

DATED 7TH DECEMBER 2023

Between:

(1) The Rochdale Borough Council

And

(2) Anita Elizabeth Lewis

Supplemental Deed to vary Section 106 Agreement

dated 31st August 2021 in relation to land south east of Half Acre House, Residential Care Home

SB/ECO0001/594

dated 7TH DECEMBER

2023

Parties

- (1) **The Rochdale Borough Council** of Number One Riverside, Smith Street, Rochdale OL16 1XJ (the **Council**); and
- (2) **Anita Elizabeth Lewis** of 73 Highcroft Way, Syke, Rochdale, Lancashire, OL12 9UE (the **Owner**).

Recitals

- (A) This Deed is supplemental to and varies the Original Agreement
- (B) A section 106 agreement was entered into between the Council (1) and Rodney Lewis and Anita Elizabeth Lewis (2) dated 31 August 2021 (the **Original Agreement**) in respect of the Site (as therein defined) in relation to full planning permission reference 17/01418/OUT (the **Original Planning Permission**).
- (C) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated and as such is the local planning authority entitled to enforce the terms of this Deed.
- (D) The Owner (as identified in this Deed) is the sole owner of the freehold estate of the Site legal title to which is registered under title number LA339760.
- (E) The Owner has submitted an application to the Council to vary the Original Planning Permission (the **Section 73 Application**) and the Council resolved to approve the Section 73 Application.
- (F) The Council have agreed to vary the Original Agreement in light of the Section 73 Application.
- (G) The parties to this Deed agree to alter the terms of the Original Agreement in the manner hereinafter appearing.

Operative Clauses

1 Definitions and interpretation

1.1 In this Deed where the context so admits:

- 1.1.1 References to clauses, paragraphs and schedules are references to those in the Original Agreement.
- 1.1.2 Words and phrases whose meanings are not set out in clause 1.1.3 below or varied by this Deed have the same meanings as in the Original Agreement.
- 1.1.3 The following expressions shall have the meanings set out below:

Deed means this Deed of Variation;

Original Agreement means the agreement between the Council (1) and Rodney Lewis and Anita Elizabeth Lewis (2) entered into pursuant to section 106 of the Act dated 31 August 2021;

Original Planning Permission means the planning permission reference 17/01418/OUT dated 31 August 2021;

Parties means the parties to this Deed and "Party" shall be construed accordingly; and

Section 73 Application means the application submitted to the Council for section 73 variation and allocated reference number 22/01270/VRCON; and

Section 73 Permission means the written planning permission in the form of the draft decision notice at Schedule 2 of this Deed to be granted by the Council pursuant to the Section 73 Application.

2 Legal Effect

2.1 This Deed is supplemental to the Original Agreement and relates to and binds the Site. This Deed is made pursuant to the provisions of sections 106 and 106A of the Act and is a planning obligation for the purposes of section 106 of the Act. Insofar as the provisions hereof do not constitute planning obligations for the purposes of section 106 of the Act this Deed is also entered into pursuant to section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers enabling the Council thereunto.

2.2 The planning obligations in this Deed are enforceable by the Council as the local planning authority of the area in which the Site is situated.

2.3 This Deed shall come into effect on the date hereof.

3 Variation of the Original Agreement

3.1 It is hereby agreed between the Parties that the Original Agreement is varied in the manner set out in the Schedule.

3.2 Save as expressly varied by this Deed the Original Agreement shall remain in full force and effect.

3.3 Where any obligation under the Original Agreement has been complied with that obligation shall be deemed to have been complied with under the Original Agreement as varied by this Deed.

4 Local Land Charge

This Deed is a local land charge and shall be registered as such.

5 Costs

6 Upon completion of this Deed the Owner shall pay to the Council its reasonable and proper legal costs incurred in connection with the preparation, negotiation and

completion of this Deed of £801.00 (Eight Hundred and One Pounds) and any reasonable disbursements.

7 Contracts (Rights of Third Parties) Act 1999

The Parties do not intend that any term of this Deed shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Deed.

8 Jurisdiction

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.

Schedule

Variations to Original Agreement

The Parties agree that the Original Agreement shall be varied as follows:

- 1 A new definition of "**Section 73 Application**" shall be inserted in Clause 1:

""Section 73 Application" means the application for planning permission under section 73 of the Act for the variation of condition 3 to allow for the lawful implementation of the Original Planning Permission amendment of plan 'Proposed Site Plan reference 1311.15 Revision C' respectively;"

- 2 A new definition of "**Section 73 Permission**" shall be inserted in Clause 1:

""Section 73 Permission" means the written planning permission in the form of the draft decision notice at Schedule 5 to be granted by the Council pursuant to the Section 73 Application;"

- 3 A new definition of "**Original Planning Permission**" shall be inserted in Clause 1:

""Original Planning Permission" means planning permission granted by the Council pursuant to the Application;"

- 4 The definition of "**Planning Permission**" in Clause 1 shall be deleted in its entirety and replaced with the following:

""Planning Permission" means the Original Planning Permission as varied by the Section 73 Permission;"

- 5 The definition of "**Site**" in Clause 1 shall be amended to insert "and Section 73 Application" after "Application".

