

DATED

2025

Jennifer Susan Tomkins and Trevor Tomkins

TO

WILTSHIRE COUNCIL

**Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990
and all other enabling powers
relating to The Old Paddock, Winsley, Wiltshire, BA15 2LN**

Planning Application Reference PL/xxxxx

**Solicitor to the Council
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN**

THIS OBLIGATION BY WAY OF UNILATERAL UNDERTAKING IS MADE ON [Date]

BY

- (1) **Jennifer Susan Tomkins and Trevor Tomkins
(Joint Owners)**

TO

- (2) **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (**Council**)

BACKGROUND

- (A) The Owner is the freehold owner of the Land registered at the Land Registry under title number WT221477 shown for the purposes of identification only edged red on the Plan.
- (B) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (C) Under regulation 8 of the Biodiversity Gain Requirements (Exemptions) Regulations 2024 ("**the 2024 Exemptions Regulations**"), the BNG condition, otherwise deemed to apply to all development with planning consent, doesn't apply to Self-Build and Custom Build developments which fulfil the criteria listed in this regulation
- (D) The Owner has submitted the Planning Application to the Council in which the Development is described as a Self-Build Dwelling and satisfies the criteria under regulation 8 of the 2024 Exemptions Regulations.
- (E) The Owner enters into this Deed, to ensure that the Development will remain a Self-Build Dwelling for the Occupation Period. The planning obligations contained in this Deed are relevant, proportionate and necessary.
- (F) The Council has resolved to grant planning permission for the Development subject to conditions and the prior completion of this Deed in the interests of the proper planning of the area.

NOW THIS UNILATERAL UNDERTAKING WITNESSES AS FOLLOWS:

Definitions

The definitions and rules of interpretation in this clause apply in this Deed:

“the Act”	means the Town and Country Planning Act 1990 (as amended).
“Biodiversity Metric”	means the statutory biodiversity accounting tool published by DEFRA or Natural England from time to time that can be used to measure the biodiversity value or relative biodiversity value of habitat or habitat enhancement for the purposed of biodiversity net gain.
“Biodiversity Net Gain or BNG”	means an increase of at least 10% in Biodiversity Units resulting from implementing the Habitat Management and Monitoring Plan (as measured using the Biodiversity Metric in force at the time that the HMMP is approved) that can be allocated to the Development to fulfil the BNG Requirement
“BNG Requirement”	means the requirement to create or enhance BNG as a result of the Development imposed under Schedule 7A of the Act
“Biodiversity Units”	means the quantum of Biodiversity Value as measured by the Biodiversity Metric which will be set out in the HMMP and

are necessary towards achieving the Biodiversity Net Gain.

“Biodiversity Value”

means the habitat creation and enhancement works as prescribed in the HMMP deemed to conserve the natural environment of land

“CIL Regulations”

means the Community Infrastructure Levy Regulations 2010 (as amended).

“Commencement of Development”

means the date on which any material operation as defined in section 56(4) of the Act forming part of the Development begins to be carried out and in the context of a Residential Unit or Residential Units the material building operation or development in accordance with Section 56 of the Act shall refer to that Residential Unit or Residential Units and **“Commence”** and **“Commenced”** shall be construed accordingly.

“Custom – Build Dwelling(s)”

means the dwelling(s) which is(are) permitted to be erected pursuant to the Planning Permission, in compliance with the requirements of the Self-build and Custom Housebuilding Act 2015 (or such other replacement or successor legislation) and which the Owner has had the primary input into the final design and layout, to be Occupied by the Owner (or the Owner’s immediate family) as their principal residence

“DEFRA”

means the public body known as the Department for Environment, Food and Rural Affairs or any successor body which acts as the Government’s advisor for the natural environment, food or rural affairs in England, or any replacement of this body

“Development”

means any development permitted by the Planning Permission.

“Disqualifying Event”

means any of the following events

- (a) any change in relation to the Self-Build Dwelling or Custom-Build Dwelling(s) such that it ceases to be a Self-Build Dwelling or Custom-Build Dwelling(s); or
- (b) the letting out of part or the whole of the Self-Build Dwelling or Custom-Build Dwelling(s); or
- (c) the sale of the Self-Build Dwelling or the Custom-Build Dwelling(s).

