulham High Street, Fulham, England, SW6 3JA (the "Developer")
- together the "Parties".

**RECITALS**

- A      The Council is the local planning authority for the Site for the purposes of the Act.
- B      The Council is a principal council for the purposes of the Local Government Act 1972.
- C      The Owner is the registered freehold proprietor of the Site registered at HM Land Registry under Title Number HD307468 free from encumbrances that would prevent the Owner from entering into this Deed.
- D      The Developer has an interest in the Site under an option to purchase the Site in an option agreement dated [      ].
- E      On [      ] the Developer submitted the Application to the Council for Planning Permission for the Development.

F This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead.

## **OPERATIVE PROVISIONS:**

### **WORDS AND EXPRESSIONS**

1. In this Deed the following expressions shall have the following meanings unless inconsistent with the text:

**"Act"**

means the Town and Country Planning Act 1990 as amended;

**"Application"**

means the application for detailed planning permission for the Development submitted to the Council with the application plans and other materials on [ ] and allocated reference number[ ];

**"Commencement"**

means the carrying out by any person (which for the avoidance of doubt may or may not be a Party to this Deed or their agents or representatives) of a material operation comprised in the Development within the meaning of Section 56 of the Act save that for the purposes of this Deed only "material operation" shall not include:

- a. site clearance;
- b. demolition of existing buildings;
- c. archaeological investigation;
- d. the assessment of contamination;
- e. remedial action in respect of any contamination;
- f. diversion and laying of services;
- g. the erection of fencing or other means of enclosure for site security;
- h. the display of advertisements;
- i. any off-site highways works

and the term "Commence" and "Commences" shall be construed accordingly;

**"Development"**

means [            ]

**"Dwelling"**

means an individual residential unit permitted as part of the Development and "Dwellings" shall be construed accordingly;

**"Landscaped Land"**

the part of the Site which is to be reserved for landscaping in accordance with Schedule Two which for identification purposes only is shown shaded [            ] on Plan 2;

**"Practical Completion"**

means the issue of a certificate of practical completion by the Owner's architect certifying the completion of any part of the Development so that such part can be used for the purpose and operate in the manner for which it was designed and "Practically Complete" and "Practically Completed" shall be construed accordingly;

**"Plan 1"**

means the plan attached to this Deed and numbered Plan 1;

**"Plan 2"**

means the plan attached to this Deed and numbered Plan 2;

**"Planning Permission"**

means the planning permission granted by the Council in pursuance of the Application a draft of which is attached at Schedule One;

**"Site"**

the land known as land at Kelshall Road, Therfield as registered at the Land Registry under title number HD307468 which for identification purposes only is shown edged red on Plan 1;

2. Where the context provides:

- 2.1 words of the masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice versa;
- 2.2 references to any Party means a party to this Deed and in the case of the Owner shall include its successors in title and assigns and any persons deriving title through or under them and in the cases of the Council and shall include successors to their respective functions;
- 2.3 where a Party includes more than one person any obligations of that Party shall be joint and several;
- 2.4 any reference to any statute or any section of a statute includes any statutory re-enactment or modification;
- 2.5 any reference to clauses and schedules are references to clauses and schedules to this Deed;
- 2.6 headings in the Deed shall not form part of or affect its construction;
- 2.7 where a Party is required to give consent or approval by any specific provision of this Deed such consent or approval shall not be unreasonably withheld or delayed;
- 2.8 any provision of this Deed which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Deed; and
- 2.9 any covenant by the Owner not to do any act or thing includes a covenant not to permit, allow or suffer the doing of that act or thing.

**3. STATUTORY PROVISIONS AND COVENANTS**

- 3.1 This Deed and the covenants within it are made pursuant to section 106 of the Act. To the extent that they fall within the terms of section 106 of the 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 against the Owner and each of their successors in title and assigns to each and every part of the Site and any person deriving title to each and every part of the Site through or

under the Owner.

