

DATE: 24 November 2023

(1) GRAVESHAM BOROUGH COUNCIL

And

(2) CUSTOM HOUSE (GRAVESEND) LIMITED

AGREEMENT

Town and Country Planning Act 1990

Section 106

Relating to Custom House, The Terrace, Gravesend Kent DA12 2BW

Medway Council and Gravesham Borough Council
Gun Wharf
Dock Road
Chatham
Kent
ME4 4TR
(Ref: GPL024764)

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THIS DEED is made the 24 day of November 2023

1 PARTIES

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

- (2) CUSTOM HOUSE (GRAVESEND) LIMITED (registered company
number 12727168) whose registered address is 27 Castle Street,
Canterbury CT1 2PX ("the Owners")

Agreed terms

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following terms have the following meanings and the following rules of interpretation apply 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 following operations shall not be deemed to be the carrying out of a material operation:

- (i) the carrying out of any works of demolition,
- (ii) works of site clearance,
- (iii) ground investigation;

- (iv) site survey works;
- (v) construction of boundary fencing and hoardings,
- (vi) construction temporary accesses and/or highway works;
- (vii) archaeological investigations,
- (viii) site decontamination or remediation works,
- (ix) landscaping works,
- (x) laying of sewers and other services,
- (xi) creation of site compounds; and
- (xii) noise attenuation works.

Commenced and **Commences** shall be construed accordingly

“Commencement Date”: the date Developments Commences

“Council’s Costs” means a contribution to the Council’s proper and reasonable legal and administrative costs incurred in connection with the preparation, negotiation, execution, completion and registration of this Deed up to a maximum of £750.00 (seven hundred and fifty pounds).

“Development” means the redevelopment of the Site including demolition of the southern part of the workshop building and existing corridor link at first floor level between Custom House and the outbuildings and conversion of Custom House, the coachhouse and outbuildings to include extensions, the Old Boathouse and the Boathouse with external alterations and erection of a new three (3) storey building to provide 27 (twenty-seven) residential units (6 x1 bed, 15 x 2 bed and 6 x 3 bed) with associated landscaping and parking 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 constructed for residential occupation on the Site as part of the Development pursuant to the Permission.

“Financial Contributions” means the SAMMS Contribution and the Leisure Contribution 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 Retail Prices Index published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Retail Prices Index shall no longer be published or its name or methodology be materially altered.

“Monitoring Officer” means a suitably qualified officer 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 £500.00 (five hundred pounds).

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

“Occupation” means physical occupation of any part of the Development for any purpose permitted by the Permission but does not include occupation for the purposes of:

- (i) construction;
- (ii) fitting-out;
- (iii) internal and external refurbishment;
- (iv) decoration;
- (v) landscaping (hard and soft);

- (vi) Marketing or display;
- (vii) Sales;
- (viii) Security operations; or
- (ix) Management

and for the avoidance of doubt in the case of a sale of a freehold or a long leasehold interest to a third party Occupation commences on the date of legal completion of the sale rather than exchange of contracts and "Occupy" "Occupier" "Occupiers" and "Occupied" shall be construed accordingly.

"Permission" means the planning permission to be granted by the Council pursuant to the Planning Application.

"Plan" means the plan which is attached to this Deed at Annexe 2.

"Planning Act" means the Town and Country Planning Act 1990 as amended.

"Planning Application" means the application for the Permission to carry out the Development on the Site registered by the Council on [TBC] under reference number 20210757

"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 under Sections 77 – 79 (inclusive) 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/property known as the Custom House, The Terrace, Gravesend Kent DA12 2BW Kent and registered with title absolute under title number K807932 and shown edged red on the 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 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. 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) is a beneficiary.
- 2.2. The Owner is the freehold owner of the Site.
- 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 relating to the Development has been submitted to the Council and the Owner is proposing to carry out the Development.
- 2.5. The Council resolved on the 22 November 2023 by way of Officer Delegated Authority to grant the 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 and 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 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 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 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 with the Council to observe the restrictions and perform their obligations set out in the Schedules to this Deed, and the Owner shall be liable for all of the Owner's 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 (twenty-eight) days before the Commencement Date to serve notice of the proposed occurrence of the same;

5.2.2 within 14 (fourteen) days of the Commencement of Development to serve notice of the actual Commencement Date of the Commencement of Development;

5.2.3 within 14 (fourteen) 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 (fourteen) 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 or before completion of this Deed; and
- 5.3.2 to pay the Monitoring Officer Costs to the Council on or before completion of this Deed.

6 The Council's Covenants

- 6.1 The Council covenants with the Owner to observe and perform the obligations set out in the Second Schedule.
- 6.2 Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed.

