

DATED 2nd December 2016

EAST STAFFORDSHIRE BOROUGH COUNCIL

- and -

STAFFORDSHIRE COUNTY COUNCIL

- and -

PEVERIL HOMES LIMITED

DEED OF VARIATION

In connection with a Section 106 Agreement given under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to land at Burton Road, Ludgate Street Farm, Tutbury Staffordshire

WALKER MORRIS

Kings Court
12 King Street
LEEDS
LS1 2HL
Tel: 0113 2832500
Fax: 0113 2459412
Ref: CAS/PEV.6-22

THIS DEED is made the 2nd day of December

2016

BETWEEN:

- (1) **EAST STAFFORDSHIRE BOROUGH COUNCIL** whose principal office is at Town Hall Burton upon Trent Staffordshire ("**Council**") of the first part; and
- (2) **STAFFORDSHIRE COUNTY COUNCIL** whose principal office is at 2 Staffordshire Place Tipping Street Stafford ST16 2DH ("**County**") of the second part; and
- (3) **PEVERIL HOMES LIMITED** of High Edge Court, Heage, Belper, Derbyshire DE56 2BW ("**Owner**") of the third part.

1 DEFINITIONS

1.1 In this Deed these words and expressions shall have the following meanings: -

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| "Act" | shall have the same meaning as given to it in clause 2.1 of the Principal Agreement. |
| "Deeds of Variation" | means collectively the First Deed of Variation and the Second Deed of Variation; |
| "Deed" | means this deed; |
| "Development" | shall have the same meaning as given to it in clause 2.5 of the Principal Agreement; |
| "First Deed of Variation" | means the Deed of Variation to the Principal Agreement dated 5 March 2014 made between Peveril Homes Limited (1) Miller Homes Limited (2) Royal Bank of Scotland (3) East Staffordshire Borough Council (4) and Staffordshire County Council (5); |
| "Land" | shall have the same meaning as given to it in clause 2.9 of the Principal Agreement (as varied by the Second Deed of Variation); |
| "Principal Agreement" | means the Agreement pursuant to Section 106 of the Act dated 9 May 2012 between (1) George Ernest Shaw (2) |

the East Staffordshire Borough Council (3) Staffordshire County Council (4) and Peveril Homes Limited (5) as varied by the Deeds of Variation;

“Second Deed of Variation” means the Deed of Variation of the Principal Agreement dated 5 March 2014 made between Peveril Homes Limited (1) East Staffordshire Borough Council (2) Staffordshire County Council (3) George Ernest Shaw (4).

1.2 Where the context so requires: -

- 1.2.1 References to the masculine, feminine and neuter genders shall include the other genders.
- 1.2.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.
- 1.2.3 References to natural persons are to include corporations and vice versa.
- 1.2.4 Headings in this Deed are for reference purposes only and shall not be taken into account in its construction or interpretation.
- 1.2.5 The expression “the Owner” shall include their respective successors in title and assigns and the expressions “the County” and “the Council” shall include their respective successor authority.
- 1.2.6 A reference to a Clause, Paragraph or Schedule is (unless the context otherwise requires) a reference to a Clause, Paragraph or Schedule of this Deed.
- 1.2.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.
- 1.2.8 Where in this Deed a party includes more than one person any obligations of that party shall be joint and several.

1.2.9 Any reference in this Deed to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

2 RECITALS

- 2.1 The Council is the local planning authority for the purpose of Section 106 of the Act for the area within which the Land is situated and is the authority by whom the obligations hereby created are enforceable.
- 2.2 This Deed is supplemental to the Principal Agreement and the Deeds of Variation and varies the Principal Agreement only to the extent set out in this Deed.
- 2.3 The Owner is the owner of the Land registered with HM Land Registry under title registration number SF587675 and is the successor in title to George Ernest Shaw.
- 2.4 The Outline Application (as hereinafter defined) has been submitted to the Council on behalf of the Owner. A draft of the planning permission to be granted by the Council pursuant to the Outline Application is substantially in the form of the draft annexed to this Deed as the Annex.
- 2.5 The Council and the Owner have agreed under Section 106A of the Act that the Principal Agreement shall be varied as set out in clause 3.3 of this Deed.
- 2.6 The Owner and the agreement of the Council intends the Principal Agreement as varied by this Deed to apply to development carried out under the Planning Permission.
- 2.7 The County has agreed to be party to this Deed being a party to the Principal Agreement and to confirm acceptance of the variations made to that agreement.