- 3.2 To the extent that any of the obligations 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 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers.
- 3.3 The Owner enters into the obligations for itself and its successors in title with the Council to the intent that the obligations hereunder shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part thereof PROVIDED THAT the obligations and restrictions in this Deed shall not be enforceable against a statutory undertaker 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 or in respect of any easements relating to cables, pipes or other service media running under the Site nor enforceable against any highway authority which may be responsible for any public highway maintainable at the public expense

#### **4. LEGAL EFFECT AND CONDITIONALITY**

- 4.1 The provisions of clauses [ ] and [ ] shall come into effect immediately upon completion of this Deed.
- 4.2 Save for clause 4.1, this Deed is conditional upon:
- a) the grant of the Planning Permission;
  - b) the Commencement of the Development; and
  - c) the Practical Completion of the Development

#### **5. PLANNING OBLIGATIONS**

- 5.1 The Owner covenants with the Council to observe the restrictions and to perform the obligations and activities specified in Schedule Two to this Deed.

#### **6. EXERCISE OF THE POWERS OF THE COUNCIL**

Nothing in this Deed whether express or implied shall prejudice or affect the

rights discretion powers duties and obligations of the Council under any statute, bye-law, statutory instrument, order or regulation in the exercise of its functions as local planning authority or principal council.

## **7. WAIVER**

No waiver whether expressed or implied by the Council of any breach or default by the Owner in performing or observing any of the covenants in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing or from acting upon any subsequent breach or default of any of the covenants.

## **8. CONSENTS**

- 8.1 The Developer consents to the execution of this Deed and acknowledges that the Site shall be bound by the restrictions and covenants contained in this Deed and agrees its rights in relation to the Site shall be deferred and that planning obligations in favour of the Council shall have priority and it is acknowledged that the Developer enters into this Deed in order to give consent to its terms only and will not be bound by its terms unless it acquires a freehold or long leasehold interest in the Site.
- 8.2 The Owner warrants and confirms that it has obtained all necessary permissions and consents to it entering into this Deed.
- 8.3 The Owner warrants and confirms that it is the freehold owner of the Site with full power to enter into this Deed.
- 8.4 The Owner warrants and confirms that the Site is free from all mortgages charges or other encumbrances and that no other person apart from the Developer has an interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests in it.

## **9. SUCCESSORS IN TITLE**

No person shall be liable for breach of any covenants or obligations in this Deed occurring after the date on which they have parted with their interest in the Site or any part to which such breach relates PROVIDED THAT they will remain liable for any breach occurring before that date. Neither the reservation of 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 clause.



**10. PLANNING PERMISSION**

10.1 This Deed shall cease to have effect if the Planning Permission is quashed, revoked, expires, is modified by any statutory procedure without the consent of the Owner or is otherwise withdrawn;

**11. COSTS**

11.1 The Developer shall pay the Council's reasonable legal costs plus disbursements incurred in connection with the preparation negotiation and completion of this Deed immediately upon completion.

**12. REGISTRATION OF THIS DEED**

This Deed shall be registrable as a local land charge following completion by the Council as local planning authority

**13. THIRD PARTIES**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a Party hereto or a successor in title to a Party hereto.

**14. NOTICE**

The Owner shall give the Council prior written notice of:

14.1 the Commencement of the Development;

14.2 the Practical Completion of each Dwelling;

14.3 the Practical Completion of the Development; and

14.4 any change of any interests in the Site occurring before the completion of the Development such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of Site purchased by reference to a plan.

**15. SERVICE OF NOTICES AND DOCUMENTS**

Any notice required or authorised to be given by any Party shall be in writing in the form of proforma set out in Schedule Three and shall contain the Application reference number [ ] and reference to the date of this Deed and shall be sufficiently given if sent by first class post or facsimile to the

following persons

The Council                      Planning Control and Conservation Manager North  
Hertfordshire District Council Council Offices Gernon  
Road Letchworth Garden City Hertfordshire SG6 3JF [ref  
xxx]

The Owner    [tbc]

## **17 DETERMINATION OF DISPUTES**

In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions shall apply:

