

Note Detailing The Appellant's Rights to Access the Site from the South

1. Introduction

- 1.1.** On the 22nd November 2022 Malcolm Richard Cooke, Pamela Cooke, Oliver Cheslin Matthews And Edward George Charles Matthews transferred land in title AV249252 (being the land immediately to the South of the Appeal Site) to St Modwen Homes Limited (the 22nd November Transfer). It was clearly understood by the parties to the 22nd November Transfer that access through the transferred land from Biddle Street to the Appeal Site (referred to as the Retained Land in the 22nd November Transfer) would be beneficial.
- 1.2.** To that end a number of provisions were put in place to ensure that a vehicular and pedestrian highway (together with service corridors) would be constructed on the transferred land to connect the Appeal Site to the public highway. Further provisions ensured that if the roadway (referred to as Roadway A) did not connect to the boundary of the Appeal Site rights were retained to enable the developer of the Appeal Site to enter upon the transferred land to complete the construction of Roadway A (and services).
- 1.3.** If St Modwen as transferee failed to construct Roadway A (and services) within 2 years of ST Modwen's RM or detailed permission being granted provision was made for the owner of the Appeal Site to enter upon the transferred land to carry out the construction of Roadway A (and services) and to require the transferee to enter into such agreements as may be required by the Highway Authority and or utility undertakers to have Roadway A (and services) adopted.
- 1.4.** There are detailed provisions dealing with the requirement for the transferee to consult with the owner of the Appeal Site prior to submission of any reserved matters or detailed application on the transferred land and to prohibit building on the road corridor so as not to frustrate the construction of Roadway A.
- 1.5.** Whilst many of the rights under the 22nd November Transfer are said to be for the benefit of the "owner for the time being of the Retained Land" (which would include the developer of the Appeal Site) some rights are not. However, the 22nd November Transfer permits the transferors to assign the benefit of such rights to the purchaser of the Appeal Site. Under the provisions of an Option Agreement between Persimmon Homes Limited and the transferors it is agreed that such an assignment shall be put in place at nil cost upon the completion of the transfer of the Appeal Site. The developer of the Appeal Site will therefore have the full benefit of the rights contained in the 22nd November Transfer.
- 1.6.** The 22nd November Transfer is some 37 pages long much of it not relevant to this issue. The entire document has therefore not been reproduced. Instead, the most relevant provisions have been copied into the first Appendix to this note and the relevant plan into the second Appendix. A redacted full version of the 22nd November Transfer can be produced if so required. However, it is hoped that the level of detail set out in this note is sufficient to demonstrate that the Appeal Site can and will be accessible from the land to the south. This is an eventuality that has been planned for and is accepted by the owner of that land.

Appendix 1 Relevant Provisions of the 22 November Transfer

Definitions

Access Corridor

means corridors of land within the Property (being the land immediately to the South of the Appeal Site and purchased by St Modwen Homes Ltd) :

(a) being no less than 10.5 metres wide and suitable for construction of Roadway A from Connection Point A to the existing adopted highway known as Biddle Street

And..... .

Access Corridor Date

means the date when the extent and route of the Access Corridor is approved in writing or deemed approved by the Transferor pursuant to the provisions of clause 12.10.8 (or the date on which it is determined by the Expert that the Transferor has unreasonably withheld its approval to the extent and/or route of the Access Corridor)

Connection Point A

means a point of connection between the Property and the Retained Land between points A and B on the Plan

Retained Land

means. the freehold property at Biddle Street Yatton being all the land registered under title number AV125643 (being the Appeal Site).

Roadway A

a 6.5m wide highway with 2m wide footpaths (or service strips or a combination of both) on each side constructed in accordance with this transfer and all requisite planning and other consents (1) in a position where a connecting roadway and its associated carriageway and footways can be connected from the Retained Land to Roadway A entirely between points A and B on the Plan and (2) such that Roadway A is constructed as close to the boundary between points A and B on the Plan as is permitted and approved by the local planning authority and/or highways authority and in any event to a point within the Property being a distance of no more than 10m from the boundary between points A and B on the Plan and intended to provide a connection between the Retained Land and the existing adopted highway known as Biddle Street

Substantive Provisions

Access Corridor and Roadway A

12.4.6 A right for the owner or owners for the time being of the Retained Land and all those authorised by them to enter upon:

12.4.6.1 any part of the Property that is reasonably necessary (but only such parts of the Property as remain unbuilt upon and do not form any proposed Dwelling or the cartilage (sic) of a Dwelling); and

