

Dated

12 July

2022

LONDON LEGACY DEVELOPMENT CORPORATION (1)

AND

E20 STADIUM LLP (2)

DEED OF VARIATION

pursuant to section 106A of the Town and Country
Planning Act 1990 relating to the Olympic Stadium
located within the Queen Elizabeth Olympic Park



GOWLING WLG

THIS DEED is made on the

12th day of July

2022

BETWEEN

- (1) **LONDON LEGACY DEVELOPMENT CORPORATION LIMITED** of Level 9, 5 Endeavour Square, Stratford, London E20 1JN ("**the LPA**");
- (2) **E20 STADIUM LLP** (a Limited Liability Partnership incorporated in England and Wales with registered number OC376732) whose registered office is at Level 10 1 Stratford Place, Mountfichet Road, London E20 1EJ ("**the Developer**");

together "**the Parties**";

BACKGROUND

- (A) The Parties entered into a Deed under Section 106 of the Town and Country Planning Act 1990 dated 12 August 2013 for the development of the Site ("**the Original Section 106 Agreement**").
- (B) The Developer has the benefit of a lease interest in the Site dated 28th January 2014 and registered under titles TGL392837 and TGL392838.
- (C) By virtue of the London Legacy Development Corporation (Planning Functions) Order 2012 (effective from 1 October 2012 and made pursuant to powers, inter alia, in the Localism Act 2011) the LPA is the local planning authority for the purposes of Part 3 of the Act for the area in which the Site is situated and is the local planning authority by whom the obligations contained in this Deed are enforceable.
- (D) The Developer has made an application to vary the Original Section 106 Agreement to the LPA (reference: 22/00028/DOV) ("**Variation Application**").
- (E) The Developer and the West Ham United Football Club Limited have made a planning application pursuant to section 96A of the 1990 Act under planning reference 19/00372/NMA ("**the Section 96A Application**") for the purpose of varying the description of development pursuant to planning permission 12/00066/FUM as varied by 16/00062/VAR ("**the Original Planning Permission**").
- (F) The Developer and the West Ham United Football Club Limited have made a related planning application pursuant to section 73 of the 1990 Act under planning reference 20/00060/VAR ("**the Section 73 Application**") for the purpose of varying the Original Planning Permission.
- (G) The LPA has resolved to grant planning permission ("**the Section 73 Planning Permission**") pursuant to the Section 73 Application subject to the completion of this Deed.
- (H) The Parties have agreed to vary the Original Section 106 Agreement in the manner set out below.
- (I) Accordingly the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in it pursuant to the provisions of section 106 and 106A of the 1990 Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the Localism Act 2011 and all other powers enabling.
- (J) This Deed is supplemental to and varies the Original Section 106 Agreement on the terms set out in the Schedule to this Deed and is enforceable by the LPA.

- (K) The Parties agree that the obligations contained in this Deed meet the three tests for planning obligations as set out in the Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

NOW THIS DEED WITNESSES as follows:

1 INTERPRETATION

In this Deed:-

- 1.1 Unless the context requires otherwise, all the words and phrases beginning with a capital letter in this Deed shall have the same meaning as that which is ascribed to them in the Original Section 106 Agreement.
- 1.2 Any reference to an enactment includes any amendment to or modification of it and the version of it for the time being in force shall apply.
- 1.3 Headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation.
- 1.4 References to clauses, sub-clauses and schedules are references to clauses, sub-clauses and schedules in this Deed save where expressly stated or the context provides otherwise.
- 1.5 Where the context so requires:-
- (i) the singular includes the plural and vice versa;
 - (ii) the masculine includes the feminine and vice versa; and
 - (iii) persons includes bodies corporate associations and partnerships and vice versa.
- 1.6 Where there is more than one person named as a party and where more than one party undertakes an obligation all of their obligations can be enforced against all of them jointly and severally;
- 1.7 Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction; and
- 1.8 References to any party shall include their respective successors in title and assigns and in the case of the LPA the successors to their respective statutory functions.

2 LEGAL BASIS

- 2.1 This Deed is made pursuant to Sections 106 and 106A of the Act, Section 111 and 120 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the Localism Act 2011 and all other enabling powers and is a planning obligation for the purposes of Section 106 of the Act.

- 2.2 The Deed shall take effect on the date hereof save for the provisions contained within clauses 3.1-3.7 which shall come into effect on the grant of the Section 73 Planning Permission.
- 2.3 The Developer agrees to observe and perform all (and procure that any lessee observes and performs all (as may apply to the lessee's property)) of the covenants agreements restrictions and obligations contained in the Original Section 106 Agreement subject to this Deed.
- 2.4 The Parties expressly agree that the Original Section 106 Agreement shall remain in full force and effect and shall be read and construed as expressly varied by the provisions set out in this Deed.

3 VARIATION

- 3.1 The Parties agree that from the date of this Deed the Original Section 106 Agreement shall be varied as follows:

Interpretation (Clause 1.1)

- (a) Inserting the following new definition to Clause 1.1. of the Original Section 106 Agreement:

"Section 73 Application" means the application submitted by the LPA on 18 February 2020 and allocated reference 20/00060/VAR;

- (b) Amending the following definitions Clause 1.1 of the Original Section 106 Agreement:

"Planning Application" means the application for planning permission submitted to the LPA and given reference number 12/00066/FUM by the LPA and / or the Section 73 Application (as applicable);

"Planning Permission" means the planning permission to be granted by the LPA pursuant to the Planning Application and/or pursuant to the Section 73 Application";

Front end clauses (new clauses 16 and 17)

- (c) Inserting the following new Clauses 16 and 17 after Clause 15 of the Original Section 106 Agreement and renumber existing Clause 16 as Clause 18:

"16 FINANCIAL CONTRIBUTIONS AND INDEXATION

- 16.1 Where, pursuant to this Agreement, a payment or financial contribution is to be made, such payment or financial contribution shall be paid in accordance with the triggers and provisions for payment set out in and in accordance with all relevant provisions of this Agreement.

16.2 All payments or financial contributions to be paid to the LPA pursuant to this Agreement will be increased (but not decreased) in accordance with the definition of "Index Linked" in Schedule 1.

17 INTEREST

If any payment due under this Agreement is paid late, interest shall be payable from the date payment is due to the date that the payment is received at the rate of 3% above the base lending rate of Barclays Bank Plc from time to time."

Definitions (Schedule 1)

(d) Inserting the following new definitions at Schedule 1 of the Original Section 106 Agreement:

"Event Surveys" **Day** means surveys in order to determine the modal split of visitors to the Stadium such Events to be agreed in advance in writing with the LPA;

"Non-Event Surveys" **Day** means an annual email survey of staff, tenants and contractors attending the Stadium in order to determine the modal split and a survey of at least ten conference or non-conference events each to be on different days and of differing sizes in order to determine the modal split of visitors to the Stadium;

"Wayfinding Signage Contribution" **and** means the sum of £125,000 (one hundred and twenty five thousand pounds) towards wayfinding and signage improvements within Stratford Regional Station.

(e) Amending the following existing definitions at Schedule 1 of the Original Section 106 Agreement:

"Non-Event Day Travel Plan Review Period" means the period of 12 months commencing on [date of this Deed] and thereafter annually on a rolling basis;

"Non-Event Day Modal Split Targets" means in respect of Non-Event Days the following targets:

1. a 90% non-car mode share for staff employed at the Stadium;
2. a 90% non-car mode share for visitors to the Stadium;

3. a 90% non-car mode share for visitors to the Stadium who are using the conference and hospitality facilities **PROVIDED THAT** attendance by more than 3,000 people shall constitute an Event for which the Event Day Modal Split Target for Event Types C and D shall apply;

Definitions (Schedule 2)

- (f) Amending the following existing definitions at Schedule 2 of the Original Section 106 Agreement:

"Event Management Plan Monitoring" means monitoring of the Event Management Plan by carrying out and/or obtaining from relevant stakeholders (without limitation) the following information in relation to the Events:

1. Event start and end times;
2. details of methods used to retain visitors at the Stadium;
3. a summary of changes to any crowd management measures set out in the approved Event Management Plan;
4. the profile of arrival and departure times of visitors to the Stadium;
5. any observed or reported changes of crowding beyond expected levels at local and remote stations;
6. enhanced services being operated;
7. general observations on Event performance;

SCHEDULE 1

Event Day Travel Plan Monitoring (Paragraph 2.1 of Schedule 1)

- 3.2 The Parties further agree that Schedule 1 of the Original Section 106 Agreement shall be varied by as follows:

- (a) Inserting a new paragraph 2.1.9 as follows:

"The Developer may, at its discretion, serve not less than one month's written notice on the LPA of its intention to pay the Sustainable Transport Contribution early and may thereafter pay the Sustainable Transport Contribution to the LPA."

