

DATE: 17 November 2022

(1) GRAVESHAM BOROUGH COUNCIL

and

ELIZABETH HUGGINS COTTAGES CHARITY (2)

DEED OF VARIATION

Pursuant to Section 106 and 106A of the
Town and Country Planning Act 1990 (as amended)
Relating to development at
Elizabeth Huggins Cottages, Cross Lane West Gravesend

Bhupinder Gill
Assistant Director Legal and Governance
Gun Wharf
Dock Road
Chatham
ME4 4TR
RGS/GBC002436

Dated this

17

day of

November

2022

Parties

- (1) Gravesham Borough Council whose address is Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU ("**the Council**") ;
- (2) Elizabeth Huggins Cottages Charity incorporated and registered with the Charity Commission for England and Wales with charity number 209211 whose registered office is C/O Gravesend Churches HA, 14 London Road, Northfleet, Kent, DA11 9JQ ("**the Owner**")

Introduction

- (A) This deed is supplemental to the Section 106 Agreement (as defined in clause 1 of this Deed).
- (B) The Owner is the freehold owner of part of the Site registered with title number K978840
- (C) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 for the area in which the Site is situated and is the authority by which the obligations in the Section 106 Agreement are enforceable.
- (D) The Council and the Owner have agreed to enter into this Deed to vary Section 106 Agreement in the manner set out in this Deed.
- (E) The Parties are satisfied that the restrictions and provisions in this Deed are relevant to planning considerations concerning the Site, directly related in scale and kind to the Development and are reasonable in all other respects, and thus satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

Agreed terms

1 Definitions and interpretations

In this deed the following words and expressions have the meaning specified except when expressly stated to the contrary.

1.1 Definitions

“Council’s Costs”

the sum of £750 with no VAT being payable being the agreed contribution to the Council’s proper and reasonable costs in the preparation execution and registration of this Deed

“New Planning Application”

the new planning application numbered 20220135 (application for variation of condition 2 attached to planning permission reference no. 20210672 to provide social housing to ex service personnel to provide a mix of 3 bedroom 2 storey houses, single bedroom flats, 2 bedroom flats, 2 bedroom cottages and a 3 bedroom maisonette for warden, car parking and cycle storage: to allow a reconfiguration of the Blocks A, B F and G, car parking layout and refuse and cycle store locators)

“Principal Agreement”

the agreement dated 22nd December 2014 made between (1) the Council (2) The Trustees of the Elizabeth Huggins Cottages Charity as varied by the deed of variation dated 26th July 2021 made between (1) the Council (2) The Official Custodian for Charities in relation to the Permission

“Permission”

the Permission reference 20220135

“Site”

as defined in the Principal Agreement

1.2 Interpretation

- 1.1 Save where the context otherwise requires the expressions used in this deed shall have the same meaning or meanings as those stated in the Principal Agreement.

- 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 visa 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 Legal Effect and Recitals

- 2.1 This Deed is made pursuant to s.106 and 106A 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.

- 2.2 The Deed constitutes a planning obligation for the purposes of section 106 of the Planning Act which binds the Site and are enforceable by the Council as Local Planning Authority.
- 2.3 The Council's Costs are payable pursuant to S106 (1) (d) of the Planning Act
- 2.4 The Owner is the registered proprietor of the Site registered at the Land Registry under title number K978840 with title absolute
- 2.5 The New Planning Application has been submitted to the Council because the Owner wishes to reconfigure Blocks A, B, F and G and car parking layout and refuse and cycle store locations as shown on the Original Planning Application
- 2.5 The Owner and the Council have agreed to vary the terms of the Principal Agreement in the manner hereinafter appearing
- 2.6 Nothing in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise by it of its statutory functions and the rights, powers, duties and obligations of the Council under private statutes are effectively exercised as if it were not a party to this Deed.
- 2.7 This Deed shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council.
- 2.8 This Deed is subject to and will be construed in all respects in accordance with the provisions of English law.
- 2.9 It is hereby agreed between the Parties that the provisions of this Deed take effect upon the date hereof.

3 Variation

The Owner and the Council agree that the Principal Agreement is varied as follows:

- 3.1 the definition of "the Planning Application" shall be deleted and replaced with the following
- "the Planning Application" means the application for planning permission to carry out the Development on the Site and given the Council's reference number 20130881 and 20210672 as varied by application reference 20220135
- 3.2 the definition of Section 73 Consent shall be included
- "the Section 73 Consent" means a planning permission issued pursuant to an application to vary the Permission made under section 73 of the Planning Act
- 3.3 the following clause shall be inserted in the Principal Agreement
- Section 73 Consent
- In the event any Section 73 Consent is granted after the date of this Agreement

- 3.3.1 the obligations in this Agreement shall relate to and bind such Section 73 Consent: and
- 3.3.2 the definitions of Planning Application, Permission and Development shall be constructed 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

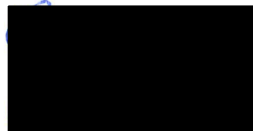
- 3.3.3 nothing in this clause shall fetter the discretion of the Council in determining the planning application for the Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same
- 3.3.4 to the extent that any of the obligations in this Agreement 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
- 3.3.5 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

4 Future construction

- 4.1 The Section 106 Agreement will, from the date of this deed, take effect and be constructed taking account of the variation effected by this deed.
- 4.2 The Council and the Owner confirm that the covenants and conditions contained in the Section 106 Agreement (except as varied by this deed) are to continue in full force and effect and shall continue to be applicable to the Site in respect of the Development as defined by the Principal Agreement and remain to be performed to the extent that they have not already been performed

This deed has been executed as a deed and is delivered on the date on the stated at the beginning of it.

THE COMMON SEAL of)
GRAVESHAM BOROUGH COUNCIL)
was hereunto affixed (but this Deed is)
not delivered until the date hereof) on)
the authority of:-)



Authorised Sealing Officer



17,467

Executed as a deed by **Elizabeth Huggins Cottages Charity** acting by a director, in the presence of:

Signature (Witness) [redacted]

Print Name [redacted]

Address [redacted]
Occupation [redacted]

[redacted]
Director