12.4.6.2 following the Access Corridor Date upon the Access Corridor and such adjoining land as is reasonably necessary (but only such parts of such adjoining land as remain unbuilt upon and do not form any proposed Dwelling or the cartilage (sic) of a Dwelling) in order to construct a road and footway connection into Roadway A (and to exercise the step-in rights at clause 12.4.9) and to carry out alterations to Roadway A in order to construct such connection and thereafter to use Roadway A and any connection

constructed thereto with and without vehicles (other than agricultural vehicles) all times and for all purposes to and from the public highway to and from the Retained Land and thereafter to maintain repair renew and replace Roadway A and any such connection constructed thereto subject to making good any damage caused in the exercise of this right (or paying compensation for any damage which cannot be made good)

Step in Rights

12.4.9 If the Transferee shall have failed to construct Roadway A and its associated Highway Drains to Base Course and Service Installations to Adoption Standard within 2 years from the Commencement Date in compliance by the Transferee with obligations set out in clause 12.7 below or if the Transferee shall have failed to construct Roadway A and its associated Highway Drains to Adoption Standard within 2 years from completion of the construction of Roadway A to Base Course:

12.4.9.1 the Second Owner shall be entitled to serve written notice on the Transferee detailing such default ("Default Notice") and in the event that the Transferee fails to remedy such default within four months from the date of such notice then the following provisions shall apply

12.4.9.2 the owner or owners for the time being of the Retained Land and all those authorised by them shall have a right to enter (with or without vehicles machinery and apparatus) on such parts of the Property as are unbuilt upon and as are reasonably required to remedy the relevant default

12.4.9.3 the Transferee shall indemnify the Second Owner against its reasonable and proper costs (including but not limited to any reasonable and proper associated professional fees) incurred by the Second Owner in undertaking such works

12.7 Positive covenants by the Transferee for the benefit of the Retained Land

The Transferee covenants with the Second Owner to the intent that (a) the benefit of these covenants may be assigned to any successor in title of the Retained Land without the consent of the Transferee (provided that the Transferee is notified of such assignment) and (b) the benefit of the covenants in this clause 12.7 shall not pass to successors in title of the Retained Land unless such benefit is expressly assigned and (c) references to the Second Owner shall include references to such assignee, to:

12.7.1 Obtain the consent of the Second Owner to:

12.7.1.1 the layout set out in the application for reserved matters consent pursuant to the Planning Permission prior to submission of such application to the local planning authority

12.7.1.2 the layout set out in any application for detailed planning permission in respect of the Property prior to submission of such application to the local planning authority

such consent not to be unreasonably withheld or delayed provided that such consent may not be withheld where the layout included in such application provides for the Access Corridor and the construction of Roadway A Roadway B and all associated Highway Drainage and Service Installations and provided that the Second Owner's

consent shall be deemed to have been given where no approval or objection to the said layout is received by the Transferee within 20 working days of a request for approval

12.7.2 Construct Roadway A and Service Installations together with the associated Highway Drains in on or under Roadway A to Adoption Standard as soon as reasonably practicable and to construct Roadway A to Base Course and make Roadway A available for use in any event within 2 years after the Commencement Date Provided That in the event that a Pandemic Restriction applies the time period for completing the construction of Roadway A shall be extended by a reasonable period of time having regard to the nature of the Pandemic Restriction and provided also that the Transferee shall not be required to construct Service Installations and associated Highway Drains to a capacity or specification that is capable of serving any development from time to time on the Retained Land and/or the Third Party Land (and the Transferee shall not be required to oversize Service Installations and/or Highway Drains for this purpose).

12.7.3 Where Roadway A is not contiguous with the boundaries of the Retained Land to provide for the benefit of the Retained Land:

12.7.3.1 A suitable point of connection to all Service Installations on the Property and the Highways Drains; and

12.7.3.2 A suitable point of connection to Roadway A

12.7.4 Maintain and repair and if necessary reinstate Roadway A, the associated Highway Drains and Service Installations constructed in accordance with clause 12.7.2 until they are adopted and maintained by the Relevant Authority (provided that any damage caused to Roadway A, Highway Drains and Service Installations by the Second Owner, its successors in title, assignees and/or any persons authorised by the Second Owner shall be made good by the Second Owner at its cost (or the Second Owner shall compensate the Transferee for any damage which is not made good));

12.7.5 Use reasonable endeavours to enter into any agreement and/or dedication and/or vesting or other deed or document pursuant to Section 38 and/or Section 278 Highways Act 1980 and/or Section 104 Water Industry Act 1991 which is required in connection with the development by -the Transferee of the Highway Drains, Roadway A and/or any relevant Service Installations which are intended to become adopted within 2 years after the Commencement Date and thereafter use reasonable endeavours to comply with the provisions of such agreements so as to enable adoption of the Highway Drains, Roadway A and/or any relevant Service Installations which are intended to become adopted within 5 years after the Commencement Date.