- (b) Inserting a new paragraph 2.1.10 as follows:

"On and after the date of payment of the Sustainable Transport Contribution pursuant to paragraph 2.1.9 of this Schedule, the obligations in paragraphs 2.1.1 to 2.1.8 inclusive shall cease to apply ("**End Date**") and instead, in the first one year period following the End Date and thereafter in every two year period following the End Date ("**Relevant Period**") from the date of payment of the Sustainable Transport Contribution until otherwise agreed with the LPA in writing, the Developer shall:

- (a) Carry out or procure the carrying out of Event Day Surveys for at least four Events, which shall include at least one Event Type A and one Event Type D (unless otherwise agreed in writing with the LPA), taking place within the Stadium during each Relevant Period, such events to be agreed in advance in writing with the LPA; and
- (b) Submit to the LPA within 28 days of the end of each Relevant Period a report setting out the details and results of the Event Day Surveys carried out in that period."

- (c) Inserting a new paragraph 2.1.11 as follows:

"The LPA covenants to provide the Developer upon reasonable written request with evidence of what the Sustainable Transport Contribution has been spent on and to use reasonable endeavours to obtain written agreement from the Developer as to which Sustainable Transport Measures the Sustainable Transport Contribution will be spent on before it is committed or expended."

Non-Event Day Monitoring (Paragraph 2.2 of Schedule 1)

- 3.3 The Parties further agree that Schedule 1 of the Original Section 106 Agreement shall be varied as follows:

- (a) Inserting a new paragraph 2.2.9 as follows:

"On and after the date of payment of the Sustainable Transport Contribution pursuant to paragraph 2.1.9 of this Schedule, the obligations in paragraphs 2.2.1 to 2.2.8 inclusive shall cease to apply and instead, from the date of payment of the Sustainable Transport Contribution for a period of 12 years, the Developer shall, unless otherwise agreed in writing with the LPA:

- (a) Carry out or procure the carrying out of Non-Event Day Surveys for Non-Event Days as follows;
- (i) for the first calendar year following payment of the Sustainable Transport Contribution;
- (ii) for years two and three together following payment of the Sustainable Transport Contribution; and
- (iii) at three yearly intervals thereafter.

- (b) Submit to the LPA within 28 days of the end of each period noted above in 2.2.9(a) a report setting out the details and results of the Non-Event Day Surveys carried out in that period and confirmation that condition OST.99 of 19/00438/NMA is being complied with."

Event Day Travel Plan Modal Split Targets (Paragraph 3.1 of Schedule 1)

3.4 The Parties further agree that Schedule 1 of the Original Section 106 Agreement shall be varied by as follows:

- (a) Amending paragraph 3.1.12 by inserting those words shown below in underline and by deleting those words show below in strikethrough:

"Save for the where the Developer has elected to pay the Sustainable Transport Contribution pursuant to paragraph 2.1.9 of this Schedule ~~The~~ Developer's liability under paragraph 3.1.10(a) of this Schedule 1 shall not exceed:

- (i) £400,000 (four hundred thousand pounds) per calendar year; and
(ii) £1,800,000 (one million eight hundred thousand pounds) overall."

- (b) Inserting a new paragraph 3.1.13 as follows:

"On and after the date of payment of the Sustainable Transport Contribution pursuant to paragraph 2.1.9 of this Schedule, the obligations in paragraphs 3.1.1 to 3.1.11 inclusive shall cease to apply."

