

DATED

2025

[LANDOWNER]

AND

(2) SHROPSHIRE COUNCIL

AGREEMENT

Pursuant to Section 106 Town & Country Planning Act 1990

**Relating to Land at Lythwood Sports Complex, Bayston Hill, Shrewsbury, Shropshire
SY3 0AB**



**LEGAL AND DEMOCRATIC SERVICES
The Guildhall Frankwell Quay Shrewsbury SY3 8BH**

Planning Application Reference: 24/03437/FUL

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THIS AGREEMENT is made the _____ day of _____ Two Thousand and Twenty-Five

BETWEEN:-

- (1) **[NAME]** of [Address]
("the Landowner"); and
- (2) **SHROPSHIRE COUNCIL** of The Guildhall, Frankwell Quay, Shrewsbury,
Shropshire SY3 8HQ ("the Council").

INTRODUCTION

1. The Council is the local planning authority for the purposes of the Act for the area within which the Site and the Biodiversity Gain Land is situated and accordingly is the person who is entitled to enforce the obligations contained in this Agreement.
2. The Landowner is the owner of the Site and the Biodiversity Gain Land which is registered at HM Land Registry under title number SL
3. The Landowner submitted the Application to the Council on 26th September 2024 and pursuant to the Application the Landowner has applied for full planning permission for the Development.
4. The Council supports the Development subject to completion of this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
5. The Council's Head of Development Management has resolved to approve the Application under their delegated powers subject to the prior completion of this Agreement.
6. The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Landowner and their respective successors in title and to ensure that the Biodiversity Gain Land provides a Biodiversity Net Gain to satisfy the requirements of Schedule 7A of the Act.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

“Act” Means the Town and Country Planning Act

1990 (as amended).

“Application”

Means a planning application made to the Council by the Landowner on 26th September 2024 for the proposed internal reconfiguration and extension to sports pavilion and the construction of a detached storage building and associated landscaping and allocated the reference 24/03437/FUL by the Council.

“Biodiversity Gain Land”

Means the land shown edged [] on the Plan [1]

“Biodiversity Gain Land Monitoring Contribution”

Means the sum of £8,221.90 (eight thousand two hundred and twenty one pounds and ninety pence) Index Linked to be paid by the Landowner to the Council under paragraph 3 of the Fourth Schedule of this Deed to be applied by the Council as a financial contribution towards the Council's costs of monitoring compliance with:

(a) the Landowner's obligations under this Deed in respect of the Biodiversity Gain Land; and

(b) compliance with condition [] of the Planning Permission

“Biodiversity Net Gain or BNG”

Means an increase in Biodiversity Units resulting from implementing the Habitat Management and Monitoring Plan (as measured using the Biodiversity Metric) that can be allocated to the development to fulfil its requirement to create or enhance biodiversity under Schedule 7A of the Act.

“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 purposes of biodiversity net gain.

“BNG Commencement Date”

means the date upon which the Habitat Creation and Enhancement Works have commenced

“Breach Notice”

Means a notice which may be served by the Council on the Landowner under paragraph

6 of the Third Schedule to this Deed

“Certificate of Completion”

Means a written certificate of completion confirming that the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Council on the Completion Date issued (or deemed to have been issued) by the Council under paragraph 2.1(b)(i) of the Third Schedule .

“Commencement of Development”

Means the date upon which the Development shall be implemented by the carrying out on the Site pursuant to the Planning Permission of a material operation specified in Section 56 of the Act PROVIDED THAT any works of or associated with demolition, site clearance, remediation works, environmental or archaeological investigations, site and soil surveys, erection of contractors work compound, erection of site office, erection of fencing to site boundaries and laying out of access roads and services shall for the purposes of this Agreement be deemed not to be material operations and “Commencement Date” shall be construed accordingly.

“Completion Date”

means the date specified in the Certificate of Completion as the date the Habitat Creation and Enhancement Works were completed.

“Completion Date Notice”

means written notice from the Landowner to the Council of the proposed Completion Date of the Habitat Creation and Enhancement Works served in accordance with paragraph 1.1(e) of the Fourth Schedule.

“Deed”

Means this Agreement.

“DEFRA”

Means the public body known as the Department for Environment, Food & Rural Affairs or any successor body which acts as the Government's advisor for the natural environment, food or rural affairs in England.

“Development”

Means the proposed internal reconfiguration and extension to sports pavilion and the construction of a detached storage building and associated landscaping in accordance with the Planning Permission.