12.7.6 At the request and reasonable and proper cost of the Second Owner within 20 working days of request to enter (as landowner only) into such Statutory Agreements as the Relevant Authority may reasonably require in relation to any works carried out by the Second Owner on or to be carried out on the Property pursuant to the rights set out in this Transfer provided that the Second Owner shall indemnify the Transferee in respect of all costs, claims, expenses, losses, actions, demands and / or proceedings arising directly from or in connection with such Statutory Agreement

12.7.7 If the Transferee shall have failed to construct and complete Roadway A associated Highway Drains to Base Course and Service Installations to Adoption

Standard within 2 years from the Commencement Date in compliance by the Transferee with the obligations set out in this clause 12.7:

12.7.7.1 On receipt of a Default Notice to remedy such default within four months from the date of such

12.7.7.2 To permit the owner or owners for the time being of the Retained Land and all those authorised by them to enter (with or without vehicles machinery and apparatus) on such parts of the Property as are unbuilt upon and as are reasonably required to remedy the relevant default

12.7.7.3 To indemnify the Second Owner and its successors in title to the Retained Land within 10 working days of written demand against the reasonable and proper costs (including but not limited to any associated reasonable and proper professional fees) incurred by the Second Owner or its successors in undertaking such works

12.7.8 At any time following completion of the development of the Property within 30 working days of written request by the Second Owner to transfer to the Second Owner the freehold interest in any part of the Access Corridor between the extent of Roadway A and the Retained Land which is not required for or used in connection with access to the Property or which is to be used exclusively to provide access to the Retained Land (with or without Third Party Land) such part to be transferred to the Second Owner in consideration of the sum of one pound:

12.7.8.1 with vacant possession;

12.7.8.2 free from incumbrances and financial charges other than those referred to in or in existence at the date of such transfer (provided that rights will be reserved for the benefit of the Property of support and protection);, and

12.7.8.3 subject to the Planning Permission and Planning Agreements insofar as the same apply to and affect the Access Corridor (and the Second Owner shall provide an indemnity covenant in respect of any breach of the Planning Permission and Planning Agreements insofar as the same apply to and affect the part of the Access Corridor thereby transferred).

12.7.9 Within 20 working days of written request by the Second Owner or any assignee of the benefit of this covenant at no cost to the Second Owner or its assignee, to enter into and procure that any mortgagee of the Property enters into a deed of grant ("Deed of Grant") providing for the grant of such rights over and provision of such covenants in respect of the Property (but not any buildings thereon) as are made for the benefit of the Retained Land in clause 12.4 and this clause

12.7 of this transfer, in favour of the owner or owners of the Third Party Land or any part thereof, provided that:

12.7.9.1 such Deed of Grant shall be in the form of a draft deed provided by the Second Owner and approved by the Transferee acting reasonably and without delay

12.7.9.2 the Transferee shall be deemed to have approved any draft Deed of Grant provided to it if no written approval or written objection (with reasons) to the form of draft Deed of Grant is provided within 30 working days of written request

12.7.9.3 the Transferee may not object to the form of the Deed of Grant provided it's terms are no more onerous than the provisions set out at clause 12.4 and 12.7 of this Transfer save for the enlargement of the benefitting land and it is agreed that the intent

of this covenant is that the rights reserved and covenants made for the benefit of the Retained Land in this transfer shall be granted and made for the benefit of the freehold owner of the Third Party Land on request by the Second Owner

12.7.10 To procure that on any Disposal of .Restriction Land A (other than a Permitted Disposal) the disponee enters into a deed of covenant in favour of the Second Owner or any assignee of the benefit of the covenants in this clause 12.7 in a form approved by the Second Owner or its assigns whose approval is not to be unreasonably withheld or delayed) by which the disponee covenants to observe and perform the obligations of the Transferee pursuant to this clause 12.7 which remain to be observed and performed provided that

(a) (in respect of a Disposal) on delivery of such executed deed of covenant, the Second Owner at the request and reasonable and proper cost of the Transferee provides the Transferee with such forms and/or consents duly signed by or on behalf of the Second Owner to enable the Disposal to be registered at Land Registry within 10 working days of delivery of such executed deed of covenant (and the Transferee shall be granted irrevocable power of attorney (by way of security) to give such form and/or consent on behalf of the Second Owner in the event that the Second Owner does not provide such signed forms and/or consents within that period);

(b) (in respect of a Permitted Disposal) the Second Owner at the request and reasonable and proper cost of the Transferee provides the Transferee with an RX4 (or such other form or document as is required by Land Registry) signed by or on behalf of the Second Owner in respect of the land comprised in the Permitted Disposal within 10 working days of request by the Transferee (and the Transferee shall be granted irrevocable power of attorney (byway of security) to give such RX4 (or other form or document as required by Land Registry) on behalf of the Second Owner in the event that the Second Owner does not provide such signed RX4 and/or other form within that period).

Appendix 2- 22nd November Transfer Plan

