

DATED

3 April

2020

ARUN DISTRICT COUNCIL (1)

AND

WEST SUSSEX COUNTY COUNCIL (2)

AND

LINDEN LIMITED (3)

and

OPTIVO (4)

**SECOND DEED OF VARIATION
OF PLANNING OBLIGATION**

Pursuant to Section 106A of the

Town and Country Planning Act 1990 (as amended) "the Act"

Planning Application: BE/36/19/PO

Relating to Land to the west of New Barn Lane, North Bersted, Bognor Regis, West Sussex

ARUN DISTRICT COUNCIL
ARUN CIVIC CENTRE
MALTRAVERS ROAD
LITTLEHAMPTON
WEST SUSSEX
BN17 5LF

Ref: CMS 7268

THIS DEED is dated the

3

day of

April

2020

BETWEEN

- (1) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF ("**the District Council**")
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex PO19 1RQ ("**the County Council**")
- (3) **LINDEN LIMITED** (Company registration number 1108676) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex UB8 2AL ("**the Owner**")
- (4) **OPTIVO** (Community Benefit Society No.7561) of Grosvenor House 125 High Street Croydon England CR0 9XP ("**the Applicant**")

RECITALS

- (A) By a planning obligation (by agreement) made pursuant to Section 106 of the Act dated 24 February 2016 and made between Arun District Council (1) West Sussex County Council (2) OLBY Developments Limited (3) and Landform Bognor Regis Limited (4) the Land was made subject to the covenants and obligations as therein contained (hereinafter referred to as "**the Principal Agreement**")
- (B) The Principal Agreement was varied by a deed made pursuant to Section 106A of the Act dated 3 May 2017 made between Arun District Council (1) West Sussex County Council (2) OLBY Developments Limited (3) and Landform Bognor Regis Limited (4) ("**the First Deed of Variation**")
- (C) The Principal Agreement as amended by the First Deed of Variation shall hereinafter be referred to as "**the Section 106 Agreement**".
- (D) The Land means Mulberry Field New Barn Lane North Bersted PO21 5DB
- (E) The Owner is the freehold owner of part of the Land registered at the HM Land Registry under title number WSX1725 ("**the Owners Land**") and attached to this deed as Schedule 2
- (F) This Deed is supplemental to the Section 106 Agreement.
- (G) The parties agree to vary the Section 106 Agreement as set out herein
- (H) The Applicant has made the Planning Application and is the freehold owner of part of the Land under Title WSX405868 and WSX405871 ("**the Applicant's Land**") and attached to this deed as Schedule 3
- (I) The District Council is the Local Planning Authority for the purposes of the Act for the area in which the Land is situated.
- (J) The County Council is the strategic planning authority, the local highway authority, the local education authority and the authority responsible for providing library and fire and rescue services.

AGREED TERMS

1. INTERPRETATION

- 1.1. Save as otherwise provided herein, words, phrases and expression in this Deed (including the Recitals) shall have the same meaning as those contained in the Section 106 Agreement as though they were contained in and formed part of this Deed
- 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 or permitted assigns and in the case of the County Council and the District Council the successors to their respective statutory functions.
- 1.7. 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

2. ENABLING PROVISIONS

- 2.1. This Deed is made pursuant to Section 106A of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and any other enabling powers and the obligations contained here are planning obligations for the purpose of Section 106 of the Act and are entered into by the Owner and Applicant with the intent that it shall bind the Land and is enforceable by the District Council and/or the County Council against the Owner and/or Applicant and their respective successors and assigns

3. COVENANTS TO THE DISTRICT COUNCIL AND THE COUNTY COUNCIL

- 3.1. The Owner covenants with the District Council and the County Council to observe and perform all the covenants, restrictions, agreements and obligations contained in the Section 106 Agreement as varied by this Deed
- 3.2. In relation to the Applicant's Land, the Applicant covenants with the District Council and the County Council to observe and perform all the covenants, restrictions, agreements and obligations contained in the Section 106 Agreement as varied by this Deed.

4. VARIATIONS TO THE SECTION 106 AGREEMENT

- 4.1. The Owner, the Applicant, the District Council and the County Council agree that from the date of this Deed the Section 106 Agreement is varied as set out in Schedule 1 of this Deed and all references to the Section 106 Agreement (whether in the Section 106 Agreement or otherwise) shall take effect as references to the Section 106 Agreement so varied
- 4.2. Except as expressly amended by this Deed, the Section 106 Agreement shall remain in full force and effect.