3 OPERATIVE PROVISIONS

- 3.1 This Deed is made under section 106 and section 106A of the Act and all other powers so enabling and is a planning obligation for the purposes thereof with the intent that it shall bind the Owner and its successors in title to each and every part of the Land and its assigns as provided in these clauses and in the clauses of the Principal Agreement.

3.2 The planning obligations comprised in this Deed shall become effective in accordance with clause 7 of the Principal Agreement.

3.3 The parties hereto hereby mutually agree to vary and supplement the terms of the Principal Agreement so that the Principal Agreement shall from and including the date of this Deed be read and construed as follows: -

3.3.1 The following new definition be inserted as a new clause 2.11 to the Principal Agreement and all following clauses shall be renumbered accordingly: -

"Outline Application" means outline planning application P/2016/00717 submitted to the Council and made valid on 11 June 2016 for the erection of 12 self build dwellings including access."

3.3.2 The definition of "the Applications" in clause 2.2 of the Principal Agreement shall be deleted and replaced with the following definition: -

"Applications" means: -

1. planning application number P/2011/00546/CEH/PO and planning application number P/2011/00547/CEH both of which were made valid on 2 June 2011; and
2. planning application number P/2013/00984 which was made valid on 3 September 2013 (as referred to in the First Deed of Variation) ("**Application P/2013/00984**"); and
3. the Section 73 Application (as referred to in the Second Deed of Variation); and
4. the Outline Application;

and reference to "**Applications**" shall be construed accordingly."

3.3.3 The definition of "Planning Permission" in clause 2.16 of the Principal Agreement shall be deleted and replaced with the following definition: -

"Planning Permission" means: -

1. the planning permission granted by the Council dated 10 May 2012 pursuant to application number P/2011/00546/CEH/PO and planning application number P/2011/00547/CEH; and
2. the planning permission granted by the Council dated 6 March 2014 pursuant Application P/2013/00984; and
3. the planning permission granted by the Council dated 6 March 2014 pursuant to the Section 73 Application; and
4. a planning permission to be granted by the Council pursuant to the Outline Application."

4 IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

- 4.1 This Deed shall be construed as one with the Principal Agreement.
- 4.2 The provisions of the Principal Agreement continue to be enforceable by the Council and the County and to bind the Land in all respects save for as varied by the Deeds of Variation and this Deed, but for the avoidance of doubt the alterations and amendments hereby made shall to the extent only that they are material supersede specific provisions to the contrary in the Principal Agreement and the Deeds of Variation and this Deed and the Principal Agreement as varied by the Deeds of Variation and this Deed shall always be read together (changing only those things which need to be changed) with the latter to that extent predominating.
- 4.3 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term hereof provided that this Clause shall not affect any right of action of any person to whom this Deed is lawfully assigned or in whom it becomes vested in law.
- 4.4 This Deed shall be registered as a Local Land Charge.

5 COSTS

The Owner shall pay to the Council and the County upon the signing of this Deed their proper and reasonable legal costs incurred in connection with the preparation and completion of this Deed.

IN WITNESS whereof the parties hereto have executed this Deed the day and year first before

written

THE COMMON SEAL of EAST)
STAFFORDSHIRE BOROUGH)
COUNCIL was affixed to this)
deed in the presence of:)



Authorised Signatory

THE COMMON SEAL of)
STAFFORDSHIRE COUNTY)
COUNCIL was affixed to this)
deed in the presence of:)



Authorised Signatory

EXECUTED AS A DEED by)
PEVERIL HOMES LIMITED)
in the presence of:-)

Director

Director/~~Secretary~~

Annex
Draft Decision Notice



**TOWN AND COUNTRY PLANNING ACT 1990
OUTLINE PERMISSION FOR DEVELOPMENT**

Date valid application received: 10/06/2016

Application No: P/2016/00717

Name and address of Agent
Signet Planning
Pure Offices
Lake View Drive
Sherwood Park
NG15 0DT

Name and address of Applicant
Mr T Broster
Peveril Homes Ltd
C/O Agent

EAST STAFFORDSHIRE BOROUGH COUNCIL in pursuance of powers under the above mentioned Act hereby **PERMITS**:

-----**DRAFT**-----

Outline application for the erection of 12 self build dwellings including access
Land at, Burton Road, Tutbury, Staffordshire

in accordance with the submitted documents and plans and subject to the condition(s) specified hereunder:

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| 1 | <p>Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.</p> <p>Reason: To conform with Section 92 (2) of the Town and Country Planning Act 1990.</p> |
| 2 | <p>The development hereby permitted shall be begun before the expiration of one year from the date of the approval of the last reserved matter(s) to be approved.</p> <p>Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 as amended by section 51 of the Planning and Compulsory Purchase Act 2004.</p> |
| 3 | <p>Prior to the commencement of work on site in respect of each dwelling plans and particulars of the layout, scale and appearance of the building(s) to be erected, the landscaping of the site (hereinafter called the reserved matters" shall be submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with those details that have been approved in writing by the Local Planning Authority.</p> <p>Reason: The application is in outline only and the Local Planning Authority wishes to ensure that these details which have not yet been submitted are appropriate for the locality and amenity of residents.</p> |
| 4 | <p>The development hereby permitted shall be carried out in accordance with the following approved plan subject to compliance with other conditions of this permission:</p> <p>Drawing No. 6640/P/OS2 1:2500 Site Location Plan with the site outlined in red, dated as received on 23rd May 2013.</p> |

Sal Khan CPFA, MSc
Head of Service (Section 151 Officer)
P.O. Box 8045, Burton upon Trent, Staffordshire DE14 9JG
www.eaststaffsbc.gov.uk

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| | Reason: For the avoidance of doubt to ensure the development will not adversely affect the appearance of the locality, the amenities of neighbouring properties or the safe and efficient use of the highway network, in accordance with East Staffordshire Local Plan Policies SP1, SP24, DP1 and DP3, the East Staffordshire Design Guide and the National Planning Policy Framework (particularly Paragraph 17 and Section 7). |
| 5 | <p>The development overall and of each plot shall comply with the plot location, plot sizes, no build zones and developable areas shown on the illustrative site plan (6640 P 09 dated as received on 23rd May 2016) and the design details in the submitted Design and Access Statement including the plot parameters given in Section 6, which details the maximum dimensions of the dwelling on each plot, unless any variation is first agreed in writing by the Local Planning Authority.</p> <p>Reason: To safeguard the character and appearance of the area and the amenity of neighbours, in accordance with East Staffordshire Local Plan Policies SP1, SP24, DP1 and DP3, the East Staffordshire Design Guide and the National Planning Policy Framework (particularly Paragraph 17 and Section 7).</p> |
| 6 | <p>No development or site clearance shall take place in respect of each individual plot (or for the site as a whole) until a written scheme of investigation securing the implementation of a programme of archaeological work has been submitted to and approved in writing by the Local Planning Authority. The programme of work shall be implemented in accordance with the approved details.</p> <p>Reason: To ensure that no development or site works takes place which may adversely affect any items of archaeological interest without adequate prior investigation in accordance with East Staffordshire Local Plan Policies SP1 and DP5 and Section 12 of the National Planning Policy Framework.</p> |
| 7 | <p>No development shall take place until details of the construction, surfacing, street lighting and drainage (including longitudinal sections and means of drainage to an acceptable outfall) of the access road between the 12 self build plots and the previously completed main distributor road (which serves the wider residential site of 212 dwellings) have been submitted to and approved in writing by the Local Planning Authority. The access road shall be completed in accordance with the approved details prior to the occupation of the residential development.</p> <p>Reason: In the interests of highway safety, in accordance with East Staffordshire Local Plan Policy SP1.</p> |
| 8 | <p>No development shall take place in respect of each individual dwelling until details of access drives, parking and turning areas (including details of surfacing materials) be submitted to and approved in writing by the Local Planning Authority. The approved access drives, parking and turning areas shall be provided prior to the first occupation of the dwelling to which they relate and thereafter shall be made available at all times for their designated purposes.</p> <p>Reason: In the interests of highway safety, and to ensure porous materials are used where appropriate to reduce the risk of flooding, in accordance with East Staffordshire Local Plan Policies SP1 and SP27 and the National Planning Policy Framework (particularly Sections 4 and 10).</p> |
| 9 | <p>No development shall take place in respect of each individual plot/dwelling until samples and details of all materials to be used externally have been submitted to and approved in writing by the Local Planning Authority and the development shall only be carried out using the agreed materials.</p> <p>Reason: To safeguard the character and appearance of the area, in accordance with East Staffordshire Local Plan Policies SP1, SP24, DP1 and DP3, the East Staffordshire Design Guide</p> |