“Habitat Management and Monitoring Plan or HMMP”

means a detailed document outlining how habitats will be provided managed and monitored for at least 30 (thirty) years to ensure the BNG Requirement is achieved and sustained, which HMMP will be submitted by the Owner and approved by the Council in case a Disqualifying Event occurs during the Occupation Period, and which plan may also include details of the financial mechanism to be put in place to ensure

that sufficient funding is available at all times to secure that the Biodiversity Units are managed and maintained following the approval of the Habitat Management Monitoring Plan at no cost to the Council

“Land”

means the Former Paddock Title ref WT 221477

“Occupation” and “Occupied”

means occupation of the completed Self-Build Dwelling by the Owner or the Owner’s immediate dependents for the purposes permitted by the Planning Permission and **“Occupied”** and **“Occupy”** shall be construed accordingly.

“Occupation Date”

means the date upon which the completed Self-Build Dwelling is first Occupied as notified to the Council with the service of the Occupation Notice in accordance with this Deed.

“Occupation Notice”

means the notice in writing to be served upon the Council by the Owner notifying it of the Owner’s intention to Occupy the Land, a copy of which is contained within Annex B.

“Occupation Period”

means the continuous period of 3 (three) years from the Occupation Date.

“Plan”

means the plan attached to this Deed as Annex A and referenced [WT221477],

dated [] The plan is for the purposes of identification only.

"Planning Application"

means the planning application for construction of one self-build dwelling and associated works ref xxx to follow

"Planning Permission"

means the planning permission for the Development that may be granted pursuant to the Planning Application.

"Self-Build Dwelling(s)"

means the dwelling(s) which is permitted to be erected pursuant to the Planning Permission, in compliance with the requirements of the Self-build and Custom Housebuilding Act 2015 (or such other replacement or successor legislation) and which is to be Occupied by the Owner or the Owner's immediate family only as their principal residence.

"Working Day(s)"

means days on which clearing banks in the City of London are open to the public and for the avoidance of doubt such days shall not include any Saturday, or Sunday, New Year's Day, Good Friday, Easter Monday, May Day, Christmas Day, and Boxing Day.

Construction of this Deed

- (a) Words importing the masculine include the feminine and neuter gender and vice versa.

- (b) Words importing the singular include the plural and vice versa.
- (c) Words importing persons include companies, corporations and vice versa and all such words shall be construed interchangeable in that manner.
- (d) Wherever there is more than one person named as a party and where more than one party undertakes an obligation (including by becoming a successor in title) all their obligations can be enforced against all of them jointly and against each individually.
- (e) Insofar as different parts of or interests in the Land are owned by different persons each person covenants with the Council and with one another to co-operate insofar as they are able to ensure that the covenants herein on behalf of "the Owner" are fulfilled as expeditiously as possible.
- (f) The headings throughout this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed.
- (g) Any reference to a clause paragraph schedule or plan is to one in to or attached to this Deed and any reference to this Deed includes any schedule, plan, annexure or other attachment to this Deed.
- (h) In the absence of contrary provision any reference to a Council document to be completed which is annexed or referred to in this Deed shall be the Council document which is current and in force at the date of its completion.
- (i) In the absence of contrary provision any reference to a statute or statutory instrument includes any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference to a statute includes any statutory instrument direction or specification made or issued under the statute or deriving validity from it.
- (j) References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and successors to any statutory functions of the Council.
- (k) Covenants to do or not to do an action shall include respectively a covenant to permit or not to permit that action to be done.

Statutory provisions

- (l) This Deed is given pursuant to Section 106 of the Act and all other enabling powers and may be enforced by the Council pursuant to those powers.
- (m) The covenants restrictions and requirements created by this Deed are planning obligations for the purposes of Section 106 of the Act to the intent that it shall bind the parties and their respective successors in title to each and every part of the Land and are enforceable by the Council as local planning authority.

It is acknowledged that the obligations contained in this Deed are:

necessary to make the Development acceptable in planning terms;
directly related to the Development; and
fairly and reasonably related in scale and kind to the Development
in accordance with the requirements of Regulation 122 of the CIL Regulations.

Commencement

- (n) This Deed takes effect on the grant of the Planning Permission.
- (o) The Owner shall notify the Council of the Commencement of Development, and the Owner agrees that no time shall run to the detriment of the Council if and so long as the Owner has failed to serve notice.
- (p) If the Owner has not provided the information referred to in clause 4.2 above within 20 Working Days of its becoming available the Council shall have the right to obtain this information by other reasonable means and to charge the Owner its costs in obtaining this information subject to a maximum of one thousand pounds (£1,000) per time

PROVIDED THAT the information is in fact obtained as aforesaid and reasonable evidence of this is provided by the Council to the Owner.