7. DECLARATIONS AND AGREEMENTS

7.1 Effective Date

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

7.2 Liability for Breach

No person shall be liable for a breach of a covenant, restriction or obligation 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 revoked or modified by the Council 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.

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 s.106 Officer and addressed to Development Manager, Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU and quoting reference 20210757 with a copy to planning.obligations@gravesham.gov.uk and quoting reference 2021 0757

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

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

7.8.2 The Council and the Owner acknowledge that all the liabilities and obligations of the Owner in this Deed are that of the Owner and pursuant to clause 3.1 their successors in title save that the purchasers of an individual Dwelling of the Development are excluded from all liability and obligations set out in this Deed and the Owner indemnifies all owners of the Dwellings within the Development from the provisions of the Deed

7.9 Disputes Resolution

7.9.1 Without prejudice to the rights and powers of the Council and 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 set out in the Third Schedule.

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 or fraud.

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 (twenty-one) 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 (4%) 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 forming part of the Financial Contributions which become payable under this Deed on a date more than 12 (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 forming part of the Financial Contributions 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 12 (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 on receipt of a valid VAT invoice.

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 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;
- 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 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.

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

The Owner shall, if the whole or any part of Site is disposed prior to Commencement of Development give to the Council within seven (7) 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.

16. 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 and the Monitoring Officer Costs

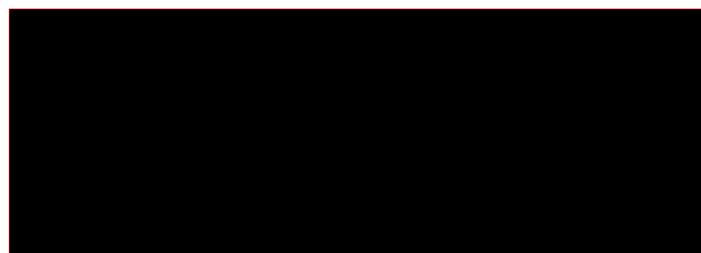
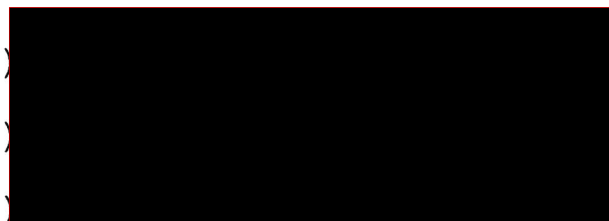
IN WITNESS whereof this Agreement has been duly executed as a Deed by
the Parties the day and year first before written

THE COMMON SEAL of GRAVESHAM)
BOROUGH COUNCIL was hereunto)
affixed to this Deed on the authority of)



17, 716

EXECUTED as a DEED by)
CUSTOM HOUSE (GRAVESEND))
LIMITED acting by a Director)
and its secretary (or two directors)
Signature of Director
Signature of Secretary/Director



FIRST SCHEDULE

Financial Contributions

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

PART ONE

1. COUNCIL'S FINANCIAL CONTRIBUTIONS

- 1.1. the sum calculated to the formula of £314.05 (three hundred and fourteen pounds and five pence) per Dwelling the total of which is **£8,479.35** (eight thousand four hundred and seventy nine pounds and thirty five 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 (SAMMS Contribution) such contributions to be paid prior to the Commencement of Development.
- 1.2. the sum of **£ 30,000.00** (thirty thousand pounds) and which shall be used towards the upgrading and improving of Cygnet Leisure Centre, Old Perry Street, Northfleet Gravesend Kent DA11 8BU and/or Cascades Leisure Centre, Thong Lane, Gravesend Kent DA12 4LG and/or the Riverside Leisure Area, Milton Place Gravesend.(Leisure Contribution) such contributions to be paid prior to the Commencement of the Development

The Owner covenants not to Commence the Development until the Council has received in full the Financial Contributions payable under 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
 - 2.1 in respect of the SAMMS Contribution it has been released as set out in paragraph 5 below
 - 2.2 in respect of the-Leisure Contribution it has 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 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. In the event that the Leisure Contribution made to the Council pursuant to this Agreement has not been spent within a period of ten (10) years from receipt of the relevant Contribution or the final instalment of the relevant Contribution was paid the Council will repay the unexpended balance to the original party which made the Leisure Contribution together with interest accrued.
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 and will confirm the same to the Owner.

THIRD SCHEDULE

Dispute Resolution Procedure

1. General

All differences and questions that arise between the parties arising out of or in connection with this Agreement 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

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. Library Contribution/SAMMS Contribution/NHS:

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 : Management Development

Gravesham Borough Council

Section 106 Officer

Planning Department

Civic Centre, Windmill Street,

Gravesend,

Kent, DA12 1AU

