

DATE: 15 February 2023

(1) GRAVESHAM BOROUGH COUNCIL

AND

(2) AK GRAVESEND PROPERTIES LIMITED

AND

(3) CHURCHILL RETIREMENT LIVING LIMITED

Town and Country Planning Act 1990

Section 106

Relating to The Former Police Station, Windmill Street, Gravesend Kent

Medway Council and Gravesham Borough Council
Gun Wharf
Dock Road
Chatham
Kent
ME4 4TR
(Ref: RGS/GPL021759)

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THIS DEED is made the 15 day of February 2023

PARTIES

- (1) GRAVESHAM BOROUGH COUNCIL whose address is Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU ("the Council")
- (2) AK GRAVESEND PROPERTIES LIMITED (Co. Regn. No. 11154168) of Unit 4, Paris, Parklands, Railton Road, Guildford, England, GU2 9JX ('the Owner') .
- (3) CHURCHILL RETIREMENT LIVING LIMITED (Co. Regn. No. 06260373) of Churchill House, Parkside, Ringwood, Hampshire, BH24 3SG ("the Applicant");

Agreed terms

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following terms have the following meanings unless inconsistent with the context

"Affordable Housing" means housing for sale or rent for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers): and which complies one or more of the definitions set out in Annex 2 of the National Planning Policy Framework (as shall be updated and replaced from time to time) or as otherwise provided by legislation

"Charge Holder" means any mortgagee or chargee of the Site (or any part of the Site) from time to time or the successors in title to such

mortgagee or chargee or any receiver or manager appointed by such mortgagee or chargee;

“Commencement of the Development” means commencement of the Development on the Site by the carrying out of a material operation within the meaning of Section 56(4) of the Planning Act but for the purpose of this definition the carrying out of any works of demolition, works of site clearance or re-grading, works connected with infilling, ground investigation and site survey works, construction of boundary fencing of hoards, construction temporary accesses and/or highway works, archaeological investigations and works, site decontamination or remediation works, landscaping works, laying of sewers and other services, creation of site compounds and noise attenuation works shall not be deemed to be the carrying out of a material operation

“Council’s Costs” means a contribution to the Council’s proper and reasonable costs in the preparation execution and registration of this Deed

“Development” means the demolition of the existing structures on site and the erection of 75 Retirement Living apartments for older people (comprising 48 no. 1-bed and 27 no 2-beds) including communal facilities, access, car parking and landscaping by the Owner in accordance with the Planning Application

“Disputes Resolution Procedure” means the procedure referred to in clause 7.9 and set out in the Third Schedule of this Deed

“Dwelling” means a building or part of a building designed for residential occupation by a single household constructed pursuant to the Permission

“Financial Contributions” means the Financial Contributions as set out in the First Schedule

“Indexation” means the increase of any sum in accordance with the formula set out in clause 9

“Inflation Index” means the “all items” index figure of the Index of Retail prices published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published or its name or methodology be materially altered

“Monitoring Officer” means a suitably qualified officer experienced in projects similar to the Development appointed by the Council in connection with this Deed

“Monitoring Officer costs” means the Monitoring Officer’s costs of £500 (five hundred pounds)

“Notice” means a notice in the form which is attached to this Deed at Annex 1

“Occupation” means beneficial occupation of a Dwelling or Dwellings and not for the purpose of fitting out decorating marketing security or any other purpose which is only incidental to the primary purpose of its construction and the term **“Occupied”** shall be construed accordingly

“Permission” means the planning permission granted by the Council pursuant to the Planning Application

“Plan” means the plan annexed to this Deed at Annex 2

“Planning Act” means the Town and Country Planning Act 1990 as amended

“Planning Application” means the application for planning permission to carry out the Development on the Site and given reference 20220432

“Planning Permission” the full planning permission that will be granted by the Council for the Development in pursuance of the Planning Application following the completion of this Agreement

“SAMMS Contribution” means the contribution detailed at paragraph 1.1 of the First Schedule to this Deed

“Section 73 Consents” means a planning permission granted pursuant to an application made under section 73 of the Act to vary the Planning Permission

“Secretary of State” means the Secretary of State for Levelling up, Housing and Communities or other minister or other authority for the time being having or entitle to exercise the powers conferred on the Secretary of State for Levelling Up, Housing and Communities by the Planning Act

“Schedule” means any one or all of the Schedules annexed to this Deed

“Site” means the land/property known as the Former Police Station, 133 Windmill Street, Gravesend Kent and more particularly delineated edged red on the attached Plan