“Habitat Creation and Enhancement Works”

Means the habitat creation and

	enhancement works set out in the Habitat Management and Monitoring Plan (excluding any management or monitoring activities specified in the Habitat Management and Monitoring Plan).
“Habitat Management and Monitoring Plan or HMMP”	Means the document to be submitted at the same time as biodiversity gain plan which shall include but is not limited to written narrative and spatial mapping details for Biodiversity Net Gain on the Biodiversity Gain Land and including any modification to it approved by the Council
“Interest”	Means interest at 4 per cent above the base lending rate of Barclays Bank plc from time to time.
“Index Linked”	<p>means all payments expressed in this Deed are to be increased from the date of this Deed to the date of payment by reference to the Index applying the following formula:</p> <p>$D = A \times B/C$ where:</p> <p>A = the sum stated to be payable in this Deed;</p> <p>B = the last Index figure published prior to the payment date;</p> <p>C = the last Index figure last published prior to the [date]; and</p> <p>D = the sum payable to the Council.</p>
“Monitoring Report”	means the monitoring reports to be issued to the Council as specified in the Habitat Management and Monitoring Plan.
“Natural England”	Means the public body known as Natural England or any successor body which acts as the Government’s advisor for the natural environment in England.
“Plan 1”	Means the plan attached to this Agreement marked “Plan 1 ”
“Planning Permission”	Means the planning permission that may be granted by the Council in pursuance of the Application as set out in draft in the Second Schedule.

“Site”

Means the land described in the First Schedule.

2 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it
- 2.6 references to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions
- 2.7 the clause headings do not affect its interpretation
- 2.8 references to the Site include any part of it
- 2.9 “including” means “including, without limitation”
- 2.10 any covenant by the Landowner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing
- 2.11 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected
- 2.12 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it

3 LEGAL BASIS

- 3.1 This Agreement is made pursuant to Section 106 of the Act section 111 Local Government Act 1972 and section 1 Localism Act 2011

- 3.2 The covenants, restrictions and requirements imposed upon the Landowner under this Agreement create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council against the Landowner

4 CONDITIONALITY

This Agreement is conditional upon the Commencement of Development save for the provisions of Clauses 7.1, 7.2, 7.3, 12 and 13 and paragraphs 1.1 and 1.2 of the Third Schedule and paragraph 1.1(a) of the Fourth Schedule which shall come into effect immediately upon completion of this Agreement

5 THE LANDOWNER'S COVENANTS

The Landowner covenants with the Council as set out in the Third Schedule

6 THE COUNCIL'S COVENANTS

The Council covenants with the Landowner as set out in the Fourth Schedule

7 MISCELLANEOUS

- 7.1 The Landowner shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement in the sum of £
- 7.2 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.3 This Agreement shall be registered as a local land charge by the Council
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Landowner from the Council under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director for Economy and Place (or their nominated representatives) and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party
- 7.5 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement
- 7.6 Insofar as any clause or clauses of this Agreement 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 Agreement
- 7.7 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or without the consent of the Landowner it is modified by any statutory procedure or expires prior to the Commencement of Development
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it has parted with its entire interest in the Site or any part thereof but without prejudice to liability for any subsisting breach arising prior to parting with such interest. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the site will constitute the retention of an interest for the purposes of this paragraph

- 7.9 The obligations contained in this Agreement shall not be binding upon or enforceable against owner-occupiers or tenants of the Open Market Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them
- 7.10 The obligations contained in this Agreement shall not be binding upon or enforceable against any statutory undertaker or any person who acquires part of the Site or any interest in it for the purposes of the supply of electricity gas water drainage telecommunications or public transport services
- 7.11 Subject always to Clause 15 of this Agreement, nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement

8 WAIVER

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

9 CHANGE IN OWNERSHIP

The Landowner agrees with the Council to give to the Council as soon as practicably possible written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Agreement have been discharged 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 the Site by reference to a plan

10 INTEREST

If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment

11 VAT

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable

12 JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and Wales

13 DELIVERY

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been signed by all parties and dated

14 DISPUTE RESOLUTION

In the event of any dispute or difference arising out of this Agreement between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Agreement) such dispute or difference shall be referred to a person to be agreed between the parties who is a member of the Royal Institute of Chartered Surveyors or in the absence of agreement on the application of any party to be appointed by the President of the Royal Institute of Chartered

Surveyors such person to act as sole expert in the determination of the dispute or difference and whose decision shall be final and binding upon the parties

15 SECTION 73 VARIATION

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 in respect of the conditions relating to the Planning Permission or shall approve an application by the Landowner for a non material amendment relating to the Planning Permission (and for no other purposes whatsoever) references in this Agreement to the Application and the Development and the Planning Permission shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and the Agreement shall henceforth take effect and be read and constructed accordingly

Executed as a Deed on the date specified at the commencement of this Agreement

FIRST SCHEDULE

Details of the Landowner's Title, and description of the Site

ALL THAT freehold land at Lythwood Sports Complex, Bayston Hill, Shrewsbury, Shropshire SY3 0AB as the same is registered with absolute title at HM Land Registry under title number SL and which is shown edged red on Plan 1:

SECOND SCHEDULE

Draft form of notice of planning permission

Planning Permission reference 24/03437/FUL in the draft form annexed to this Agreement to be issued pursuant to the Application.

