

DATED 30 October 2023

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990**

RELATING TO

**RYEFIELD FARMHOUSE, LIDSEY ROAD, ALDINGBOURNE, CHICHESTER,
W SUSSEX, PO20 6ST**

(1) JEREMY CHRISTIAN COX

To

(2) ARUN DISTRICT COUNCIL and

(3) WEST SUSSEX COUNTY COUNCIL

THIS DEED is dated 30 October

2023

- (1) JEREMY CHRISTIAN COX of Ryefield Farmhouse,, Lidsey Road, Aldingbourne, Chichester, W Sussex, PO20 6S (Owner)

IN FAVOUR OF Arun District Council of The Civic Centre Maltravers Road Littlehampton BN17 5LF (Council) AND West Sussex County Council of County Hall, West Street, Chichester, PO19 1RQ (the "County Council")

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The County Council is the Education Authority, Highway Authority, the county planning authority, the education authority and the authority responsible for the provision of the library and fire services for the area in which the Property is situated
- (C) The Owner owns the land registered at HM Land Registry with title number WSX75638
- (D) The Owner gives this undertaking to perform the obligations set out in this deed.

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

ADC Monitoring Fee: means the sum of £400.00 towards the costs of monitoring the delivery of these planning obligations and reporting under The Community Infrastructure Levy Regulations, 2010.

Base Rate: the higher of 2% and the base rate from time to time of Barclays Bank plc.

BCIS Index: means the All-in Tender Price Index published by the Building Cost Information Service Ltd provided that in the event that such index ceases to be published the index which replaces it or is the nearest equivalent to it as agreed by the parties;

BEW: Barnham, Eastergate and Westergate.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; erection of any fences and hoardings around the Property; the provision of security measures or lighting; the erection of temporary buildings or structures associated with the Development; the laying, removal or diversion of services; the provision of construction compounds; the temporary display of site notices or advertisements and piling works. Commenced and Commences shall be construed accordingly.

Commencement Date: the date of Commencement of the Development.

Council Contributions: means the Highway Contribution A29 re-alignment and the NHS Contribution.

County Council Contributions: Education Contribution - Early Years, Education Contribution – Primary, Education Contribution – SEND, Education Contribution – Secondary, Education Contribution – Transport, Education Contribution - Sixth Form, Highway Contribution, Library Contribution, Fire and Rescue Service Contribution and the Transport Contribution

County Council Monitoring Fee: means the sum of £1,200.00 towards the costs of the County Council monitoring the delivery and performance of the planning obligations over the lifetime of the development and reporting under The Community Infrastructure Levy Regulations, 2010.

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property by the erection of 4 no. dwellings, alterations to access and associated works as described in the Planning Application and in accordance with the Planning Permission.

Education Contribution - Early Years: means the sum of £5,767.00 towards the erection of a new early year's facility serving the local areas known as BEW

Education Contribution - Primary: means the sum of £27,907.00 towards the erection of a new primary school facility serving the local areas known as BEW,

Education Contribution - SEND: means the sum of £2,233.00 towards a new Specialist Support Centre for SEND pupils serving the local areas known as BEW.

Education Contribution - Secondary: means the sum of £28,438.00 towards fixtures, fittings, and equipment for a new secondary school serving the local areas known as BEW.

Education Contribution - Transport: means the sum of £ 16,519.00 towards educational transport facilities facility serving the local areas known as BEW.

Education Contribution - Sixth Form: means the sum of £5,498.00 towards classroom infrastructure at the local sixth form known as St Phillip Howard Catholic High School.

Highways Contribution: means the sum of £2,506.97 to be used towards some or all of the following projects to deliver development in and around BEW:

- a) £333.95 -Barnham Village Centre Improvements
- b) £1,419.53 – Rowan Way Improvements
- c) £753.49- A29/A259 Felpham Relief Road Improvements

PROVIDED THAT the County Council shall have flexibility to spend across these schemes with the sum being payable in two instalments as set out in clause 3 of this agreement.

Highway Contribution A29 re-alignment: means the sum of £40,356.28 towards the strategic highways infrastructure, specifically the A29 re-alignment required to deliver development in and around BEW.

Index Contribution: means the following Contributions only:

- a) County Council Contributions; and
- b) NHS Contribution.

Library Contribution: means the sum of £93.00 towards new equipment for a Tier 7 facility to include shelving and a self-service terminal, or allocation to the nearest library should a Tier 7 facility not be provided serving the local areas known as BEW.

Fire and Rescue Service Contribution: means the sum of £165.00 towards expansion of fire and rescue capacity which could be built infrastructure or investment in new technology/equipment services within BEW.

National Highway Contributions: means the sum of £2,761.87 to be used towards some or all of the following projects to deliver development in and around BEW:

- a) £304.19 – A27/B2233 Nyton Road Improvements
- b) £1,023.26 -A27 Fontwell eastern roundabout improvements
- c) £1,434.42 - A27 Fontwell western roundabout improvements

PROVIDED THAT the National Highways shall have flexibility to spend across these schemes with the sum being payable in two instalments as set out in clause 3 of this agreement.

NHS Contribution: means the sum of £7,134.71 towards making good a deficiency in NHS Healthcare provision arising from the Development and specifically at local GP Surgery for medical equipment and services.

Occupation: means occupation for the purposes permitted by the Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly.

Owner: means the Jeremy Christian Cox and includes their respective successors in title

Plan: the plan attached to this deed.

Planning Application: an application for planning permission registered by the Council under reference number AL/31/22/PL.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

Property: the freehold land at Ryefield Farmhouse, Lidsey Road, Aldingbourne, Chichester, W Sussex, PO20 6S shown edged red on the Plan and registered at HM Land Registry under title number WSX75638.