The Owner's Covenants

The Owner will observe and perform the obligations set out in this Deed and Schedule 1.

General

- (q) Nothing in this Deed constitutes an obligation to grant planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function and nothing in this Deed constitutes any such approval, consent or permission.
- (r) This Deed does not and is not intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999 (other than any replacement body of the Council).
- (s) Insofar as any clause or clauses or any part thereof of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- (t) If before Commencement of Development the Planning Permission:
 - a) expires within the meaning of Sections 91, 92, or 93 of the Act; or
 - b) is revoked, quashed or modified without the consent of the Owner;this Deed shall cease to have effect.
- (u) The Owner shall pay to the Council on completion of this Deed its proper and reasonable legal costs incurred in negotiating preparing and entering into this Deed

upon completion of this Deed and in relation to any transaction arising therefrom upon completion of the same.

- (v) This Deed shall be registerable as a local land charge by the Council.
- (w) If required by the Council the Owner shall secure registration of this Deed in the Charges Register of the Registered Title to the Land at the Land Registry.
- (x) Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- (y) Nothing contained or implied in this Deed shall prejudice affect fetter or restrict the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority or any other statutory function rights duties powers and obligations under all public and private statutes byelaws and regulations.
- (z) This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the Courts of England and Wales.

Notices

Any notice or other communication given or made under this Deed shall be in writing and (unless otherwise herein provided) shall be deemed to be sufficiently served if sent by pre-paid first class post or other next working day delivery service to the address of the party specified in this Deed or to such other address (in substitution thereof) as may be notified in writing by that party from time to time for this purpose and in the case of the Council shall be addressed to the Head of Legal Services and quote reference IKEN 203495 and copied to the Section 106 and Community Infrastructure Levy Officer email: cilands106@wiltshire.gov.uk.

Waiver

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

Change in Ownership

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged. Such notice to give details of the transferee's name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation transferred by reference to a plan PROVIDED THAT this clause shall not apply to the disposal of an individual Residential Unit.

Delivery

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

Schedule 1 – Covenants to the Council

1. The Owner covenants with the Council that it shall:

- 1.1 Serve on the Council the Occupation Notice at least 5 (five) Working Days before the Occupation Date and not to Occupy the Development until the Owner has served on the Council the Occupation Notice in accordance with this paragraph 1.1; and
- 1.2 Occupy the Development as a Self-Build Dwelling for the Occupation Period and not to Occupy or permit to be Occupied any part of the Development otherwise than as a Self – Build Dwelling during the whole of the Occupation Period; and
- 1.3 Not at any time during the Occupation Period sell or let the Self-Build Dwelling to anyone other than a member of the Owner's immediate family

2 Disqualifying Event occurring within the Occupation Period

In the event of a Disqualifying Event occurring within the Occupation Period notwithstanding the 2024 Exemptions Regulations, the Owner further covenants:

- 2.1 To submit a HMMP for the Council's approval within 20 (twenty) Working Days from being so notified by the Council that a Disqualifying Event has taken place; and
- 2.2 If required by the Council, to enter into a planning obligation under s106 of the Act for the provision, monitoring and maintenance of the Biodiversity Units as will be included in the HMMP; and
- 2.3 Implement the HMMP approved by the Council within 20 (twenty) Working Days from the date of the Council's approval, or such other period as the Council may agree.

PROVIDED ALWAYS that the restrictions in paragraphs 1 and 2 shall cease to apply upon the expiry of the Occupation Period.