5. WARRANTY

- 5.1. The Owner and Applicant warrants to the District Council and the County Council that as at the date hereof the Land is free from all mortgages, charges and other encumbrances and that no other person other than the Owner and Applicant, has any legal or equitable interest in the Land.

6. LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such by the District Council

7. COSTS

- 7.1. The Applicant shall on or before the date of this Deed pay the reasonable legal costs of both the District Council and the County Council in connection with the preparation, negotiation and completion of this Deed

8. NO FETTER OF DISCRETION

Nothing (contained or implied) in this Deed shall fetter or restrict the District Council or the County Council's statutory rights, powers, discretions and responsibilities

9. WAIVER

No failure or delay by the District Council or the County Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

10. THIRD PARTY RIGHTS

It is agreed that nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contract (Rights of Third Parties) Act 1999 and nothing in this Deed is intended to confer on any third party (whether referred to herein by name class description or otherwise) any benefit or any right to enforce any provision of this Deed

11. GOVERNING LAW

This Deed shall be governed by and interpreted in accordance with the law of England

In witness whereof the parties hereto have duly executed this Deed on the day and the year first before written

SCHEDULE 1

The Section 106 Agreement shall be varied as follows:

1. The definition of chargee shall be inserted at clause 1 as follows:

"Chargee means a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver

2. A new sub-paragraph (d) shall be inserted at Clause 3.3 as follows

"3.3 (d) the AHP of the Affordable Housing Units shall only be bound by and subject to the relevant obligations set out in Part 1 of Schedule 4"

3. Sub-paragraph 7.3(a) of Part 1 of Schedule 4 shall be deleted and replaced as follows

7.3 (a) a Chargee of the AHP; or

4. Sub-paragraph 7.3(b) of Part 1 of Schedule 4 shall be amended so that the words "or their mortgagee or successor in title" are inserted immediately after the word "owner"

5. Sub-paragraph 7.3(c) of Part 1 of Schedule 4 shall be amended so that

- a. the words "or their mortgagee or successor in title" are inserted immediately after the word "owner"; and
- b. the words "or the right to buy or preserved right to buy" are inserted immediately after the words "right to acquire"

6. Sub-paragraph 7.5(b) of Part 1 of Schedule 4 shall be amended so that the words "any reasonable interest in the Affordable Housing Units by the chargee or mortgagee in the exercise of its power of sale shall not be prevented provided that the chargee or mortgagee" are deleted and replaced as follows:

"an interest in the Affordable Housing Units by the Chargee shall not be prevented provided that the Chargee"

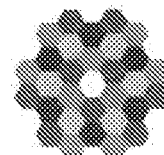
7. Sub-paragraph 7.5(c) of Part 1 of Schedule 4 shall be deleted and replaced as follows

7.5 (c) that the procedure referred to in paragraph 7.5(b) shall be as follows:

- (i) such Chargee shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Unit(s) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Unit(s) to another registered provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- (ii) if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Unit(s) free from the affordable housing provisions in this Agreement which provisions shall determine absolutely

Schedule 2



Official copy of register of title

Title number WSX1725

Edition date 30.11.2018

- This official copy shows the entries on the register of title on 11 SEP 2019 at 08:45:32.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 26 Feb 2020.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Durham Office.

A: Property Register

This register describes the land and estate comprised in the title.

WEST SUSSEX : ARUN

- 1 The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land on the south west side of New Earn Lane, North Bersted, Bognor Regis.
- 2 (10.08.2017) A new title plan with a revised extent based on the latest revision of the Ordnance Survey Map has been prepared.
- 3 (22.01.2019) The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.
- 4 (22.01.2019) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered WSX405868 in green on the title plan dated 20 December 2018 made between (1) Linden Limited (2) Mulberry (North Bersted) Management Company Limited and (3) Optivo but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under WSX405868.

- 5 (22.01.2019) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered WSX405871 in green on the title plan dated 20 December 2018 made between (1) Linden Limited (2) Mulberry (North Bersted) Management Company Limited and (3) Optivo but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under WSX405871.

