

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

relating to the development of land forming part of the former car park, Southend Road, Hunstanton, Norfolk

Dated:

Parties:

1. The Borough Council of King's Lynn & West Norfolk
2. Norfolk County Council

eastlaw

King's Court
Chapel Street
King's Lynn
Norfolk PE30 1EX

Ref: NJD/014133

This Deed of Agreement (“this Deed”) is made on:

PARTIES

- (1) The Borough Council of King’s Lynn & West Norfolk of King’s Court, Chapel Street, King’s Lynn, Norfolk (“the Council” and until such time as it ceases to have an interest in the Site “the Owner”)

- (2) Norfolk County Council of County Hall, Martineau Lane, Norwich, Norfolk, NR1 2UA (“the County Council”)

INTRODUCTION

- 1 The Council and the County Council are Local Planning Authorities 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 Application has been submitted by the Owner to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed

- 4 The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed

- 5 Having regard to the Council’s ownership of the Site and to avoid any suggestion of a conflict of interest or other improper motive or conduct the County Council has agreed to be the Enforcing Authority for the purposes of this Deed during such time as the Council has an interest in the Site

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 full planning permission for the redevelopment of the car park of which the Site forms a part to provide 32 new dwellings, together with associated parking and infrastructure on the Site

“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 and the temporary display of site notices or advertisements and “Commence Development” and “Commenced” shall be construed accordingly

“Development”:

the development of the Site by the construction of 32 new dwellings, together with associated parking and infrastructure as set out in the Application

“Dwelling”:

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

“Enforcing Authority”

The County Council until the Council ceases to have an interest in the Site after which time it means the Council

“Index”:

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

“Index-Linked”:

proportionately increased equivalent to the proportionate increase in the Index from the date of completion 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

“Occupation” and “Occupied” and “Occupy”:

occupation of the Site for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out, decoration, marketing or display or occupation in relation to security operations

“Parties”:

together, the Council, the County Council and the Owner and ‘Party’ shall be construed accordingly

“Plan”:

The Design Partnership plan number **LP-856-PAP03**, a copy of which is attached to this Deed at the Appendix

“Planning Permission”:

the planning permission subject to conditions to be granted by the Council following consideration of the Application

“Site”:

the land forming part of the former car park, Southend Road, Hunstanton, Norfolk against which this Deed may be enforced as shown edged red on the Plan and as described in the First Schedule

“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 Clause, paragraph or schedule headings shall not affect the interpretation of this Deed.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 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.
- 2.5 Wherever there is more than one person named as a party to this Deed 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 and the County Council any successor to their respective statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is entered into under 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 under this Deed create planning obligations under section 106 of the Act and are enforceable by the Council and the County Council as local planning authorities and as Enforcing Authority against the Owner.

4 CONDITIONALITY

4.1 This Deed is conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development

save for the provisions of this Clause and Clauses 8 (1), 9, 14 and 15 (and any other relevant provisions necessary to make this Deed operational and effective), which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the Enforcing Authority:

5.1.1 as set out in the Second Schedule

5.1.2 save in respect of individual Dwellings to give the Council and the Enforcing Authority immediate written notice of any change in ownership of any of its interests in the Site occurring before all 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

5.2 The Owner covenants with the Enforcing Authority as set out in the Fourth Schedule

5.3 The Owner covenants with the Council and the County Council to notify the Council and the County Council of the reaching of any of the Occupation, Commencement, Completion or other thresholds (including payment thresholds) relating to the Planning Obligations contained in this Deed, such notification to be given within 10 Working Days of reaching such threshold.

6 THE ENFORCING AUTHORITY COVENANTS

6.1 The Enforcing Authority covenants with the Owner as set out in the Third Schedule.

7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Council and the County Council on or before completion of this Deed the legal costs of the Council and the County Council incurred in the negotiation, preparation and execution of this Deed.
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed 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 Owner from the Enforcing Authority under the terms of this Deed such agreement, approval, 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:
- 7.4.1 the Council by the Executive Director, Environment & Planning
- 7.4.2 the Enforcing Authority by the Executive Director, Environment and Planning of the Council where the Council is the Enforcing Authority and the Director of Environment, Transport and Development where the County Council is the Enforcing Authority
- 7.5 Any notices required to be served in accordance with the terms of this Deed shall be deemed to have been properly served if sent by recorded delivery to the registered office (if a company) or the usual or principal address (if not) of the relevant party, as appropriate.
- 7.6 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.
- 7.7 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.
- 7.8 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.
- 7.9 The Council and the County Council shall not be liable to any person under this Deed after that person has parted with their entire interest in the Site but without prejudice to any liability for any subsisting breach arising prior to parting with such interest.