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| | and the National Planning Policy Framework (particularly Paragraph 17 and Section 7). |
| 10 | <p>No development shall take place in respect of each individual plot until details of boundary treatment, including materials, finishes, heights and sections (where there are changes in topography), have be submitted to and approved in writing by the Local Planning Authority. The boundaries between new dwellings and the public realm shall consist of walls and/or railings. The boundary treatment shall be provided in accordance with the approved details prior to the first occupation of the dwelling to which it relates.</p> <p>Reason: To safeguard the character and appearance of the area and the amenities of neighbouring properties, in accordance with East Staffordshire Local Plan Policies SP1, SP24, DP1 and DP3, the East Staffordshire Design Guide and the National Planning Policy Framework (particularly Paragraph 17 and Section 7).</p> |
| 11 | <p>No development shall take place in respect of each individual plot until details of all slab levels and any regrading proposed to that site/plot have been submitted to and approved in writing by the Local Planning Authority and the development shall only be carried out in accordance with those details so approved.</p> <p>Reason: To safeguard the character and appearance of the area and the amenities of neighbouring properties, in accordance with East Staffordshire Local Plan Policies SP1, SP24, DP1 and DP3, the East Staffordshire Design Guide and the National Planning Policy Framework (particularly Paragraph 17 and Section 7).</p> |
| 12 | <p>No development shall take place in respect of each individual plot until a scheme for the disposal of foul and surface waters, to include sustainable drainage principles and the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details prior to its first occupation.</p> <p>Reason: To ensure adequate drainage facilities are provided to serve the development to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution as recommended by Severn Trent Water Limited in accordance with East Staffordshire Local Plan Policies SP27, SP34 and DP7 and the National Planning Policy Framework (particularly Section 10).</p> |
| 13 | <p>No development shall take place in respect of each individual dwelling until details of sustainable construction including energy and water saving measures, techniques to be employed have been shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details.</p> <p>Reason: To ensure the development is sustainable in terms of energy and water efficiency and does not contribute unduly to climate change, in accordance with East Staffordshire Local Plan Policies SP1, SP24 and DP2, the East Staffordshire Design Guide and the National Planning Policy Framework.</p> |
| 14 | <p>If during the course of development, contamination not previously identified is found to be present on the site, then no further development (unless otherwise first agreed in writing with the Local Planning Authority) shall be carried out until a method statement detailing how and when the contamination is to be dealt with has been submitted to and approved in writing by the Local Planning Authority. The contamination shall then be dealt with in accordance with the approved details.</p> |

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| | Reason: In order to safeguard human health, in accordance with East Staffordshire Local Plan Policies SP34 and DP7 and Paragraphs 120 and 121 of the National Planning Policy Framework. |
| 15 | <p>All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the dwelling to which it relates or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.</p> <p>Reason: To ensure that the approved landscaping to enhance the development and to provide usable gardens is implemented in a speedy and diligent way and that initial plant losses are overcome in the interests of the visual amenities of the locality in accordance with East Staffordshire Local Plan Saved Policy SP1 SP24 and DP1, and the East Staffordshire Design Guide and the National Planning Policy Framework (particularly Paragraph 7 and Section 7).</p> |
| 16 | <p>Prior to the first occupation of the each dwelling the applicant or developer shall provide each property with waste collection bins/receptacles in accordance with that stipulated in the Council's Supplementary Planning Document regarding Waste Storage and Collection Guidance.</p> <p>Reason: To ensure the provision of appropriate waste storage facilities in accordance with the East Staffordshire Waste Storage and Collection Guidance for New Developments Supplementary Planning Document.</p> |
| 17 | <p>Notwithstanding the provisions of Class A Schedule 2 Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any Order revoking and re-enacting that Order, no gates, walls, fences or other means of enclosure (except for those approved by Condition 10 this permission) shall be erected within the curtilage of the dwellings unless planning permission has first been granted by the Local Planning Authority.</p> <p>Reason: To safeguard the character and appearance of the building and their surroundings, in accordance with East Staffordshire Local Plan Policies SP24, DP1 and DP3, the East Staffordshire Design Guide and the National Planning Policy Framework (particularly Paragraph and Section 7).</p> |

Informative(s)