- 6 The Section 73 Permission attached to Schedule 2 of this Deed shall be deemed to have been inserted after the draft decision notice of the Original Planning Permission attached to Schedule 5 of the Original Agreement.

Schedule 2

Draft Section 73 Permission



DRAFT DECISION

Town and Country Planning Act 1990 (as amended)

PLANNING PERMISSION GRANTED

APPLICATION REFERENCE: 22/01270/VRCON

Name and address for correspondence:	Applicant name:
Mr Malcolm Percy Building Design and Planning Consultancy 5, Newark Place Henhull Nantwich Cheshire CW5 6XY	Mr And Mrs R Lewis

Part I - Particulars of Application

Date of Application: 29 September 2022

Proposal:	Outline application for erection of five detached dwellings without complying with condition 3 of planning permission 17/01418/OUT (to allow the access point into the site to be retained in its existing location and not repositioned as approved)
Location:	Half Acre House Residential Care Home, Roch Valley Way, Rochdale, OL11 4DB,

Part II - Particulars of decision

The Rochdale Metropolitan Borough Council hereby give notice in pursuance of the provisions of the Town and Country Planning Act 1990 (as amended) that planning permission has been **GRANTED SUBJECT TO CONDITIONS** for the carrying out of the development referred to in Part I above.

The Council hereby permits the above development in accordance with the details given on the application form and submitted plans subject to the following condition(s):

Conditions and Reasons:

- 1 Amended Condition 1
Application for approval of reserved matters must be made not later than the expiration of three years beginning with the date of this permission and the development must be begun not later than whichever is the later of the following dates:

- (a) The expiration of three years from the date of this permission; or
- (b) The expiration of two years from the final approval of the reserved matters; or

in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004

- 2 The approval of the Local Planning Authority shall be sought in respect of the following matters before the development is commenced: the scale, external appearance and the landscaping of the site.

Reason: The application is granted in outline only under the provisions of Article 5 of the Town and Country Planning (Development Management Procedure) Order 2015 and details of the matters referred to in the condition have not been submitted for consideration.

3 Amended Condition 3

The total number of residential units included in any application(s) for reserved matters submitted pursuant to condition 2 of this permission shall be limited to a maximum of five dwellings and the development shall be substantially in accordance with the following plans/documents:

- Location Plan (Amended Plan Received 02.04.20)
- Drawing No: 1311.15 Rev F - Proposed Site Plan (received 28/09/2022)
- 1131.16 Illustrative Floor Plans & Elevations (Received 02.04.20)

Reason: The submitted layout of the proposed development incorporates a number of key parameters that will guide the detailed reserved matters applications, and in order to provide for an acceptable scale and layout of development and high quality environment, in accordance with policies P3 and DM1 of the adopted Rochdale Core Strategy, saved policy G/8 of the Rochdale Unitary Development Plan and the National Planning Policy Framework.

- 4 No development shall take place until an investigation and risk assessment (in addition to any assessment provided with the planning application) has been submitted to and approved in writing by the Local Planning Authority. The assessment shall investigate the nature and extent of any contamination on the site (whether or not it originates on the site). The assessment shall be undertaken by competent persons and a written report of the findings submitted to and approved in writing by the Local Planning Authority before any development takes place.

The submitted report shall include:

- i) a survey of the extent, scale and nature of contamination
- ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland, and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
- iii) where unacceptable risks are identified, an appraisal of remedial options and proposal of the preferred option(s) to form a remediation strategy for the site.

The development shall thereafter be carried out in full accordance with the duly approved remediation strategy and a verification report submitted to and approved in writing by the Local Planning Authority before any of the buildings hereby approved are first occupied.

Reason: To ensure the safe development of the site in the interests of the amenity of future occupiers in accordance with Policy G9 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.

Reason for pre-commencement condition: Further investigation will be necessary prior to commencement of any building or engineering works on site.

- 5 No development shall take place until such time as a scheme for the disposal of foul and surface waters from the site has been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, foul and surface water shall drain on separate systems. The surface water drainage scheme should be based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions, and include details of how the scheme shall be managed after completion. In the event of surface water draining to the public surface water sewer, the pass forward flow rate to the public sewer must be restricted to 6.5 l/s. The duly approved scheme shall be implemented prior to first occupation of the development hereby permitted and maintained and managed in accordance with the approved details.