7.10 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 but FOR THE AVOIDANCE OF DOUBT 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.

7.11 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.

7.12 The obligations in this Deed shall not be binding upon or enforceable against any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services.

8 TITLE

8.1 The Owner warrants that it is the freehold owner of the whole of the Site and has full power to enter into this Deed and that the land is free from mortgages, charges or other encumbrances and that there is no person having any interest in the Site other than as disclosed in the title to the Site or as notified in writing to the Council's Solicitor and the County Council's Head of Law prior to the date hereof.

9 WAIVER

9.1 No waiver (whether express or implied) by the Council or the Enforcing Authority or the Owner 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 Council or the Enforcing Authority or the Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

10 INDEXATION

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

11 INTEREST

- 11.1 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.

12 VAT

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

13 DISPUTE RESOLUTION

- 13.1 The parties to this Deed will attempt in good faith to resolve any dispute or claim arising out of or relating to this Deed promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.
- 13.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (“ADR”) procedure as recommended to the parties by the Centre for Dispute Resolution.
- 13.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR Procedure the dispute (other than a dispute relating to a matter of law or in relation to the interpretation of this Deed) may be referred by any party to the dispute to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties to the dispute and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 13.4 Nothing in Clauses 13.1 to 13.3 shall apply to the recovery of ascertained or ascertainable sums or prevent the parties from commencing or continuing court proceedings.

14 JURISDICTION

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

15. THE COUNCIL COVENANTS WITH THE COUNTY COUNCIL

15.1 The Council covenants with the County Council to indemnify the County Council against all costs claims and demands in connection with its obligations in acting as the Enforcing Authority contained in this Deed

IN WITNESS of which the Parties have executed this document as a Deed on the date first before written.

APPENDIX 1

The Plan

~~Affordable Housing Plan~~

FIRST SCHEDULE

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

All that piece or parcel of freehold land situated, in the County of Norfolk in the Borough of Kings Lynn and West Norfolk which is shown edged red for identification purposes only on the Plan and which is identified in a conveyance dated 28 November 1986, made between Pretoria Warehousing Company Limited and the borough of King's Lynn and West Norfolk as land between Southend Road and Beach Terrace Road, Hunstanton

SECOND SCHEDULE

Part 1

DEFINITIONS AND CLAUSES FOR THE PROVISION AND TRANSFER OF AFFORDABLE HOUSING

1. In this part of this Schedule (unless the context otherwise requires) the following expressions shall have the following meanings:-

“Affordable Dwellings”:

the Dwellings to be constructed to Design and Quality Standards on the Site as Affordable Housing

“Affordable Housing”:

the Intermediate Housing and Rented Housing to be provided to Eligible Households

“Affordable Housing Mix”:

the mix of Intermediate Housing and Rented Housing, dwelling types, location and size as set out in Clause 3 of this part of this Schedule and as shown on the Affordable Housing Plan

~~**“Affordable Housing Plan”**~~

~~Plan number XXXX, a copy of which is attached to this Deed at the Appendix~~

“Affordable Housing Provision”:

the construction and provision of ~~ten-six~~ (610) Affordable Dwellings on the Site (or such other number as the Council may agree in its absolute discretion) in accordance with the Affordable Housing Mix

“Affordable Rented Dwellings”:

Dwellings to be let by a Registered Provider with an appropriate agreement with Homes England for the provision of affordable rents being controls that limit the rent to no more than eighty percent (80%) of local market rents including any service charges or as otherwise agreed with the Council in writing

“Complete”:

a stage of construction such that a Dwelling has a complete roof and all windows and external doors installed and where further works do not ordinarily amount to “development” for the purposes of section 55(1) of the Act and “Completed” shall be construed accordingly

“Design and Quality Standards”:

the appropriate standards as specified by the Regulator or such other construction standards as the Council may specify

“Eligible Household”:

a person or persons in need of accommodation who are unable to rent or buy on the local open market and nominated by the Council in accordance with the Council’s housing allocation policy or as otherwise approved by the Council or by mutual exchange in accordance with section 158 of the Localism Act 2011

“Homes England”:

the statutory body trading as Homes England or such successor statutory body or bodies that funds Registered Providers

“Intermediate Dwellings”:

Dwellings for sale at prices below local market price that Eligible Households can afford as determined by the Council acting reasonably including low cost homes (but not including low cost market housing), shared ownership, shared equity and equity loan products as approved by the Council

“Intermediate Housing”:

one or more Intermediate Dwellings, Shared Ownership Dwellings and/or Intermediate Rented Dwellings as agreed by the Council

“Intermediate Rented Dwellings”:

Dwellings for rent at rents above those of Social Rents but below local market rent that Eligible Households can afford which shall be no more than eighty percent (80%) of local

market rents including any service charges as determined by the Council not including Affordable Rented Dwellings

“Open Market Dwelling”:

any Dwelling constructed as part of the Development which is not an Affordable Dwelling

“Provider”:

either:

- a) a Registered Provider; or
- b) another organisation that owns the Affordable Dwellings and has been approved in writing by the Council

“Public Subsidy”:

funding provided by the Council, Homes England or any other public body or successor body towards the provision of Affordable Housing

“Registered Provider”:

as defined in the Housing and Regeneration Act 2008

“Regulator”

the statutory body trading as the Regulator of Social Housing or such successor statutory body or bodies that regulate Registered Providers

“Rented Housing”:

one or more Affordable Rented Dwellings and/or Social Rented Dwellings as agreed with the Council

“Shared Ownership Dwellings”:

Dwellings purchased on a Shared Ownership Lease

“Shared Ownership Lease”:

a lease in a form approved by Homes England or where there is no such form in a form approved by the Council such lease to provide for the following:

- a) not more than seventy-five percent (75%) and not less than twenty-five percent (25%) of the equity (or such other percentages as the Council may agree) shall be initially sold to the purchaser by the Provider
- b) power to the purchaser to increase their ownership up to one hundred percent (100%) if they so wish
- c) an initial rent not exceeding 2.75% of the value of the equity retained by the Provider subject to annual increases not exceeding the Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of the Regulator

“Social Rented Dwellings”:

Dwellings to be let by a Provider at Social Rents

“Social Rents”:

rents not exceeding Target Rent (or if such target rents cease to be set such other measure of affordable rent as the Council may reasonably agree)

“Target Rent”:

the rent for Social Rented Dwellings as determined by the national rent regime published by the Regulator or any subsequent replacement or where there is no such replacement at a rent determined by the Council

2. The Owner covenants with the Council:

- 2.1 Not to Complete or allow Completion of more than fifty percent (50%) of the Open Market Dwellings until all of the Affordable Dwellings are Complete and have been transferred to the approved Provider (or where no transfer is required their ongoing provision has been secured) in accordance with and subject to the following terms:

- 2.1.1 for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed;
 - 2.1.2 free from all financial charges, adverse rights, restrictions or other encumbrances which would interfere with the use of the Affordable Dwellings as Affordable Housing; and
 - 2.1.3 with the benefit of all necessary easements, rights and utilities;
- 2.2 Not to use or allow the Affordable Dwellings to be used for any purpose other than Affordable Housing (and accordingly and for the avoidance of any doubt an Affordable Dwelling shall not be Occupied otherwise than by an Eligible Household) PROVIDED THAT the obligations contained in this Schedule shall not be binding upon:
- 2.2.1 a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire;
 - 2.2.2 an Eligible Household under a Shared Ownership Lease which has acquired one hundred percent (100%) of the leasehold or freehold interest
 - 2.2.3 a mortgagee or chargee or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a "Receiver") of the whole or any part of the Affordable Dwelling or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT it has first complied with the following:
 - 2.2.3.1 such mortgagee or chargee or Receiver shall first give notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant

security documentation including all accrued principal monies, interest, costs and expenses; and

2.2.3.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the obligations contained in this Schedule which provisions shall determine absolutely in relation to the affected Affordable Dwellings

2.2.4 any successor in title to persons referred to in 2.2.1 to 2.2.3 above

3. ~~Ten-Six (610)~~ Affordable Dwellings of which Units 22 and 233 are to be Shared Ownership Dwellings, Units 7, 10, 13 and 21 are to be Affordable Rented Dwellings ~~as shown on the Affordable Housing Plan~~

THIRD SCHEDULE

Enforcing Authority's Covenants

1. The Enforcing Authority covenants with the Owner:
 - 1.1 At the written request of the Owner to provide written confirmation of the discharge of the Obligations contained in this Deed and for which the Enforcing Authority has assumed responsibility when satisfied that such obligations have been performed
 - 1.2 Following the performance and satisfaction of all the Obligations contained in this Deed for which the Enforcing Authority has assumed responsibility on the written request of the Owner to arrange for the Council to mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed as soon as reasonably possible

**THE COMMON SEAL OF THE BOROUGH COUNCIL OF
KINGS LYNN and WEST NORFOLK** was affixed in the
presence of:

Authorised Signatory:

**THE COMMON SEAL OF
THE NORFOLK COUNTY COUNCIL**
was affixed hereto in the presence of:

.....

authorised for and on behalf of the Director of Governance
and this deed has been duly and properly executed
in accordance with the constitution of The Norfolk County Council