- 17.1 The parties shall use their reasonable endeavours to resolve the dispute by agreement
- 17.2 If agreement cannot be reached the matter in dispute shall be referred to and settled by some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert on the application of either party after giving notice in writing to the other party to this Deed
- 17.3 The person to be appointed pursuant to clause 17.2 shall be a person having ten years or more post qualification experience of projects comprising works of the scale and nature of the Development
- 17.4 Reference to the expert shall be on terms that determination shall take place within 28 working days of the expert accepting his instructions
- 17.5 The expert shall have the power to award costs of the determination in favour of either party to the dispute at the expense of the other party and failing such determination such costs shall be borne by the parties in equal shares
- 17.6 The expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision
- 17.7 The findings of the expert shall (other than in the case of a manifest material error) be final and binding on the parties to the dispute

## **18 MISCELLANEOUS**

- 18.1 Without prejudice to the Council's statutory rights the Owner hereby grants to the Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter any part of the Site to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed provided that the Council gives the Owner two days notice and complies with any reasonable on site health and safety requirements of the Owner during any such inspection.
- 18.2 At the written request of the Owners at any time after the planning obligations have been fully and satisfactorily discharged/performed, the Council may issue the Owner with written confirmation of the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 18.3 Nothing in this Deed shall be construed as affecting prohibiting or limiting any rights to develop any part of the Site in accordance with a planning permission (other than the Planning Permission subject to clause 19) granted whether before or after the date of this Deed by the Council or any other competent authority.
- 18.4 Where any approval, agreement, consent, confirmation or expression of satisfaction is required under the terms of this Deed the request for it shall be made in writing and where a request is made the approval, agreement, consent, confirmation or expression of satisfaction shall not be unreasonably withheld or delayed.

## **19 SECTION 73**

- 19.1 In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the Act (or any re-enactment or replacement) in respect of the conditions in the Planning Permission references in this Deed to the Planning Application and the Planning Permission shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly.

## **20 JURISDICTION**

- 20.1 This Deed is to be governed by and interpreted in accordance with the

laws of England.

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

## **21 EXECUTION**

The parties have executed this Deed as a deed and it is delivered on the date setout above.

**SCHEDULE ONE**  
**DRAFT PLANNING PERMISSION**

## **SCHEDULE TWO**

### **OWNER'S COVENANTS TO THE COUNCIL**

#### **Landscaped Land**

1. The Owner covenants with the Council:

- 1.1 not to use the Landscaped Land for any use or purpose other than as a landscaped area.

### **SCHEDULE THREE**

#### **PROFORMA**

#### **EVENT NOTIFICATION AND PAYMENT**

#### **PURSUANT TO SECTION 106**

#### **AGREEMENT**

DATED .....

MADE BETWEEN .....

PLANNING PERMISSION REFERENCE.....

HCC DU REFERENCE .....

SITE ADDRESS .....

.....

.....

.....

.....SITE OWNER DETAILS

Name .....

Contact name .....

Address .....

.....

.....

.....Telephone nos.

Main .....

Mobile .....

Email .....

#### **EVENTS BEING NOTIFIED**

Commencement Date – date :.....

Practical Completion of Dwelling (Number if relevant) – date:.....

Completion of Development – date: .....

**EXECUTED and DELIVERED** as a **DEED** on the date of this document

**EXECUTED** under the Common Seal  
of **NORTH HERTFORDSHIRE**  
**DISTRICT COUNCIL**

in the presence of:

Duly Authorised Officer

**EXECUTED AS A DEED** by )  
**GRAHAM BULLARD** )  
in the presence of )

Witness signature:

Address:

**EXECUTED AS A DEED** by **JEAN** )  
**MARGARET BULLARD** )  
in the presence of )

Witness signature:

Address:

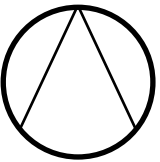
**EXECUTED** as a **DEED** by  
**QUANTA HOMES 6 LIMITED**  
Acting by two Directors/a  
Directorand its Secretary