THIRD SCHEDULE

The Landowner's covenants with the Council

The Landowner's BNG Covenants

The Landowner covenants with the Council as follows:

1. Submission and Implementation of Habitat Management and Monitoring Plan

1.1 To:

- (a) prior to the Commencement of Development to submit to the Council for approval the Habitat Management and Monitoring Plan prepared in accordance with the approved biodiversity gain plan
- (b) The Habitat Management and Monitoring Plan shall detail specifically:-
 - ii. Creation of 200m² of native broadleaved woodland,
 - ii. Enhancement of 474m² of retained woodland on site in the following ways:
 - iii. Clearance of non-native species shrubs,
 - iv. Creation of open spaces for natural re-generation of native trees,
 - v. Selection of healthy individual trees for 'halo-thinning' to produce mature and eventually veteran trees,
 - vi. Creation of dead-wood log piles within the woodland parcel.
 - vii. Planting of 7 standard native trees, to reach 'medium' size by the end of the 30-year BNG term.
- (c) notify the Council in writing of the BNG Commencement Date within 10 Working Days of it occurring;
- (d) complete the Habitat Creation and Enhancement Works in accordance with the Habitat Management and Monitoring Plan;
- (e) issue the Completion Date Notice to the Council within 10 Working Days of the completion date of the Habitat Creation and Enhancement Works;
- (f) promptly rectify any defects in the Habitat Creation and Enhancement Works identified by the Council under paragraph 2.1(b)(ii) of the Fifth Schedule and issue a subsequent Completion Date Notice and thereafter to continue to rectify any defects and issue Completion Date Notices until the Council issues a Certificate of Completion;
- (g) upon receiving the Certificate of Completion from the Council, maintain the Biodiversity Gain Land in accordance with the Habitat Management

and Monitoring Plan for a period of not less than 30 years from the Completion Date; and

- (h) provide a Monitoring Report to the Council within 20 (twenty) Working Days of each Monitoring Report date specified in this Deed and the Habitat Management and Monitoring Plan.
- (i) Not to dispose/change ownership of the Biodiversity Gain Land without the written consent of the Council

2. Habitat Management and Monitoring Plan

2.1 To notify and obtain written approval from the Council of any requested amendment to the Habitat Management and Monitoring Plan, such notice to include:

- (a) the proposed amended Habitat Management and Monitoring Plan;
- (b) a statement of reasons for such amendment(s); and
- (c) confirmation (with reasons) that the amendment would not prejudice:
 - (i) the use or management of the Biodiversity Gain Land in a manner consistent with its function to deliver Biodiversity Net Gain; and
 - (ii) the continued function of the Biodiversity Gain Land for Biodiversity Net Gain

3. Biodiversity Gain Land Monitoring Contribution

3.1 To pay the Biodiversity Gain Land Monitoring Contribution to the Council within 10 Working days of the BNG Commencement Date

4. Access for Inspection

4.1 From the BNG Commencement Date, to allow the Council, its agents, and contractors with or without workmen and equipment to:

- (a) enter onto the Biodiversity Gain Land at all reasonable times (following reasonable notice given in accordance with paragraph 5 of the Fourth Schedule) to monitor compliance with:
 - (i) the obligations in this Deed; and
 - (ii) any Breach Notice

and

- (b) pass and re-pass across any land in the Landowners control which is necessary to gain access to for the purposes of accessing the Biodiversity Gain Land in accordance with paragraph 4.1(a).