Reason: To prevent an increased risk of flooding as a result of the development and to ensure satisfactory disposal of surface and foul water from the site in accordance with the requirements of Policy G8 of the adopted Rochdale Core Strategy, saved policies EM/7 and EM/8 of the Rochdale Unitary Development Plan and the National Planning Policy Framework.

Reason for pre-commencement condition: Drainage infrastructure will need to be implemented prior to commencement of above ground works and a scheme therefore needs to be agreed in advance of the same.

- 6 No development, including works of site clearance, until a Construction Method Statement (CMS), has been submitted to, and approved in writing by the Local Planning Authority, which shall include the following:
- a. the parking of vehicles of site operatives and visitors;
 - b. loading and unloading of plant and materials;
 - c. storage of plant and materials used in constructing the development;
 - d. the erection and maintenance of security hoarding;
 - e. hours of construction, including deliveries (which should not take place outside of the hours of 08:00-18:00 Monday to Friday and 09:00-14:00 Saturday, with no work taking place on Sundays or Bank Holidays).

The development shall be carried out in accordance with the approved CMS.

Reason: To minimise detrimental effects to the amenity of surrounding residential occupiers and dangers to highway safety during the construction phase in accordance with Policies DM1, T2, and G9 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.

Reason for pre-commencement condition: As the proposals require ground works and engineering works an understanding will therefore be necessary of what measures will be put in place to protect the amenity of nearby residents prior to commencement of any building or engineering works on site.

- 7 No development or works of site preparation shall take place until a detailed method statement for the removal or long-term management/eradication Himalayan Balsam on the site has been submitted to and approved in writing by the local planning authority. The method statement shall include measures to prevent the spread of Himalayan Balsam during any operations such as mowing, strimming or soil movement, and measures to ensure that any soils brought to the site are free of the seeds/roots/stems of any invasive plant covered under the Wildlife and Countryside Act 1981. Development shall be carried out in accordance with the approved method statement.

Reason: In accordance with policy G7 of the adopted Rochdale Core Strategy and to ensure the satisfactory treatment and disposal of invasive plant species which, under the terms of the Wildlife & Countryside Act 1981 (as amended) it is an offence to be caused to be spread in the wild.

Reason for pre-commencement condition: Construction activity increases the risk of invasive species spreading.

- 8 No development, earthworks or works of site clearance and preparation shall take place until such time as a survey of the site and within 30m for badgers has been undertaken by a suitably qualified person and the findings submitted to and agreed in writing by the Local Planning Authority. Should evidence of badgers in the search area be identified, no development shall take place until a badger protection management plan has been submitted to and approved in writing by the Local Planning Authority. The badger protection management plan shall be adhered to throughout the entirety of the construction works and it shall confirm:

- No use of very heavy machinery (generally tracked vehicles) should take place within 30 metres of any entrance to an active sett;
- No use of lighter machinery (generally wheeled vehicles), particularly for any digging operation, within 20 metres;
- Construction activity should be limited to hand digging or scrub clearance within 10 metres.
- The use of noisy plant and machinery in the vicinity of the protection zone should be minimised one hour before sunset.
- Security lighting should be directed away from setts.
- Chemicals should be stored as far away from the setts and badger paths as possible.
- Where possible, deep trenches must be covered at the end of each working day, or include a means of escape for any animal falling in.
- Any pipe system which is left open for a significant period of time should be capped in such a way as to prevent badgers gaining access.
- Trees should be felled away from setts and must not block badger paths.

Reason: In the interest of species protection, in accordance with the requirements of adopted Rochdale Core Strategy Policies G6 and G7 and the National Planning Policy Framework.

Reason for pre-commencement condition: As the proposals require ground works and engineering works it is necessary to ensure the protection of any badger setts that may be present.

- 9 No development, other than site clearance, shall take place until details of finished floor levels and external ground levels relative to off-site datum has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the duly approved details.

Reason: In order to ensure a satisfactory relationship between the new dwelling and between the development and surrounding buildings in the interests of residential and visual amenity in accordance with adopted Rochdale Core Strategy policies P2 and P3, saved policy G/8 of the Rochdale Unitary Development Plan and the National Planning Policy Framework.

Reason for pre-commencement condition: These details are required before ground works take place.

- 10 No development or works of site preparation shall take place until all trees that are to be retained within or adjacent to the site have been enclosed with temporary protective fencing in accordance with BS:5837:2012 'Trees in relation to design, demolition and construction. Recommendations'. The fencing shall be retained throughout the period of construction and no activity prohibited by BS:5837:2012 shall take place within such protective fencing during the construction period.