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| 1 | <p>The conditions identified below require details to be approved before development takes place.</p> <p>Condition Nos. 6 to 13</p> <p>This means that a lawful commencement of the approved development cannot be made until the particular requirements of the 'No development shall take place until' conditions have been met.</p> <p>As from 6th April 2008 requests for confirmation of compliance with planning conditions requires a payment of a fee to the Local Planning Authority. The fee chargeable by the authority is £97 per request and the fee must be paid when the request is made. Any number of conditions can be included for each request.</p> <p>Payment can be made by cheque or card only. If you wish to pay by credit or debit card (1.6% administration charge for credit cards) please telephone 01283 508606.</p> |
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| | Although we will endeavour to discharge all conditions within 21 days of receipt of your written request, legislation allows the Local Planning Authority a period of 8 weeks and, therefore, this timescale should be borne in mind when programming development. |
| 2 | The applicant's attention is drawn to the Council's register of individuals who wish to build their own house. Further information can be found online at http://www.eaststaffsbc.gov.uk/planning/apply-for-permission/self-build-custom-build . |
| 3 | Plot purchasers attention is drawn to the key East Staffordshire Local Plan Policies that covering design, neighbour amenity and sustainable construction (Policies SP1, SP24, DP1, DP2 and DP3), the East Staffordshire Design Guide, the Tutbury Village Design Statement and Section 7 of the National Planning Policy Framework. Such alongside the various conditions of the planning permission shall inform the designs to be submitted at the reserved matter/s stage. Policy DP1 and DP3 set out issues relating to avoiding any significant impact on neighbours in terms of light to principal windows and private gardens, overlooking/privacy, outlook and avoiding any overbearing impact. Issues to consider in terms of sustainable construction and efficiencies include building material type and sourcing, energy and water efficiency including grey water recycling, sustainable drainage and passive solar gain and ventilation. Such matters relate to Condition 13 of this permission. |
| 4 | Plot purchasers are encouraged to consider designing their proposed dwelling to meet Part M4(2) of the Building Regulations regarding accessibility and adaptability if such would meet their own needs (present or future) and/or to maximize the future marketing potential of the property should it be sold. |
| 5 | The applicant is advised that in complying with Condition 8 above materials with a high degree of porosity would be the most likely to be acceptable as they will reduce the amount of surface water run-off. |
| 6 | The applicant/developers are advised that in complying with Conditions 9 and 10 above, details of the proposed materials should be submitted in writing to the Local Planning Authority, with any correspondence including notification of the date on which samples will be made available on-site and where such are located. |
| 7 | The sustainable surface water drainage scheme required under Condition 12 should make reference to the porous surfacing material details sought by 8. Surface water interceptors should also be shown across any accesses/drives that fall towards a highway. |
| 8 | The applicant is advised that this consent does not override any obligations in respect of protected species under relevant wildlife legislation. It should be noted that nearby trees can also provide a habitat for nesting birds and bats which are protected species. It is a criminal offence to wilfully cause harm to either. The works to the building and to the access drive should, therefore, be carried out outside the bird nesting season, and if bats are known to be using any nearby trees as a roost, or are discovered during the carrying out of the works, a competent ecologist should be employed to ensure the bats are safeguarded. |
| 9 | The applicant/developers are advised that any material imported onto the site for landscaped areas should be analysed to ensure it is suitable for use, the results of which should be submitted to the Local Authority Pollution Team for approval (pollution.team@eaststaffsbc.gov.uk) |
| 10 | The applicant/developers are advised to note and act upon as necessary the comments of the Police Architectural Liaison Officer. Where there is any conflict between these comments and the terms of the planning permission, the latter takes precedence. |
| 11 | The applicant/developers are advised that the construction hours are to be restricted to the following: - Monday -Friday: 07:30 - 18:00 Saturdays: 08:00 - 14:00 Sundays/Bank Holidays: No Working |

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| 12 | During the course of consideration of this proposal the Local Planning Authority has negotiated with the applicant to ensure the development complies with relevant development plan policies and material planning considerations including the National Planning Policy Framework. It is, therefore, considered that the Local Planning Authority has worked proactively with the applicant to secure a development that is in accordance with the requirements of Paragraphs 186 and 187 of the National Planning Policy Framework. |
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The decision to grant permission has been taken having regard to the policies and proposals in the Development Plan and to all relevant material considerations, and for the following reason(s):-

This permission is granted by the under signed under powers delegated by the Borough Council in accordance with the provisions of Section 101 of the Local Government Act 1972.

This consent is given in pursuance of the relevant Planning Legislation and does not entitle you to do anything for which the consent of some other landowner, person, public authority, or department of the Council is required.

Dated 25 October 2016

Signed

Sai Khan CPFA, MSc
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