Residential Units: means all individual units within the Development to be used for residential purposes (and for the avoidance of doubt this definition shall include houses and flats as appropriate);

Ryefields Farmhouse: means the land registered at HM Land Registry with title number WSX75638.

SEND: means special educational needs and disability.

TCPA 1990: Town and Country Planning Act 1990

Transport Contribution: means the sum of £9,020.47 to be used towards some or all of the following projects required to deliver development in and around BEW:

- a) £1,116.94 - B2233 pedestrian improvement measures
- b) £1,465.12 - Bognor Regis cycle route improvement measures
- c) £1,615.16 - Barnham/Tangmere cycle route
- d) £32.56 - additional cycle parking at Barnham railway station
- e) £2,465.12 – towards a cycle Link between BEW and the South Downs National Park
- f) £1,395.34 - towards the creation of non-motorised user grade separated railway crossing to provide a safe connection between sections of the proposed Rife Valley Park
- g) £930.23 - towards a dedicated non-motorised user grade-separated railway crossing to provide a safe crossing of the Barnham-Bognor branch line linking various Public Rights of Way required

PROVIDED THAT the County Council shall have flexibility to spend across these schemes with the sum being payable in two instalments as set out in clause 3 of this agreement.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written excludes faxes and e-mail.
- 1.11 A reference to this deed or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses are to the clauses of this deed.
- 1.13 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. Statutory provisions

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, Localism Act 2011 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The obligations in this deed are conditional upon:
 - a) the grant of the Planning Permission; and
 - b) the occurrence of the Commencement Date.

2.4 The obligations contained in clause 3 of this deed are enforceable by the Council and County Council in accordance with section 106 of the T CPA 1990.

2.5 Nothing in this deed shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

3. Covenants with the Council

3.1 The Owner covenants with the Council to pay:

- (a) 50% of the total Council Contributions and National Highway Contribution on first Occupation of the first Residential Unit on the Development; and
- (b) the remaining 50% of the total Council Contributions and National Highways Contribution on first Occupation of the third Residential Unit on the Development.

3.2 The Owner covenants with the County Council to pay the County Council:

- (a) 50% of the total County Council Contributions on first Occupation of the first Residential Unit on the Development; and
- (b) the remaining 50% of the total County Council Contributions on first Occupation of the third Residential Unit on the Development.

4. Indexation

4.1 It is hereby agreed that where any Index Contribution remains unpaid in whole or part after 12 months from the date of this Deed then such Index Contribution or part of such Index Contribution remaining unpaid in the case of the County Council's Contribution shall be adjusted in accordance with the following formula

$$A = B \times C/D \text{ (where } C/D \text{ is equal or greater than } 1)$$

where:

A is the sum actually payable on the date of payment

B is the original sum mentioned in this Deed

C is the BCIS Index at the date payment falls due

D is the BCIS Index at the [date of consultation]

and Indexation shall be construed accordingly

and in the case of the Council Contributions shall be adjusted in accordance with the BCIS Index by multiplying in each case the payment due by a fraction whose denominator shall be the last BCIS monthly figure published on the date which is 12 months after the date of this Deed and whose numerator shall be the last published

BCIS Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure.

5. Release

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

6. Determination of deed

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

7. Local land charge

This deed is a local land charge and shall be registered as such by the Council.

8. Interest on late payment

If the Contributions are not paid to the Council prior to or on the Commencement Date, the Owner shall pay the Council interest on the Contributions at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Commencement Date to and including the date of payment.

9. Council's and County Councils costs

The Owner shall pay to the Council and County Council on the date of this deed the Council's and County Councils reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

10. Ownership

10.1 The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Property.

10.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 14 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

11. Notices

- 11.1 A notice or other communication to be given under or in connection with this deed must be in writing and must be:
- (a) delivered by hand; or
 - (b) sent by pre-paid first class post or other next working day delivery service.
- 11.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:
- (a) to The Planning Department of Arun District Council, quoting the Planning Application number at the following address: The Civic Centre Maltravers Road Littlehampton BN17 5LF;
 - (b) to the relevant Owner using the address stated at the beginning of this deed;
 - (c) to the relevant Mortgagee using the address stated at the beginning of this deed.
- 11.3 Any notice or other communication given in accordance with clause 11.1 and clause 11.2 will be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
 - (b) if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.
- 11.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.
- 11.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 11.6 The Owner covenants that notice of Commencement of Development shall be served on the Council and the county Council.

12. Third party rights

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

13. Governing law

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 and Wales.

14. Exclusions of liability

14.1 Any future mortgagee shall in no circumstances be liable for any pre-existing breach of this deed.

14.2 Any future mortgagee of the Land shall have no liability after it has discharged the security or has disposed of the Land which is subject to its security whether by sale or otherwise

14.3 No person shall be liable for any breach of any of the provisions of this deed which relate to a part of the Property in which it does not have an interest.

14.4 This deed shall not be enforceable against any owner, occupier or tenant of any dwelling constructed on the Property pursuant to the Planning Permission, or their mortgagees, nor against those deriving title from them.

14.5 The obligations in this deed shall not bind or be enforceable against any statutory undertaker who has or takes in future an interest in the Property for the purpose of providing apparatus pursuant to its statutory undertaking for the Development.

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

Signed as a Deed by JEREMY CHRISTIAN COX In the presence of:- Witness name: Witness address: Witness occupation:	JEREMY CHRISTIAN COX EDWARD RLES 4 WOODLAND GROVE, THE STREET BOXGROVE, 701X 0PY . COMPANY DIRECTOR .
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H.M. LAND REGISTRY		TITLE NUMBER	
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ORDNANCE SURVEY PLAN REFERENCE	SU9304 504404		Scale 1/2500
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