“Statutory Undertaker” has the meaning given such term in the Planning Act and for the avoidance of doubt, shall include any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator

“Strategic Access Management and Monitoring Scheme” means a scheme to mitigate the recreational impacts of the development of the

Thames Estuary Scheme and Marshes Special Protection Area and the Thames Estuary and Marshes Ramsar Site situated within 6km of the Development

“Trigger Date” means each date upon which an event occurs that triggers the payment of any Financial Contribution by the Owner and/or the coming into effect of any other obligation under this Deed

- 1.2 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council to the body or bodies (as appropriate) having statutory responsibility for the relevant function in replacement for the Council.
- 1.3 In the absence of any contrary provision any reference to a statute shall include any statutory extension modification or re-enactment of it and any statutory instrument, direction, order, regulation or byelaw made or issued under the statute or deriving validity from it.
- 1.4 Words importing the masculine gender shall include the feminine gender and the neuter and vice versa.
- 1.5 Words importing persons include companies, partnerships and corporations and vice versa.
- 1.6 Unless the context otherwise requires words importing the singular shall include the plural and vice versa.

- 1.7 Headings are for ease of reference only and shall not be construed as part of this Deed.
- 1.8 Reference to any recital, clause, Schedule or paragraph or any part thereof shall unless the context otherwise requires be reference to any recital, clause, Schedule or paragraph or any part thereof in this Deed.
- 1.9 Wherever there is more than one person named as a party or where more than one party undertakes an obligation all their obligations shall be enforceable against all of them jointly and or against each individually.
- 1.10 Any covenant by a party to this Deed not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by any other person.

2. RECITALS

- 2.1 The Council is the local planning authority for the purpose of the Planning Act for the area in which the Site is situated and entitled to enforce the obligations of this Deed for which it (the Council) is a beneficiary.
- 2.2 The Owner is the freehold owner of the Site as is shown edged red on the Plan and which is registered at the Land Registry under title number K984566.
- 2.3 The Owner hereby declares that as at the date hereof no other person other than those stated in this Deed holds a legal interest in the Site.

- 2.4 The Planning Application has been submitted to the Council by the Applicant in relation to the Development.

3 STATUTORY PROVISIONS

- 3.1 This Deed is made pursuant to section 106 of the Planning Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and to all other enabling powers to the intent that this Deed shall bind the parties and their heirs and successors assigns and persons claiming through or under them, except as expressly provided for by this Deed.
- 3.2 The covenants restrictions and obligations imposed on the Owner contained in this Deed are all planning obligations for the purposes of section 106 of the Planning Act and are enforceable by the Council as Local Planning Authority against the Owner.
- 3.3 The Council's Costs are payable pursuant to section 106(1)(d) of the Planning Act.
- 3.4 The Owner, the Applicant and the Council agree the need for the planning obligations contained in this Deed both for the benefit of the Development and in the interest of proper planning of the area, and that they directly relate to the Development and fairly and reasonably relate in scale and kind to the Development and thus satisfy the requirements of section 106 of the Planning Act and Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended.

- 3.5 Nothing in this Deed shall be construed as prohibiting limiting or affecting any right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted by the Council or the Secretary of State after the date of this Deed and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Commencement of Development under the terms of this Deed.

4 ENFORCEABILITY OF OBLIGATIONS

- 4.1 The obligations in this Deed shall not bind nor be enforceable against any Statutory Undertaker which acquires an interest in the Site for the sole purpose of undertaking its statutory functions.
- 4.2 The obligations in this Deed shall not bind nor be enforceable against the individual owners or occupiers or mortgagees of any Dwellings constructed on the Site pursuant to the Planning Permission nor anyone deriving title from such owners, occupiers or mortgagees nor against anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant.
- 4.3 No Charge Holder shall have any liability under or in connection with this Deed unless and until it takes possession of the Site or the relevant part of it (and it shall not be liable for any pre-existing breach arising prior to the date it enters into possession nor for any breach after it has parted with or released its interest in the Site).

5 THE OWNER'S AND APPLICANT'S COVENANTS

5.1 The Owner covenants with the Council to observe the restrictions and perform their obligations set out in the First Schedule to this Deed, and the Owner shall be liable for all of the Owners' obligations contained in this Deed.

5.2 The Owner covenants to serve a Notice on the Council in relation to and in accordance with each of the following provisions:

5.2.1 at least 28 days before the Commencement Date to serve notice of the proposed occurrence of the same;

5.2.2 within 14 days of the occurrence of a Trigger Date to serve notice of the date of the relevant Trigger Date and details of the relevant event; and

5.2.3 to retain such records and information and within 14 days of receipt of a written request by the Council to provide the Council with such records and information as the Council may reasonably request to enable the Council to satisfy itself (acting reasonably) that the Owner is complying with all of its obligations under this Deed and the conditions attached to the Permission.

5.3 The Applicant covenants with the Council as follows:

5.3.1 to pay the Council's Costs on completion of this Deed;

5.3.2 to pay the Monitoring Officer Costs to the Council on completion of this Deed.

6 THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owners to perform the obligations set out in the Second Schedule.

6.2 Within 28 (twenty eight) days of a request from the Owner the Council will certify whether or not an obligation under this Agreement has been satisfied and if not the steps that are required to be taken in order to secure its satisfaction provided that where such obligation is an ongoing obligation this clause shall not apply.

6.3 The Council agrees that upon the Owner's obligations under this Agreement being satisfied and upon receipt of a written request by the Owner the Council will remove all relevant entries relating to this Agreement from the Local Land Charges Register.

7 DECLARATIONS AND AGREEMENTS

7.1 Effective Date

Save in respect of this Clause and Clauses 5.2.1, 5.3, 7.3, 7.4, 7.8, 11, 15 and 18 which will become operative on the date of this Deed and save in respect of obligations expressly stated in this Deed as requiring compliance prior to the Commencement of the Development and which will become operative on the issue of the Planning Permission, this Deed will come into effect on the Commencement of the Development.

7.2 Liability for Breach

No person shall be liable for a breach of a covenant contained in this Deed after that person has parted with all their interest in the Site or in the part of the Site in respect of which such breach occurs but without prejudice to any subsisting breach of covenant prior to parting with such interest.

7.3 Revocation Modification or Expiry of the Permission

Subject to Clause 12 this Deed shall determine and cease to have any further effect if the Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Commencement of the Development, or the Planning Permission expires before the Commencement of the Development.

7.4 Notices

7.4.1 Any Notice required under clause 5.2 shall be in the form attached to this Deed at Annexe 1 and shall be deemed to be served if sent electronically to the address provided on the Notice or if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the Council provided on the Notice.

7.4.2 Any other notice consent or approval to be given under this Deed shall be in writing and shall be deemed to be served if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the relevant party as described at "Parties" or such other address as shall have been notified in writing to the party giving the notice consent or approval provided

that in the case of notice or other written communication to the Council the notices must be served, on the Assistant Director (Planning) and addressed to the Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU and quoting reference 20220432.

7.5 Approvals

Where any approval consent direction action or authority is required to be given by any of the parties hereto such approval consent direction action or authority shall not be unreasonably delayed or withheld and shall only be effective if given for the purposes of this Deed.

7.6 Severance

If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected or impaired.

7.7 Waiver by the Council

No waiver (whether express or implied) by the Council of any breach or default by another party in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions which they are entitled to enforce or from acting upon any subsequent breach or default in respect thereto by that party.

7.8 Registration as a Local Land Charge

This Deed is a Local Land Charge and shall be registered as such by the Council.

7.9 Disputes Resolution

7.9.1 Without prejudice to the rights and powers of the Council to take alternative action to enforce this Deed any dispute between the parties under the terms of this Deed may be referred to an expert under the Disputes Resolution Procedure.

7.9.2 The decision of any expert appointed under the Disputes Resolution Procedure shall be final and binding on all of the parties to the dispute except in the case of manifest error.

8 OVERDUE PAYMENT

8.1 Payments required to be made under the terms of this Deed shall for the purposes of this clause be deemed to fall due and to be payable on the date specified for payment in the relevant clause or if no date is specified in the relevant clause then such payment shall fall due 21 days after the occurrence of the relevant Trigger Date (in either case the "**Due Date**").

8.2 In the event of any delay in making the payment required under this Deed interest shall be payable on the amount payable at the rate of four percent above the National Westminster Bank plc base lending rate from time to time in force from the date that the relevant payment falls due to the date of actual payment.

9 INDEXATION AND VAT

9.1 Any sums which become payable under this Deed on a date more than twelve months after the date of this Deed by the Owner to the Council

other than the Council's Costs and the Monitoring Officers Costs shall be subject to Indexation.