- 6 (13.05.2019) The land has the benefit of any legal easements reserved by transfers of land removed from the title shown edged and numbered in green on the title plan.
- 7 (13.05.2019) Where transfers of the parts edged and numbered in green on the title plan include shared accessways or maintained areas rights of way are reserved thereover.
- 8 (13.05.2019) The land adjoining the parts edged and numbered in green on the title plan has the benefit of rights of entry for the inspection, maintenance and renewing any part of such adjoining land reserved by transfers of the said parts edged and numbered in green on

A: Property Register continued

the title plan.

- 9 (15.07.2019) A new title plan based on the latest revision of the Ordnance Survey Map has been prepared.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (10.08.2017) PROPRIETOR: LINDEN LIMITED (Co. Regn. No. 1108676) of Cowley Business Park, Cowley, Uxbridge, Middlesex UB8 2AL.
- 2 (10.08.2017) The price stated to have been paid on 14 July 2017 was £5,400,000 plus VAT of £1,080,000.
- 3 (10.08.2017) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of clause 21.1 of an Agreement dated 7 April 2017 between (1) Olby Developments Limited (2) Landform Bognor Regis Limited and (3) Linden Limited have been complied with or that they do not apply to the disposition.
- 4 (10.08.2017) A Transfer of the land in this title dated 14 July 2017 made between (1) Olby Developments Limited and (2) Linden Limited contains purchaser's personal covenants.

NOTE: Copy filed.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (30.11.2018) The land is subject to any rights that are granted by a Deed of Grant dated 20 November 2018 made between (1) Linden Limited and (2) Portsmouth Water Limited and affect the registered land. The said Deed also contains restrictive covenants by the grantor.
- NOTE: Copy filed.*
- 2 (30.11.2018) The land is subject to any rights that are granted by a Deed of Grant dated 28 November 2018 made between (1) Linden Limited and (2) ESP Electricity Limited and affect the registered land. The said Deed also contains restrictive covenants by the grantor.
- NOTE: Copy filed.*
- 3 (13.05.2019) The roads, footpaths, access areas and shared accessways are subject to rights of way with or without vehicles as granted by transfers of the parts edged and numbered green on the title plan.
- 4 (13.05.2019) The land is subject to rights of drainage and rights in respect of the supply of water, gas, electricity and other services granted by transfers of the parts edged and numbered green on the title plan.
- 5 (13.05.2019) The bin storage area included in the title is subject to rights of user granted by transfers of parts edged and numbered in green on the title plan.
- 6 (13.05.2019) The visitors parking spaces included in the title is subject to rights of user granted by transfers of parts edged and numbered in green on the title plan.
- 7 (13.05.2019) The parts of the land respectively affected thereby which adjoin the parts edged and numbered in green on the title plan are subject to rights granted by transfers of the said parts of subjacent and lateral support shelter and protection for the parts so edged and numbered.