Director

Director/Secretary

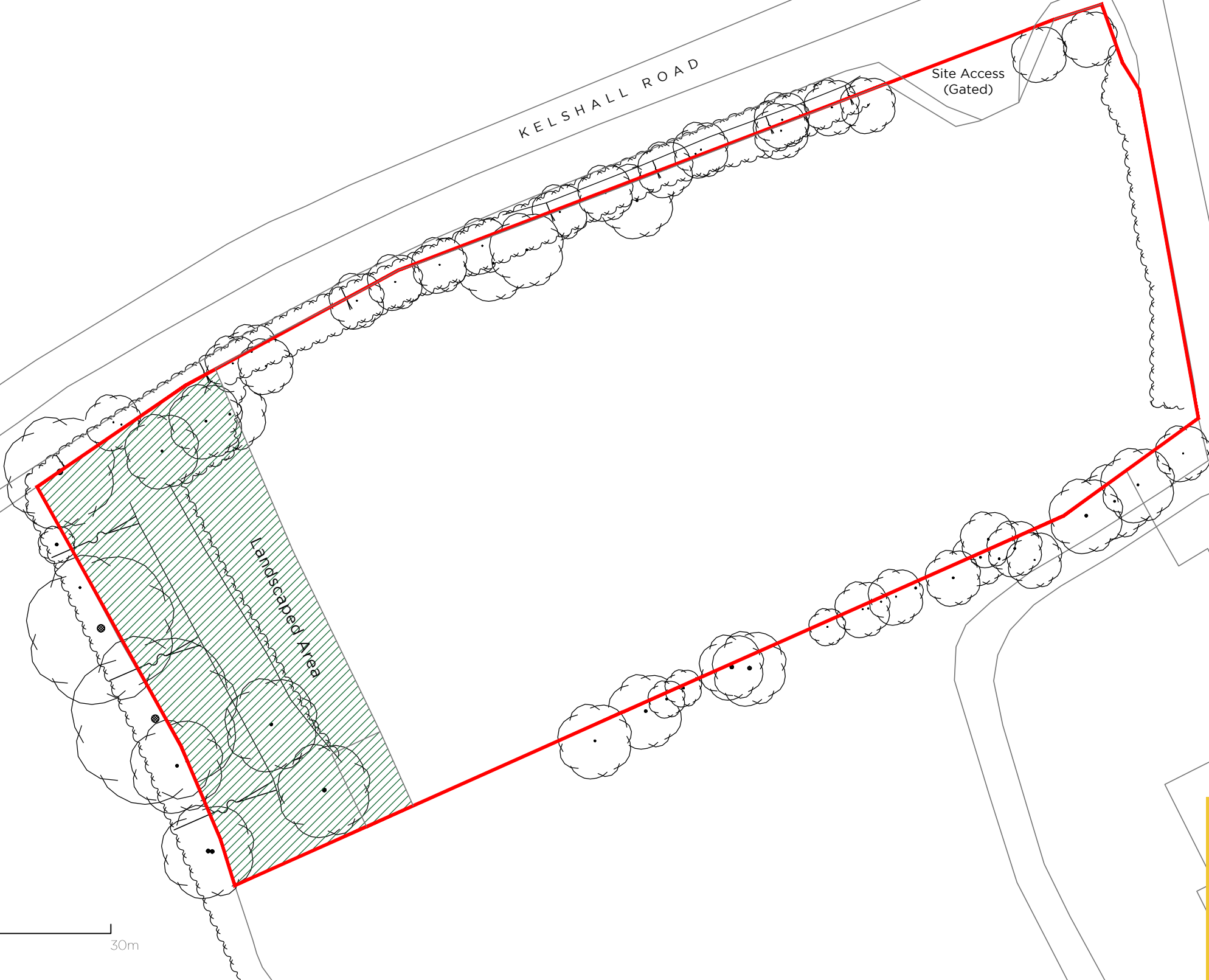


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1:500 0m 5m 15m 30m

S106 Plan



TUTHILL'S YARD  
S106 PLAN  
TUTHILL'S YARD  
THERFIELD, ROYSTON  
SG8 9TT  
QUANTA HOMES 6 LIMITED  
26.07.2021 1:500 @ A3 PROJECT 1549  
**103.01**  
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