Additional Bicycle Parking (Paragraph 4 of Schedule 1)

3.5 The Parties further agree that Schedule 1 of the Original Section 106 Agreement shall be varied by as follows:

- (a) Amending paragraph 4.1 by inserting those words shown below in underline:

"If any Full Event Day Travel Plan (Football Season) Monitoring Report and/or Full Event Day Travel Plan (Non-Football Season) Monitoring Report and/or report submitted pursuant to paragraph 2.1.10 of Schedule 1 shows that the 410 bicycle parking spaces which shall be identified in the Full Event Day Travel Plan (Football Season) Monitoring Report and/or the Full Event Day Travel Plan (Non-Football Season) Monitoring Report and/or report submitted pursuant to paragraph 2.1.10 of Schedule 1 as serving the Development (amongst others) are on more than three days during the relevant Football Season and/or Non-Football Season (as applicable) occupied at a level of ninety percent (90%) or greater then the Developer shall prepare and submit to the LPA for Approval a Temporary Bicycle Parking Strategy"

Wayfinding and Signage Contribution (Paragraph 12 of Schedule 1)

3.6 The Parties further agree that Schedule 1 of the Original Section 106 Agreement shall be varied by as follows:

- (a) A new paragraph 12 shall be inserted into Schedule 1 of the Original Section 106 Agreement as follows:

"Wayfinding and Signage Contribution

12.1 Prior to the implementation of the Section 73 Planning Permission the Developer shall pay the Wayfinding and Signage Contribution to the LPA.

12.2 The Section 73 Planning Permission shall not be implemented until the Wayfinding and Signage Contribution has been paid to the LPA."

SCHEDULE 2

Event Management Plan (Paragraph 2 of Schedule 2)

3.7 The Parties further agree that Schedule 2 of the Original Section 106 Agreement shall be varied as follows:

- (a) A new paragraph 2 shall be inserted into Schedule 2 of the Original Section 106 Agreement as follows:

"2. Upon payment of the Sustainable Transport Contribution pursuant to Schedule 1 of this Agreement the obligations in paragraph 1.2-1.4 of this Schedule 2 shall cease to apply and instead the following shall apply:

2.1 Following payment of the Sustainable Transport Contribution the Developer shall prepare and submit to the LPA for Approval the results of the Event Management Plan Monitoring as follows;

2.1.1 on the date which marks the end of the first Football Season following payment of the Sustainable Transport Contribution;

2.1.2 at two yearly intervals thereafter,

the results will be submitted to the LPA for Approval within 28 days of the end of each period noted above at paragraph 2.1.1 and 2.1.2 (as relevant)."

4 LEGAL FEES

On completion of this Deed the Developer shall pay to the LPA its reasonable legal costs in connection with this Deed (inclusive of any such reasonable costs properly incurred by external lawyer appointed by the LPA in relation to the negotiation and completion of this Deed).

5 LOCAL LAND CHARGE

This Deed shall be registered as a local land charge by the LPA.

6 THIRD PARTY RIGHTS

This Deed gives no rights under the Contract (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act and it may be enforced by the successors in title of the parties and by any successor to the LPA's statutory functions.

7 NO WAIVER

No waiver (whether expressed or implied) by the LPA or the Developer 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 LPA or the Developer from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 NO FETTER

Nothing in this Deed shall prejudice or affect the rights, powers, duties and obligations of the LPA in the exercise of their functions in any capacity.

9 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales as it applies in England.

10 DELIVERY

The provisions of this Deed shall be of no effect until this Deed has been dated.

11 COUNTERPART

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

12 SECTION 73 PLANNING PERMISSION

The LPA shall within 10 working days of the completion of this Deed grant the Section 73 Planning Permission save that the Council shall not be in breach of this obligation if it shall be prevented from doing so by a Court order.

IN WITNESS of which the Parties have executed this Deed on the date first written above

THE COMMON SEAL of
LONDON LEGACY DEVELOPMENT
CORPORATION LIMITED was hereto
affixed in the presence of:



.....
Authorised signatory

SIGNED by *as a Deed by*
E20 STADIUM LLP *acting by:*

Pinsent Masons LLP (on authority)
~~in the presence of:~~ **LONDON LEGACY DEVELOPMENT CORPORATION (DESIGNATED MEMBER)**

.....
Authorised signatory.

SIGNED by

SELH Ltd

~~in the presence of:~~ **STRATFORD EAST LONDON HOLDINGS LIMITED (DESIGNATED MEMBER)**

.....

Authorised signatory.

£10

*Pinsent Masons LLP
(on authority)*