Title number WSX1725

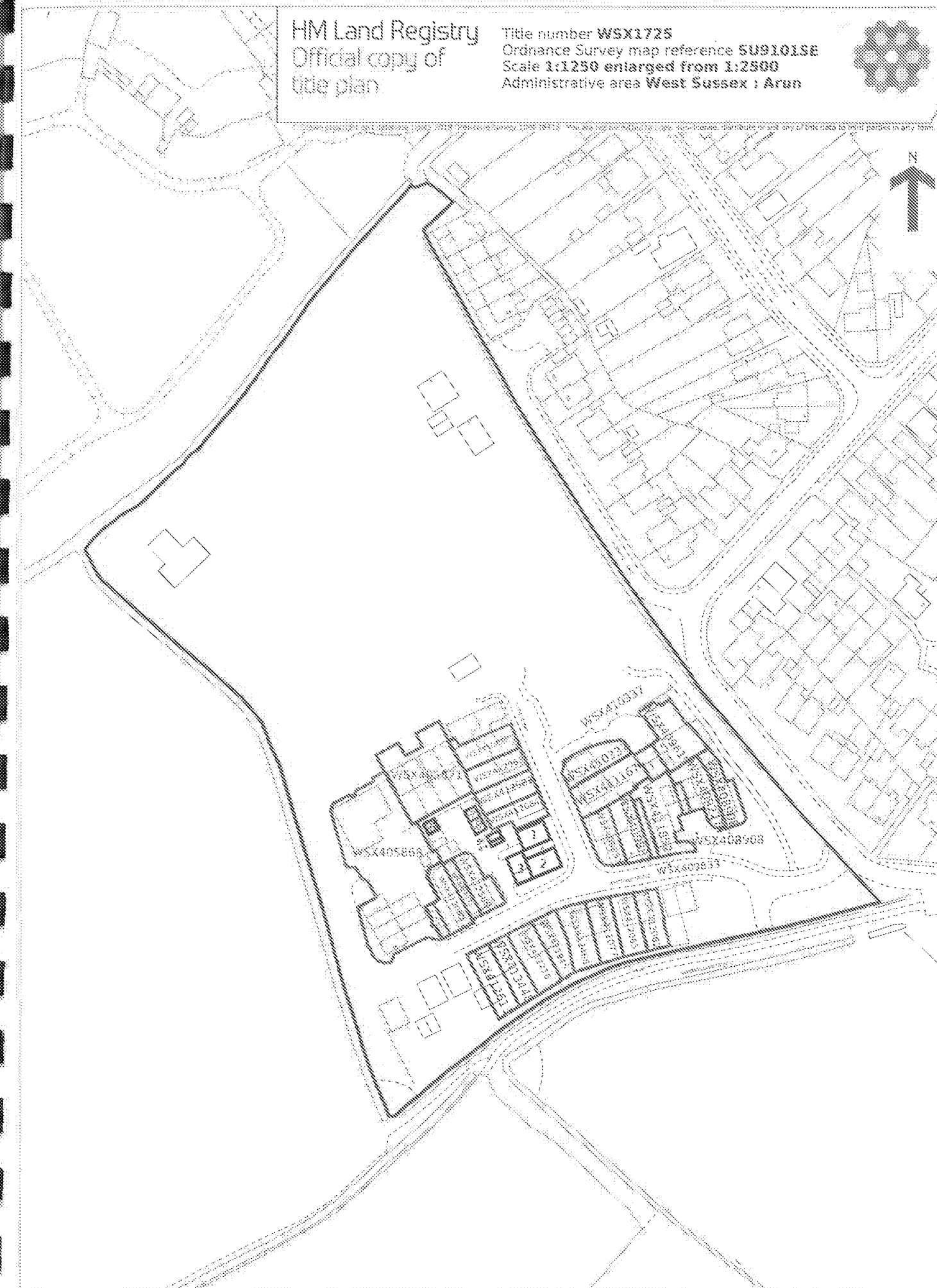
C: Charges Register continued

- 8 (13.05.2019) The parts of the land respectively affected thereby which adjoin the parts edged and numbered in green on the title plan are subject to rights granted by transfers of the said parts of entry for the purpose of inspecting maintaining or renewing any structure or thing on or under the said parts edged and numbered in green.
- 9 (15.07.2019) The parts of the land affected thereby are subject to the leases set out in the schedule of leases hereto.
The leases grant and reserve easements as therein mentioned.

Schedule of notices of leases

1	15.07.2019 Edged and numbered 1 in blue (part of) 3 in blue (part of) and 4 in blue	Flat 2, 1 Potters Way (ground floor flat) and parking spaces	28.06.2019 150 years from 1 January 2019	WSX410527
2	16.07.2019 Edged and numbered 2 in blue (part of) 3 in blue (part of) and 5 in blue	Flat 1, 1 Potters Way (ground floor flat) and parking spaces	28.06.2019 150 years from 1 January 2019	WSX410562
3	18.07.2019 Edged and numbered 1 in blue (part of) and 6 in blue	Flat 5, 1 Potters Way (first floor flat) and parking spaces	28.06.2019 150 years from 1 January 2019	WSX410646
4	22.07.2019 Edged and numbered 3 in blue (part of) and 7 in blue	Flat 4, 1 Potters Way (first floor flat) and parking spaces	28.06.2019 150 years from 1 January 2019	WSX410725
5	25.07.2019 Edged and numbered 2 in blue (part of) and 8 in blue		28.06.2019 150 years from 1 January 2019	WSX410909

End of register



These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

There is an/are application(s) pending in HM Land Registry and if we have only completed the mapping work for a pending application affecting the title concerned, such as a transfer of part:

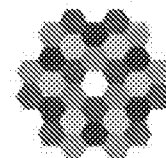
- additional colour or other references, for example 'numbered 1', may appear on the title plan (or be referred to in the certificate of inspection in form CI), but may not yet be mentioned in the register
- colour or other references may also have been amended or removed from the title plan (or not be referred to in form CI), but this may not be reflected in the register at this stage.

This official copy is issued on 26 February 2020 shows the state of this title plan on 11 September 2019 at 08:45:32. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by the HM Land Registry, Durham Office.

Schedule 3



Official copy of register of title

Title number WSX405868 Edition date 22.01.2019

- This official copy shows the entries on the register of title on 26 FEB 2020 at 11:19:16.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 26 Feb 2020.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Durham Office.

A: Property Register

This register describes the land and estate comprised in the title.

WEST SUSSEX : ARUN

- 1 The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land on the west side of New Barn Lane, North Bersted, Bognor Regis (PO21 5DL).
- 2 (22.01.2019) The land has the benefit of any legal easements granted by the Transfer dated 20 December 2018 referred to in the Charges Register but is subject to any rights that are reserved by the said deed and affect the registered land.
- 3 (22.01.2019) The Transfer dated 20 December 2018 referred to above contains a provision as to light or air and boundary structures and a provision relating to the creation and/or passing of easements.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (22.01.2019) PROPRIETOR: OPTIVO (Community Benefit Society No. 7561) of Grosvenor House, 125 High Street, Croydon CR0 9XP.
- 2 (22.01.2019) The price stated to have been paid on 20 December 2018 was £270,706.
- 3 (22.01.2019) RESTRICTION: No disposition of the registered estate (other than a charge or the grant of a shared ownership lease) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be completed by registration without a certificate signed by Mulberry (North Bersted) Management Company Limited (Co. regn. No. 11459043) of Gateway House, 10 Coopers Way, Southend on Sea, Essex S32 5TE or their conveyancer that the provisions of paragraph 3 of Part 4 of the Schedule of the transfer dated 20 December 2018 referred to in the Charges Register have been complied with.

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

Title number WSX405868

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (30.11.2018) The land is subject to any rights that are granted by a Deed of Grant dated 20 November 2018 made between (1) Linden Limited and (2) Portsmouth Water Limited and affect the registered land. The said Deed also contains restrictive covenants by the grantor.

NOTE: Copy filed under WSX1725.

- 2 (30.11.2018) The land is subject to any rights that are granted by a Deed of Grant dated 28 November 2018 made between (1) Linden Limited and (2) ESP Electricity Limited and affect the registered land. The said Deed also contains restrictive covenants by the grantor.

NOTE: Copy filed under WSX1725.

- 3 (22.01.2019) A Transfer of the land in this title dated 20 December 2018 made between (1) Linden Limited (2) Mulberry (North Bersted) Management Company Limited and (3) Optivo contains restrictive covenants.

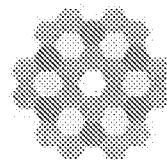
NOTE: Copy filed.

- 4 (22.01.2019) The Transfer dated 20 December 2018 referred to above contains a provision as to the grant of rights in the events therein mentioned.

