

Planning Obligation by Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990

relating to the development of land at _____, Norfolk

Dated:

(1)

(2)

(3)

The Borough Council of King’s Lynn and West Norfolk (4)

DATE

This UNILATERAL UNDERTAKING is given as a DEED by:

- (1) of [insert address] (“the Owner”)
- (2) of [insert address] (“the Developer”)
- (3) of [insert address] (“the Mortgagee”)

To:

- (4) The Borough Council of King’s Lynn & West Norfolk of King’s Court, Chapel Street, King’s Lynn, Norfolk (“the Council”)

INTRODUCTION

- 1 The Council is the Local Planning Authority for the purposes of Section 106 of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site.
- 3 The Mortgagee is the registered proprietor of the Charge and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- 4 The Developer has submitted the Application to the Council.
- 5 The Owner, the Developer and the Mortgagee have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

- 1.1 For the purposes of this Deed the following expressions shall have the following meanings:

“Act”:

the Town and Country Planning Act 1990

“Application”:

the application for outline/full planning permission dated [] 201X submitted to the Council for the Development and allocated reference number XX/XXXX/XX

“Charge”

the charge dated [] as referred to in the charges register of Title number NKXXXX

“Commencement of Development”:

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 other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” and “Commence” shall be construed accordingly

“Development”:

the Development of the Site by the [] as set out in the Application

“Dwelling”:

a dwelling (including a house, flat, bungalow or maisonette) to be constructed pursuant to the Planning Permission and used for private domestic residential purposes

“Habitats Monitoring and Mitigation Payment”

the sum of one hundred and eighty five pounds and ninety three pence (£185.93) per Dwelling to be paid in accordance with the terms of this Deed as a contribution towards the objectives of the Monitoring and Mitigation Strategy

“Index”:

the Royal Institution of Chartered Surveyors Building Cost Information Service All in Tender Index (or if that index ceases to be published such other index as the Council shall reasonably determine)

“Index-Linked”:

proportionately increased equivalent to the proportionate increase in the Index from [1 April 2016/the date of this Deed] to the date that payment is due in accordance with the terms of this Deed

“Interest”:

interest at 4% per cent above the base lending rate of the Bank of England from time to time

“Monitoring and Mitigation Strategy”

the Borough Council of King’s Lynn and West Norfolk Natura 2000 Sites Monitoring and Mitigation Strategy as adopted by the Council on 24 September 2015

“Plan”:

the plan attached to this Deed

“Planning Permission”:

the {outline/full} planning permission subject to conditions to be granted by the Council pursuant to the Application

“Site”:

the land against which this Deed may be enforced, as shown edged red on the Plan, known as..... in the County of Norfolk in the Borough of King’s Lynn and West Norfolk and which is registered under title number NK..... at the Land Registry

“Working Days”:

Monday to Friday (inclusive) except public holidays in England

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context requires 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 Any reference to a person includes a natural person, a body corporate or unincorporate and any other legal entity.
- 2.5 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.
- 2.6 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.
- 2.7 References to any party to this Deed shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the Council any successor to its statutory functions.
- 2.8 Clause headings shall not affect the interpretation of this Deed.

3 LEGAL BASIS

- 3.1 This Deed constitutes a planning obligation for the purposes of Section 106 of the Act, section 111 of the Local Government Act 1972 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner and the Developer under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council against the Owner and the Developer as local planning authority for the area in which the Site is situated.

3.3 This Deed shall come into effect on the date of grant of the Planning Permission.

4 COVENANTS WITH THE COUNCIL

4.1 The Owner and the Developer covenant with the Council:

4.11 upon the submission of this completed Deed to the Council as part of the Application to pay to the Council the sum of Fifty pounds (£50.00) towards the legal and administrative costs arising in relation to this Deed

4.12 to provide the Council with at least 10 Working Days prior notice in writing of the Commencement of Development

4.13 to pay to the Council the Habitats Monitoring and Mitigation Payment on or before the Commencement of Development

4.14 to give the Council immediate written notice of any change in ownership of any of the interests in the Site occurring before the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company) or usual or principal address (if not) together with the area of the Site or unit of occupation purchased or transferred by reference to a plan

5 MISCELLANEOUS

5.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

5.2 Any notices required to be served in accordance with the terms of this Deed shall be in writing and shall be delivered or sent by pre-paid first class post or recorded delivery post to the addresses set out at the start of this Deed and, in the case of notice to be served on the Council, shall be addressed to the Section 106 Monitoring Officer quoting the reference number allocated to the Application.

5.3 This Deed is a local land charge and shall be registered as such on the Register of Local Land Charges by the Council.

- 5.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council may, upon the written request of the Owner, effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 5.5 Insofar as any clause or clauses 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, legality or enforceability of the remaining provisions of this Deed.
- 5.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they shall have parted with their entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 5.6 Nothing in this Deed 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 (whether or not on appeal) after the date of this Deed PROVIDED THAT where permission is issued in relation to the Planning Permission pursuant to an application under section 73 of the Act this Deed shall continue in full force and effect subject to and in accordance with the provisions contained herein AND PROVIDED THAT in the event that upon receipt of a relevant application under section 73 of the Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations.
- 5.7 In the event of the Planning Permission being quashed, revoked or otherwise withdrawn or, without the consent of the Owner, being modified by any statutory procedure before the Commencement of Development or expiring and not being renewed without the Development having Commenced or in the event of the revocation of the Planning Permission the obligations under this Deed shall cease absolutely.

6 TITLE

- 6.1 The Owner warrants that it is the freehold owner of the Site and has full power to enter into this Deed and that there is no person other than the Owner, the Developer and the Mortgagee having any legal or equitable interest in the Site.

7 INDEXATION

- 7.1 Any sum required to be paid in accordance with the terms of this Deed shall be Index-Linked.

8 INTEREST

8.1 If any sum required to be paid in accordance with the terms of this Deed is paid late, Interest will be payable on the outstanding sum from the date payment is due to the date of payment.

9 VAT

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

10 JURISDICTION

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

11 MORTGAGEE’S CONSENT

11.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

IN WITNESS of which the parties to this Deed have executed this document as a Deed on the day and year first before written.

EXECUTED AS A DEED by)
)
in the presence of:)

Director

Director/Secretary

EXECUTED AS A DEED by

)

in the presence of:

)

)

Witness signature:

Witness name:

Witness address:

Witness occupation: