

DATE: 27 NOVEMBER

2023

3031

(1) GRAVESHAM BOROUGH COUNCIL (HOUSING DEPARTMENT)

In favour of

(2) GRAVESHAM BOROUGH COUNCIL

Town and Country Planning Act 1990

Section 106 Unilateral Undertaking

Relating to

Land at Worcester Close, Instead Rise Gravesend, Kent

Medway Council and Gravesham Borough Council

Gun Wharf

Dock Road

Chatham

Kent

GPL014383

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THIS DEED is made the 27 day of NOVEMBER, 2023

GIVEN BY:

PARTIES

- (1) GRAVESHAM BOROUGH COUNCIL whose address is Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU ("the Owner")

TO:

- (2) GRAVESHAM BOROUGH COUNCIL whose address is the Planning Department, Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU ("the Council")

Agreed terms

1. DEFINITIONS AND INTERPRETATION

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

"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, ground investigation and site survey works, construction of boundary fencing of hoards, construction temporary accesses and/or highway works, archaeological investigations, 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 legal and administrative costs in the negotiation, execution, completion and registration of this Deed.

“Development” means the construction of 8 new affordable rented residential units (Use Class C3) with associated vehicular and pedestrian access, car parking, cycle parking, refuse storage and landscaping on the Site by the Owner in accordance with the Planning Application.

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

“Financial Contribution” means the financial contribution set out in Part 1 of 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.

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

“Plan” means the plan annexed to this Deed.

“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 20230136

“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 entitled to exercise the powers conferred on the Secretary of State for Levelling Up, Housing and Communities by the Planning Act.

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

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

“Site” means the land situate at Worcester Close, Instead Rise, Gravesend Kent DA13 9LB and registered under title numbers K418536 and K944812 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.

“Trigger Date” means each date upon which an event occurs that triggers the payment of the 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. Recital

- 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 in its capacity as local planning authority) is a beneficiary.

- 2.2. The Owner is the freehold owner of the Site as registered with title absolute at the Land Registry under title numbers K418536 and K944812 shown edged red on the Plan and is acting in its capacity as Local Housing Authority as the applicant in this matter.
- 2.3. The Planning Application has been submitted by the housing department of the Owner to the planning department of the Council in relation to the Development.
- 2.4. The Council resolved on the 26th July 2023 to grant planning permission for the Development subject to the completion of this Deed without which the Planning Application would have been refused.

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 Owner 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.
- 3.3. The Council's Costs are payable pursuant to section 106(1)(d) of the Planning Act.
- 3.4. The need for the planning obligations contained in this Deed are agreed 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 and Infrastructure 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 as Local Planning Authority 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

The provisions contained in the Schedules to 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.

5. The Owner's Covenants

- 5.1. The Owner covenants to observe the restrictions and perform their obligations set out in the Schedules to this Deed,.
- 5.2. The Owner covenants to serve a Notice on the planning department of 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 Commencement of Development to serve notice of the actual Commencement Date of the Commencement of Development;
- 5.2.3. 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

5.2.4. 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 Owner further 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 within 28 days on completion of this Deed.

6. DECLARATIONS AND AGREEMENTS

6.1. Effective Date

The covenants contained in this Deed shall take effect on the date of this Deed or as otherwise stated in the Schedules.

6.2. 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.

6.3. Revocation Modification or Expiry of the Permission

Subject to Clause 11 this Deed shall determine and cease to have any further effect if the Permission is revoked or modified by the Council as Local Planning Authority pursuant to the Planning Act or by any Court without the written consent of the Owner or if the Permission expires before the Commencement of Development.

6.4. Notices

- 6.4.1. 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 in the Notice
- 6.4.2. 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 Local Planning Authority the notices must be served on the s.106 Officer, Gravesham Borough Council Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU with a copy to planning.obligations@gravesham.gov.uk and quoting reference 20230136

6.5. 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.

6.6. 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.

6.7. 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.

6.8. Registration as a Local Land Charge

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

7. **Overdue Payment**

- 7.1. 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**").

- 7.2. 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.

8. **Indexation and VAT**

- 8.1. The Financial Contribution which becomes 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.

- 8.2. 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

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

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 7.2. will have effect in relation to the Indexed Sum.

- 8.3. 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.

9. 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

10. Variation

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

11. Section 73 Consents

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

- 11.1. the obligations in this Deed shall relate to and bind such Section 73 Consent; and
- 11.2. 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:

- 11.3. nothing in this clause 11 shall fetter the discretion of the Council in determining the planning application for the Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;
- 11.4. 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
- 11.5. 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.

12. 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 and a person who is not a party to this Deed shall not have any rights to enforce any term against a party who is not referred to in this Deed.

13. Planning Permission

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

14. Change in ownership

- 14.1. The Owner shall give to the Council within seven days of disposing of any part of the Site written notice of such disposal such notice to contain the name and address of the person to whom the Site or any part has been transferred.

15. No Encumbrance

The Owner shall not encumber or otherwise deal with their interest 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

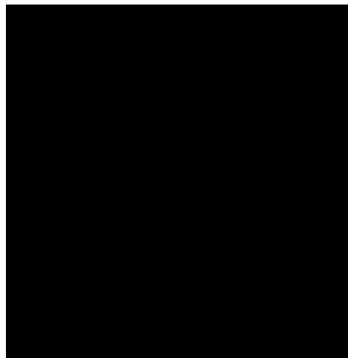
The Council acknowledges receipt of the Council's Costs

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

THE COMMON SEAL OF
GRAVESHAM BOROUGH
COUNCIL was hereunto

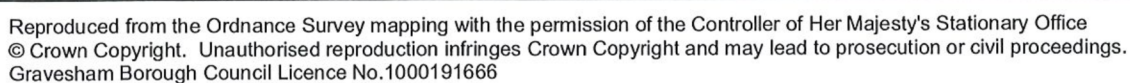
Affixed on the authority of:

Authorised Sealing Officer



MGBC 000307





FIRST SCHEDULE

Covenant

Part 1

The Owner covenants with the Council as follows

- 1.1. To pay to the Council the sum calculated to the formula of £314.05 (three hundred and fourteen pounds and five pence) per Dwelling the total of which is **£2512.40** (two thousand five hundred and twelve pounds forty pence pence) 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 such contribution to be paid prior to Commencement of Development.
- 1.2 The Owner covenants not to cause or allow Commencement of the Development until the Council has received in full the Financial Contribution payable under this Schedule

Part 2

‘Biodiversity Strategy’ means a strategy in respect of any trees which will be felled as a result of the Development and which shall include the following:

- (a) the number and species of trees which will be felled
- (b) the location of the Replacement Trees which shall be planted within a 2 mile radius of the Site

- (c) a five-year programme which shall include the maintenance and where necessary the replacement of any Replacement Trees which may die during the five year programme

“Replacement Trees” means trees which shall be semi mature of a like for like species of the felled trees and on a 3:1 ratio to the felled trees

1. The Owner shall not Commence Development until the Biodiversity Strategy has been submitted to and approved in writing by the Council
2. The Owner shall implement and comply in full with the approved Biodiversity Strategy

ANNEX 1

Notice to Gravesham Borough Council

Please complete this form in full.

Planning application number:

Section 106 dated:

Development Site Address:

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)

Date work is expected to commence on the Development Site:

(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)

Date work commenced on the Development Site:

(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. SAMMS Contribution/Biodiversity Strategy:

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

(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:

Email address (Required for invoicing):

Please send this notification to :

By email : planning.obligations@gravesham.gov.uk (preferred option)

By post : Development Management

Gravesham Borough Council

Section 106 Officer

Planning Department

Civic Centre, Windmill Street,

Gravesend,

Kent, DA12 1AU