- 9.2 Where a sum is subject to Indexation the actual sum due to the Council ("the Indexed Sum") shall be calculated in accordance with the formula except where the Inflation Index at the Due Date is less than the Inflation Index at the Base Date when the sum in question shall not be subject to Indexation

$$\text{Indexed Sum} = \text{Initial sum} \times \frac{\text{Inflation Index at Due Date}}{\text{Inflation Index at Base Date}}$$

Where:

- (a) "the Initial Sum" is the original sum specified in this Deed and
- (b) "the Base Date" is the date twelve months after the date of this Deed

PROVIDED THAT where payment is not made on the Due Date the provisions of clause 8.2. will have effect in relation to the Indexed Sum

- 9.3 All sums due under this Deed are exclusive of VAT and the Owner shall pay to the Council in addition to any such sums any VAT properly payable in respect thereof.

10 NO FETTERING OF DISCRETION

Except in so far as is legally or equitably permitted nothing in this Deed shall fetter prejudice or affect the exercise of any statutory or regulatory power duty or discretion of the Council.

11 VARIATION

No variation or modification of this Deed shall be valid unless made by Deed and executed by the parties or their respective successors.

12 SECTION 73 CONSENTS

In the event any Section 73 Consent is granted after the date of this Deed:

12.1 the obligations in this Deed shall relate to and bind such Section 73 Consent; and

12.2 the definitions of Planning Application, Permission and Development shall be construed to include reference to the planning application for the Section 73 Consent, the Section 73 Consent itself and the development permitted by the Section 73 Consent respectively.

PROVIDED THAT:

12.3 nothing in this clause 12 shall fetter the discretion of the Authority in determining the planning application for the Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

12.4 to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and

12.5 the parties acknowledge that the Council has the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it desirable to do so.

13 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Deed is not intended to confer any rights or benefit on a third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

14 PLANNING PERMISSION

Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.

15 CHANGE IN OWNERSHIP

15.1 The Owner shall give to the Council within one month of the Owner disposing of any part of the Site written notice of the name and address of the person to whom the Site or any part has been transferred PROVIDED THAT this obligation shall not extend to the disposition of individual Dwellings nor the disposition of land to any Statutory Undertaker which acquires an interest in the Site for the sole purpose of undertaking its statutory functions.

16 NO ENCUMBRANCE

The Owners shall not encumber or otherwise deal with their respective interests in the Site or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Deed are rendered impossible to carry out save where planning permission is granted after the date of this Deed for an alternative development of the Site.

17. JURISDICTION

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

18. RECEIPT

The Council acknowledges receipt of the Council's Costs and the Monitoring Officer Costs.

IN WITNESS whereof this Deed has been duly executed and delivered as a Deed by the Parties the day and year first before written

THE COMMON SEAL of GRAVESHAM)

BOROUGH COUNCIL was hereunto)

affixed to this Deed on the authority of)



Authorised Signatory



17,491

EXECUTED as a DEED by)

AK GRAVESEND PROPERTIES LIMITED)

acting by:)

Director

~~Director/Secretary~~

in the presence of:

Signature :

Name :

Address :

Occupation : *Solicitor.*

EXECUTED as a DEED by)

CHURCHILL RETIREMENT LIVING LIMITED)

acting by:)

Director

[REDACTED]

Director/Secretary

[REDACTED]

FIRST SCHEDULE

Covenants

Financial Contributions

The Owner covenants with the Council to pay the Financial Contributions to the Council as follows:

- 1.1. the sum calculated to the formula of £275.88 (two hundred and seventy five pounds eighty eight pence) per Dwelling the total of which is £20,691.00 (twenty thousand six hundred and ninety one pounds) and which shall be used towards a scheme to mitigate the recreational impacts of the development of the Thames Estuary Scheme and Marshes Special Protection Area and the Thames Estuary and Marshes Ramsar Site situated within 6km of the Development (SAMMS) such contribution to be paid prior Commencement of the Development;
- 1.2. the sum of £43,910.00 (forty-three thousand nine hundred and ten pounds) and which shall be used towards the upgrading, refurbishment and/or improvement of Cygnet Leisure Centre, Old Perry Street, Northfleet Gravesend DA11 8BU and/or Cascades Leisure Centre, Thong Lane Gravesend Kent DA12 4LG such contribution to be paid prior to first Occupation of any Dwelling; and
- 1.3. the sum of £56,090.00 (fifty-six thousand and ninety pounds) and which shall be used towards the provision of additional Affordable Housing within the Borough of Gravesham such contribution to be paid prior to first Occupation of any Dwelling.

