

Deed of Variation pursuant to Section 106 of the Town and Country Planning Act 1990 relating to land south of New Barn Lane, North Bersted, Bognor Regis

Dated

- (1) ARUN DISTRICT COUNCIL**
- (2) WEST SUSSEX COUNTY COUNCIL**
- (3) OLBY DEVELOPMENTS LIMITED**
- (4) LANDFORM BOGNOR REGIS LIMITED**

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This Deed of Variation to Section 106 Agreement dated 24 February 2016 made pursuant to S106 Town and Country Planning Act 1990 "the Act" is:-

Dated

PARTIES:

- (1) Arun District Council at Maltravers, Littlehampton, Road, West Sussex, BN17 5LF (the "**District Council**")
- (2) West Sussex County Council of County Hall West Street Chichester PO19 1RQ ("**County Council**")
- (3) Olby Developments Limited (Company Number 07444459) of The Hermitage, Church Hill, Slindon, Arundel, West Sussex, BN18 0RB ("the **Owners**")
- (4) Landform Bognor Regis Limited (Company Number 8581800) of Euro House 1394 High Road London N209YZ

Recitals

- A. The District Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Site and the S73 Site is situated and the County Council is the Highway Authority for that area.
- B. The Owners are the freehold owners of the Site and the S73 Site with title absolute at HM Land Registry under title numbers WSX343743 and WSX1725.
- C. The District Council has already granted the Planning Permission in respect of the Site under reference BE/142/15/OUT.
- D. As a pre-condition to the grant of the Planning Permission the District Council and the County Council required the Owners and the Applicant to enter into the Original Agreement.
- E. The S73 Application was submitted on 9 February 2017 to the District Council by the Applicant on behalf of the Owners, under ref BE/18/17/PL, to seek planning permission for an alternative access to that authorised pursuant to the Planning Permission.
- F. The District Council and the County Council require the Owners and the Applicant enter into this Deed of Variation to the Original Agreement in order to make the granting of the S73 Permission acceptable in planning terms.

It is agreed:

1. Definitions

In this Deed of Variation where the context so admits all expressions shall have the meanings given to them by the Original Agreement save that the following expressions shall have the following meanings:

S73 Application means the application submitted on 9 February 2017 and allocated the reference number BE/18/17/PL

S73 Permission means the planning permission to be granted pursuant to the S73 Application

Original Agreement means the agreement dated 24 February 2016 made pursuant to Section 106 of the Act between the District Council the County Council the Owners and the Applicant

2. Legal Basis

- 2.1. This Deed of Variation is made pursuant to all powers enabling the parties and in particular Section 106 and Section 106A of the Act and Section 111 of the Local Government Act 1972.
- 2.2. The obligations given by the Owners in this Deed of Variation create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council and by the County Council as planning authorities against the Owner its successors in title and assigns and the persons claiming under or through it.

3 Variations to Original Agreement

- 3.1 The District Council and the County Council and the Owners and the Applicant agree that subject to the variations of the Original Agreement as set out in Schedule 1 of this Deed of Variation and on and from the date hereof the Original Agreement is varied as follows: the Original Agreement shall be read and construed and shall take effect as if references in the Original Agreement to the Planning Permission are also references to the S73 Permission to the intent that provisions and obligations in the Original Agreement shall become fully and effectively binding and enforceable on the Commencement of the S73 Permission as in Commencement of the Planning Permission.

4 Costs

- 4.1 The Owners shall on completion of this Deed of Variation pay:
 - (a) the reasonably and properly incurred legal costs of the District Council; and
 - (b) the legal costs of the County Council to a maximum sum of five hundred pounds (£500.00)

Schedule 1 - Variations to Original Agreement

1. The Owner covenants with the District Council and the County Council that on and from the date hereof the Original Agreement is varied as follows:
 - 1.1 A new "Schedule 11" is inserted into the Original Agreement after the existing Schedule 10 as follows:

"Schedule 11

Access A means the access shown on drawing reference number P401/101 Rev C authorised pursuant to the Planning Permission and attached to this Agreement at the end of this Schedule 11

Access B means the access shown on drawing reference 507-021 Rev A submitted as part of the S73 Application and attached to this Agreement at the end of Schedule 11

Church means the Church Commissioners for England of Church House, Great Smith Street, London SW1P 3AZ or their successors in title to the Church Land

Church Land means land owned by the Church that is subject to the Church Application

Church Application means the planning application submitted by the Church to the Council on 11 May 2016 with reference BE/77/16/OUT in respect of the Church Land