Reason: In order to protect the existing trees on the site in the interests of the amenities of the area and in accordance with Policies P3, G6 and G7 of the adopted Rochdale Core Strategy, saved policy G/8 of the Rochdale Unitary Development Plan and the National Planning Policy Framework.

Reason for pre-commencement condition: Protection measures for retained trees are required to be in place prior to commencement of any works on site to ensure no damage is caused.

- 11 No above ground works shall take place until a scheme of biodiversity enhancements for the site including, but not limited to, bird boxes, bat bricks and bat boxes to be integrated to the fabric of the buildings and elsewhere within the site has been submitted to and approved in writing by the Local Planning Authority. The duly approved scheme shall be implemented in full prior to first occupation of the dwellings and retained thereafter.

Reason: In the interests of enhancing biodiversity and habitat provision within the site in accordance with Policy G7 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.

- 12 No clearance of trees and shrubs in preparation for (or during the course of) development shall take place during the bird nesting season (1 March - 31 August inclusive) unless an ecological survey has been submitted to and approved in writing by the Local Planning Authority to establish whether the site is utilised for bird nesting. Should the survey reveal the presence of any nesting species, then no development shall take place during the period specified above unless a mitigation strategy has first been submitted to and approved in writing by the Local Planning Authority which provides for the protection of nesting birds during the period of works on site. The development shall be carried out in accordance with the approved details.

Reason: In order to prevent any habitat disturbance to nesting birds in accordance with policy G7 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.

Statement under Article 31(1)(cc) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended):

Date Decision Issued

Daniela Ripa
Interim Head of Planning Services

IMPORTANT

PLEASE ENSURE THAT YOU HAVE READ AND FULLY UNDERSTOOD THE CONTENTS OF THIS DECISION NOTICE. YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES.

INFORMATIVE:

The Local Planning Authority's reasons for its decision are set out in the accompanying officer's report.

INFORMATIVE:

The applicant is reminded of the need to submit and obtain formal approval of those details required by the conditions of this planning permission before development may lawfully commence on the site. The formal discharge of a planning condition is currently subject to payment of an additional fee per request: £34.00 for householder applications and £116.00 in all other cases.

INFORMATIVE:

The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Property specific summary information on coal mining can

be obtained from The Coal Authority Property Search Service on 0845 762 6848 or at www.groundstability.com.

INFORMATIVE:

The applicant is advised that the supply and delivery of refuse containers (including all wheelie bins and food waste caddies) for residential developments is chargeable and the responsibility for these charges rests with the applicant/developer. The cost is based on a variable rate per property depending on the property size and number of bedrooms but as an indication, the present charge for a suite of three 240l recycling bins and one 240l refuse bin is £144 per residence. Please contact environmental.management@rochdale.gov.uk for a quotation for your development.

The Local Planning Authority's reasons for its decision are set out in the accompanying officer's report.

The applicant is reminded of the need to submit and obtain formal approval of those details required by the conditions of this planning permission before development may lawfully commence on the site. The formal discharge of a planning condition is currently subject to payment of an additional fee per request: £34.00 for householder applications and £116.00 in all other cases.

The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Property specific summary information on coal mining can be obtained from The Coal Authority Property Search Service on 0845 762 6848 or at www.groundstability.com.

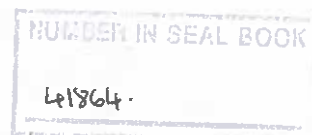
The applicant is advised that the supply and delivery of refuse containers (including all wheelie bins and food waste caddies) for residential developments is chargeable and the responsibility for these charges rests with the applicant/developer. The cost is based on a variable rate per property depending on the property size and number of bedrooms but as an indication, the present charge for a suite of three 240l recycling bins and one 240l refuse bin is £144 per residence. Please contact environmental.management@rochdale.gov.uk for a quotation for your development.

NEW INFORMATIVE:

A Deed of Variation / section 106 Agreement has been completed for this development. A copy of the S106 Legal Agreement is available on the Council's Public Register of Planning.

In witness whereof the parties have respectively sealed this Deed as a Deed the day and first year before written.

EXECUTED AS A DEED by)
affixing the Common Seal of)
THE ROCHDALE BOROUGH)
COUNCIL in the presence of:)



A handwritten signature in blue ink, appearing to be 'A. E. Lewis'.

Authorised Signatory

EXECUTED AS A DEED by)
ANITA ELIZABETH LEWIS)
in the presence of:)

A handwritten signature in blue ink, appearing to be 'A. E. Lewis'.

Witness Signature: A handwritten signature in blue ink, appearing to be 'Sheila Whitton'.

Witness Name: Sheila Whitton

Address: 40 AST Hampsons, 7 South Parade, Rochdale, OL16 1LR

Occupation: Solicitor