2.1 The Owner covenants with the Council not to Commence Development until the Council has received in full the Financial Contribution as set out in paragraph 1.1 of this Schedule nor allow Occupation of any Dwelling until the Council has received in full the Financial Contributions payable under paragraphs 1.2 and 1.3 of this Schedule.

SECOND SCHEDULE

The Council's Covenants

The Council covenants with the Owner as follows:-

1. To issue the Planning Permission within seven (7) days of completion of this Deed;
2. To place the Financial Contributions in interest bearing accounts until the Financial Contributions have been spent in accordance with this Deed;
3. To expend the Financial Contributions in accordance with this Deed in the manner and solely for the purpose for which the sums were made as soon as possible following receipt of the sums and to provide to the Owner, if so requested on each anniversary of any payment of a contribution or instalment details (if required by the Owner) of how such sums have been spent;
4. At the Owner's written request, to repay (excluding the SAMMS Contribution) to the original party who made the payment any sums not expended or committed from the Financial Contributions payable to the Council at the date ten (10) years after the date of the last occupation of any part of the Development together with any interest accrued; and
5. The Council will release the SAMMS Contribution to the identified co-ordinator of the Strategic Access Management and Monitoring Scheme for the relevant area and that before it does so the Council will obtain confirmation from the identified co-ordinator that the monies will only be used in connection with the Strategic Access Management and Monitoring Scheme.

THIRD SCHEDULE

Dispute Resolution Procedure

1. General

All differences and questions that arise between the parties arising out of or connected with this Deed shall be referred to an expert

2. Choice of Expert

2.1 If the difference or question relates to the construction of rights and liabilities of any party or to the terms or conditions to be embodied in any deed or document appertaining thereto it shall be referred to a solicitor or barrister agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the Chairman from time to time of the Bar or any person in an equivalent subsequent role.

2.2 If the difference or question relates to the occupancy of any dwelling it shall be referred to a chartered surveyor agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the President from time to time of the Royal Institution of Chartered Surveyors or any person in an equivalent subsequent role.

3. No Further Submissions

After delivery of counter submissions or (if none) after submission of written submissions no party shall be entitled to make any further submissions and the expert shall forthwith deliberate and deliver to every

party to the dispute their decision in writing within a reasonable time of closing submissions or counter submissions

4. Restriction on Terms of Decision

The expert shall be restricted in settling the dispute to choosing between one of the proposals submitted by the parties or elements compatible with one another from the submissions of different parties to the dispute

ANNEX 1

Notice

To : Gravesham Borough Council, Planning & Regeneration Services, Civic
Centre, Windmill Street, Gravesend, Kent, DA12 1AU

Planning application number : / [to be completed in full]

Section 106 dated: [to be completed in full]

Development Site Address : [to be completed in full]

In accordance with the terms of the above section 106 Agreement, **I GIVE YOU NOTICE** that the following event has been reached *(please complete as appropriate)*

EITHER:

PRIOR TO COMMENCEMENT OF WORKS ON THE DEVELOPMENT ON
SITE (1)

Work is expected to commence on the Development Site on
[insert date]

(1) this notification should be sent at least 28 days prior to commencement of works on the Development Site as required under Clause 5.1.2 of the Section 106 Agreement

OR

WORKS HAVE COMMENCED ON SITE (2)

Work commenced on the Development Site on

[insert

date]

(2) this notification should be sent within 14 days after commencement of works on the Development Site as required under Clause 5.1.2 of the Section 106 Agreement

OR

A TRIGGER DATE(S) HAS OCCURRED (3)

Obligation type:

(insert each

obligation)

e.g. Library Contribution/SAMM Contribution

Trigger Date: (insert the date that each obligation was due to be paid or was due to come into effect)

e.g.

(3) this notification should be sent within 14 days after trigger date occurred as required under Clause 5.1.2 of the Section 106 Agreement

From :

Company :

Address *(required for invoicing)* :

Email address :

Please send this notification to :

By email : [officer contact] [@gravesham.gov.uk](mailto:)(preferred option)

By post :

The Planning Service

Gravesham Borough Council

Civic Centre, Windmill Street,

Gravesend,

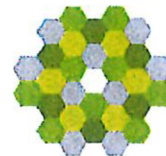
Kent, DA12 1AU

ANNEX 2

Plan

HM Land Registry
Official copy of
title plan

Title number **K984566**
Ordnance Survey map reference **TQ6473NE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Kent : Gravesend**



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