Church Permission means any planning permission granted by the District Council for development of the Church Land pursuant to the Church Application or any planning permission for development of the Church Land for residential purposes

Commencement shall have the same meaning as in s56 Town and Country Planning Act 1990

Connection Agreement means an agreement to be entered into by the Owner and the Church relating to the creation of Access A or Access B and which complies with the requirements of paragraph 4 of this Schedule 11 and is on terms which are otherwise reasonable

Implement means the carrying out of a Material Operation under S56 of the Act and "Implements" and cognate expressions shall be construed accordingly

Material Operation means a material operation on the Site or the S73 Site pursuant to the Planning Permission or the S73 Permission, as relevant, pursuant to Section 56(4) (a)-(e) of the Act provided that for the avoidance of doubt a Material Operation shall not be deemed to have taken place for the purposes of this Deed by any surveying ground investigation archaeological investigations structural or advanced planting site clearance demolition and decontamination works site preparation including earth moving laying of sewers and services the erection of fences and hoardings and the creation of a site compound

S73 Site means the site that is subject to the S73 Application and is shown edged red on plan 01084_S_02 Rev P3 attached to this Agreement at the end of Schedule 11

This Deed shall bind the Owners freehold Land with title absolute at HM Land Registry under title numbers WSX343743 and WSX1725

The Owner Covenants with the District Council and the County Council as follows:

1. That in the event that Access A is Implemented and the related works are completed to provide vehicular and pedestrian access to the S73 Site together with all necessary rights to connect to public access then the Owners shall not Implement Access B
2. That in the event that the Owners Implement Access B then they shall not Implement Access A.
3. Prior to Implementation of the Planning Permission on the Development Site with Access A or, in the alternative, the S73 Permission on the S73 Site with Access B, the Owner shall serve notice of the intended date of Implementation (including confirmation of whether it is the Planning Permission or the S73 Permission that is being Implemented) on the District Council, County Council and the Church accompanied by a draft Connection Agreement and will thereafter use its reasonable endeavours to agree and enter into the Connection Agreement with the Church.
4. The Connection Agreement will be on the following terms:
 - a. Entered into by the Owner and the Church and bind and benefit their successors in title to the Site or the S73 Site (as relevant) and the Church Land respectively;
 - b. Subject to securing all necessary third party consents and approvals, the grant and/or reservation of the necessary rights (as applicable) for the creation of Access A or Access B from the public highway through the Site or S73 Site (as relevant) over New Barn Lane into the Church Land so as to secure highway access to and servicing (utilities) of both the Site or S73 Site (as relevant) and Church Land ("the Access Works"); and
 - c. Both parties shall, if requested by the other, use reasonable endeavours to secure adoption of the Access Works and enter into any adoption agreement pursuant to S.38 of the Highways Act 1980 with the County Council in respect of Access A or Access B, as relevant.
5. If the access that is approved under reserved matters following the grant of the Church Permission does not rely on either Access A or Access B for access to the Church Land then the obligations in paragraphs 3 and 4 of this Schedule 11 shall cease to have effect.
6. If the Church Permission is granted without the District Council imposing upon the Church or the Church having entered into a Deed pursuant to section 106 of the Act requiring the Church to use reasonable endeavours to enter into the Connection Agreement with the Owners on the terms set out in paragraph 4 of this Schedule 11 then the obligations in paragraphs 3 and 4 of this Schedule 11 shall forthwith determine and cease to have effect.
7. If the District Council refuses the Church Application or the Church Application is appealed on the grounds of non-determination or the Secretary of State refuses the Church Application at appeal or upon call-in or the Church Permission is quashed before the carrying out of a Material Operation then the obligations in paragraphs 3 and 4 of this Schedule 11 shall absolutely determine and become null and void but without prejudice to the rights of any Party against the other.
8. If the District Council deems at its Development Control Committee or such other committee or decision making forum provided for in the standing orders of the District Council to hear the S73 Application that any of the obligations given and / or restrictions imposed at this Schedule 11 are not necessary or relevant for the purposes of the determination and granting of the S73 Application then those obligations and/or obligations shall forthwith determine and cease to have effect."

PLANS

EXECUTED as a deed by
OLBY DEVELOPMENTS LIMITED
acting by a director in the presence of:

Director:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

EXECUTED as a DEED by **LANDFORM**
BOGNOR REGIS LIMITED acting by:

in the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

THE COMMON SEAL OF **WEST SUSSEX**)
COUNTY COUNCIL was affixed in the)
presence of:)

THE COMMON SEAL OF **ARUN DISTRICT**)
COUNCIL was affixed in the)
presence of:)