5. Step-In Rights

5.1 Where a Breach Notice is served to:

- (a) comply with the requirements of the Breach Notice within the time limits specified by the Breach Notice (or other extended timeframe as agreed with the Council in writing);
- (b) use reasonable endeavours to agree the following with the Council within 20 Working days of receipt of the Breach Notice:
 - (i) the steps required to remedy the breach; and
 - (ii) if applicable, any remedial works;and
- (c) commence and diligently proceed to remedy the breach within the time period specified in the Breach Notice (or such other period as may be agreed with the Council under sub-paragraph (a)) in accordance with the details agreed under sub-paragraph (b);

5.2 Where it has failed to comply with a time limit of the Breach Notice, to allow the Council, its agents, and contractors with or without workmen and equipment to enter:

- (a) the Biodiversity Gain Land; and
- (b) other land in the Landowner's control needed to access the Biodiversity Gain Land,

at all reasonable times to carry out works reasonably necessary to comply with the requirement of the Breach Notice; and

5.3 To pay the Council a sum equivalent to its reasonable and properly incurred costs in respect of carrying out the relevant works under paragraph 5.2 within 20 Working Days of a notice requesting payment (such notice to include a breakdown of such costs).

FOURTH SCHEDULE

The Council's Covenants

Discharge of obligations

1. At the written request of the Landowner the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed

2 Inspection of the Habitat Management and Monitoring Plan

2.1 To:

- (a) inspect the Habitat Creation and Enhancement Works within 30 Working Days following receipt of the Completion Date Notice;
- (b) to do the following where Habitat Creation and Enhancement Works are inspected under sub-paragraph (a):
 - (i) promptly issue a Certificate of Completion if the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Council; or
 - (ii) promptly notify the Landowner of any defects, if the Council determines that the Habitat Creation and Enhancement Works have not been completed; and
- (c) where the Landowner issues a subsequent Completion Date Notice under paragraph **Error! Reference source not found.** of the Third Schedule, re-inspect the Habitat Creation and Enhancement Works under paragraph **Error! Reference source not found.** of this Schedule and to comply with paragraph 1.1.1(b) of this Schedule until it issues the Certificate of Completion.

3 Habitat Management and Monitoring Plan

- 3.1 Not to unreasonably withhold or delay giving its written approval to any revised or replacement Habitat Management and Monitoring Plan submitted by the Landowner to the Council under the Third Schedule of this Deed;
- 3.2 To monitor the implementation and operation of the Habitat Management and Monitoring Plan by a suitably qualified ecology and environmental management professional by way of periodic physical visits to the Biodiversity Gain Land and/ or remotely surveying the Biodiversity Gain Land and to provide, as soon as practicable afterwards, a written report to the Owner of the findings any monitoring activities, at the following intervals:

- (a) in years 1, 3 and 5 from the anniversary of the BNG Commencement Date; and then
- (b) every five years thereafter until the Agreement Expiry Date.

4 Habitat Management and Monitoring Contribution

- 4.1 To use the Biodiversity Gain Land Monitoring Contribution for its intended purpose and not for any other purpose.

5. Rights of Access

- 5.1 To give not less than 10 Working Days' notice to the Landowner of its intention to access the Biodiversity Gain Land for the purposes of inspection under paragraph 4 of the Fourth Schedule of this Deed to ascertain the Landowner's compliance with its covenants under this Deed or a Breach Notice.

6. Breach Notice and Step-in Rights

- 6.1 Where it considers that the Owner is not complying with its obligations under this Deed, and intends to take steps to remedy the breach, to first notify the Owner:
 - (a) the reasons for alleging non-compliance;
 - (b) the steps it proposes the Landowner should take to remedy any breach or non-compliance, and
 - (c) the reasonable time limits for the Landowner to take these steps;
- 6.2 Where it serves a Breach Notice, it may notify the Landowner of any extension of time specified in the Breach Notice, as it considers appropriate (in its absolute discretion);
- 6.3 Where the Landowner does not comply with the time limits specified in the Breach Notice (or as otherwise agreed), undertake the requirements imposed on the Landowner as set out in the Breach Notice provided that the Council:
 - (a) provides reasonable notice that it, its agents, and contractors with or without workmen and equipment will enter the Biodiversity Gain Land and/or land in the Landowner's control to access the Biodiversity Gain Land;
 - (b) ensures minimal damage and inconvenience to the Landowner;
 - (c) repairs any damage caused by exercising the step-in rights under this paragraph; and
 - (d) issues to the Landowner a full breakdown of the time spent and costs incurred in exercising its step-in rights under this paragraph.

Executed as a Deed on the date specified at the commencement of this Agreement

SIGNED as a DEED by)

)

in the presence of:-)

Witness' signature:

Witness' name:

Witness' address:

Witness' occupation:

EXECUTED as a DEED by affixing)

The **COMMON SEAL** of)

SHROPSHIRE COUNCIL)

in the presence of:-)

Tim Collard/Miranda Garrard/Rhian Cains/Kim Brown
Director of Legal and Governance/Head of Legal and Democratic Services/Legal Team
Manager – People/Legal Team Leader - Regulatory and Environment

Authorised Officer