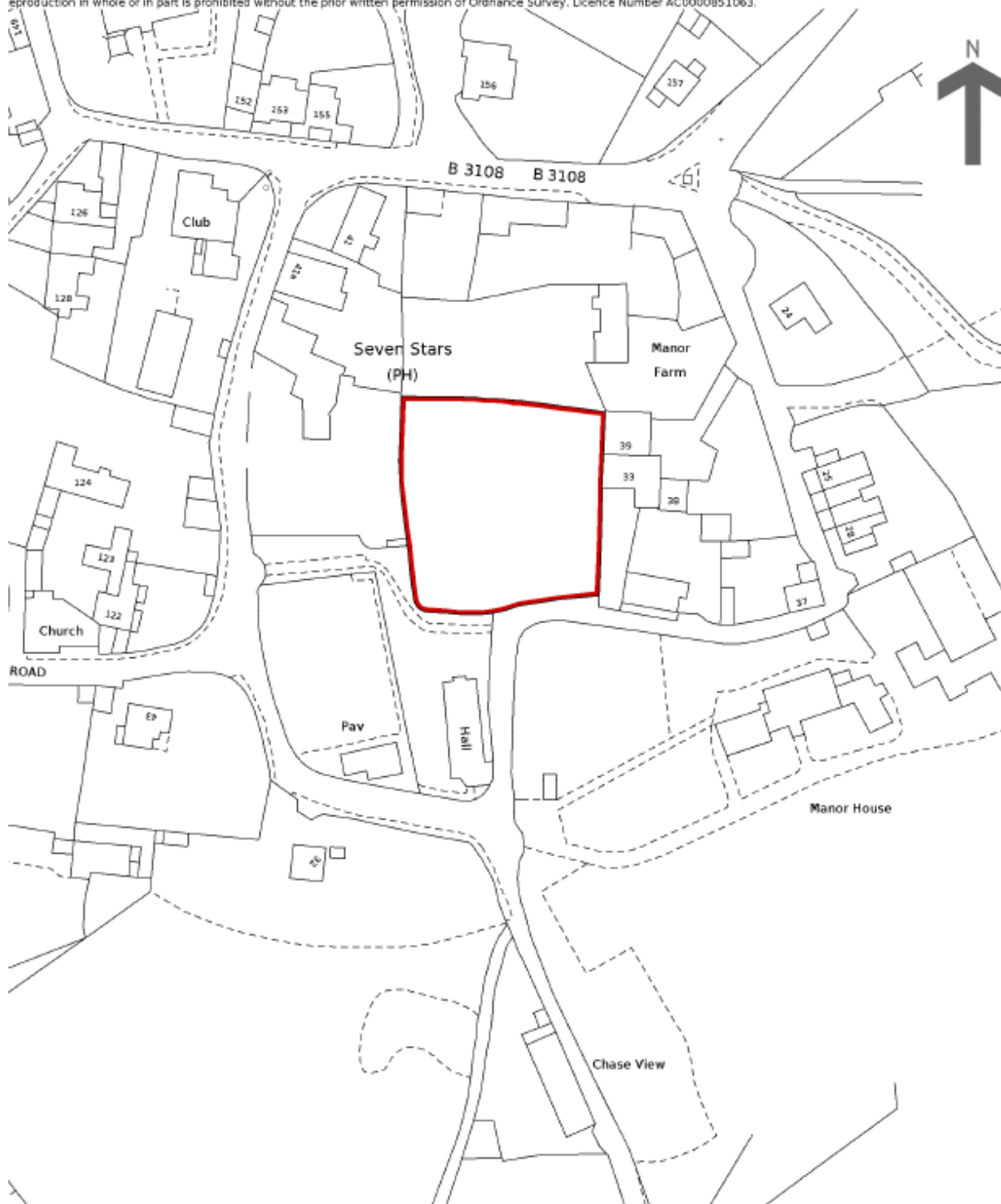
Annex A. Plan

HM Land Registry
Official copy of
title plan

Title number **WT221477**
Ordnance Survey map reference **ST7960NE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Wiltshire**



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Annex B. Form of Notice

OCCUPATION NOTICE

NOTICE TO WILTSHIRE COUNCIL OF OCCUPATION OF DEVELOPMENT

To: HEAD OF DEVELOPMENT MANAGEMENT, WILTSHIRE COUNCIL

PLANNING PERMISSION REFERENCE: PL/..... [PLEASE PROVIDE
PLANNING PERMISSION REFERENCE]

DEVELOPMENT SITE:[PLEASE PROVIDE
DESCRIPTION OF THE LAND]

DESCRIPTION OF DEVELOPMENT:[PLEASE PROVIDE
DESCRIPTION OF THE DEVELOPMENT AS IN THE PLANNING APPLICATION]

DATE OF UNILATERAL UNDERTAKING:

**NOTICE IS GIVEN TO THE COUNCIL THAT THE OCCUPATION OF THE DWELLING AS APPROVED
BY THE PLANNING PERMISSION SHALL COMMENCE ON** [PLEASE PROVIDE
THE DATE]

SIGNED BY AND ON BEHALF OF:

CONTACT NAME:

CONTACT E-MAIL ADDRESS:

DATE

Signed as a deed by X in the
presence of:

.....
[SIGNATURE OF OWNER]

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed as a deed by X in the
presence of:

.....
[SIGNATURE OF OWNER]

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

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