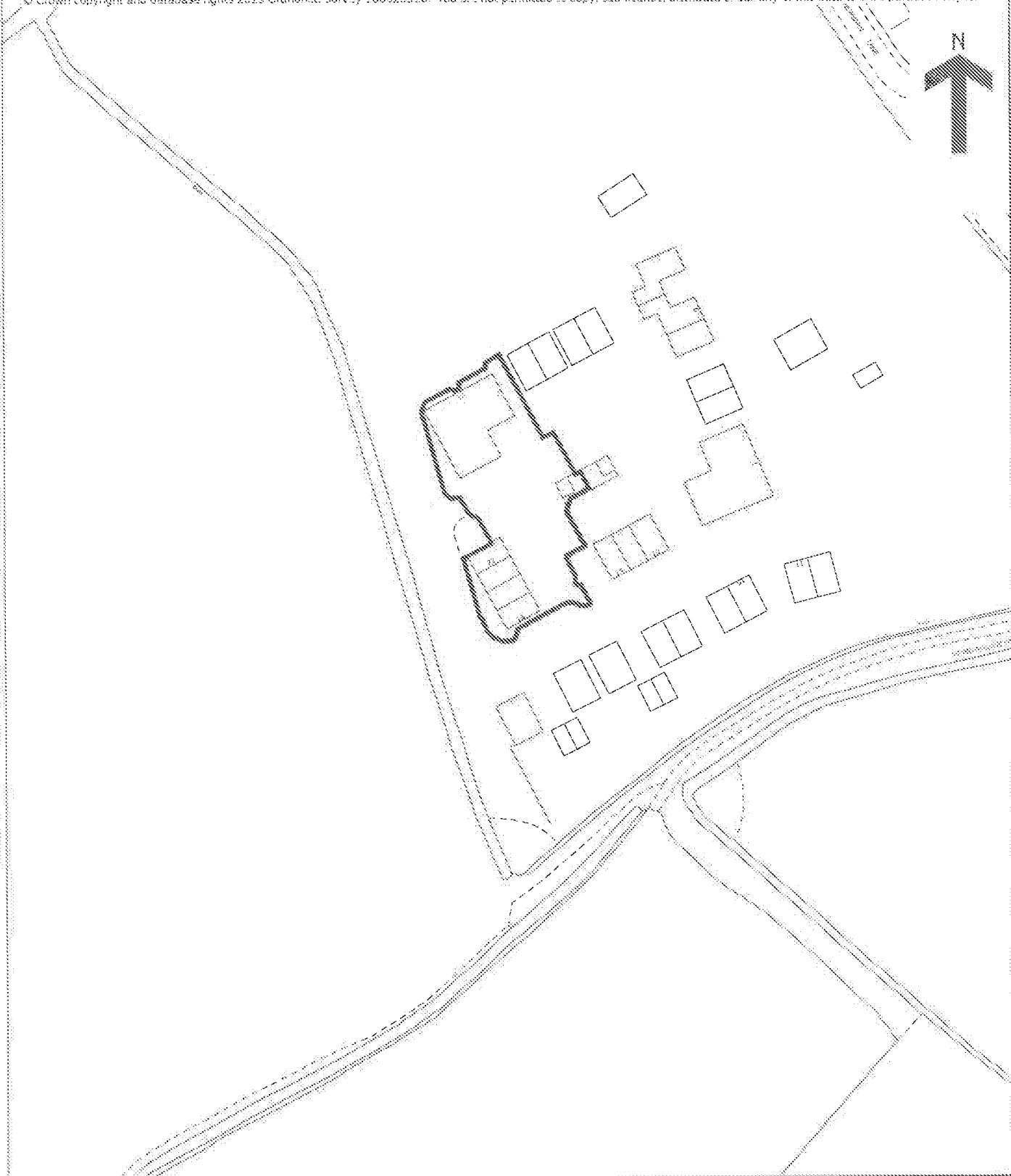
End of register

HM Land Registry
Official copy of
title plan

Title number **WSX405868**
Ordnance Survey map reference **SU9100NE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **West Sussex : Arun**



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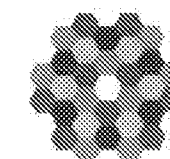
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Official copy of register of title

Title number WSX405871 Edition date 22.01.2019

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- Issued on 26 Feb 2020.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Durham Office.

A: Property Register

This register describes the land and estate comprised in the title.

WEST SUSSEX : ARUN

- 1 The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land on the west side of New Barn Lane, North Bersted, Bognor Regis (PO21 5DL).
- 2 (22.01.2019) The land has the benefit of any legal easements granted by the Transfer dated 20 December 2018 referred to in the Charges Register but is subject to any rights that are reserved by the said deed and affect the registered land.
- 3 (22.01.2019) The Transfer dated 20 December 2018 referred to above contains a provision as to light or air and boundary structures and a provision relating to the creation and/or passing of easements.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (22.01.2019) PROPRIETOR: OPTIVO (Community Benefit Society No. 7561) of Grosvenor House, 125 High Street, Croydon CR0 9XP.
- 2 (22.01.2019) The price stated to have been paid on 20 December 2018 was £144,985.
- 3 (22.01.2019) RESTRICTION: No disposition of the registered estate (other than a charge or the grant of a shared ownership lease) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be completed by registration without a certificate signed by Mulberry (North Bersted) Management Company Limited (Co. Regn. No. 11459043) of Gateway House, 10 Coopers Way, Southend On Sea, Essex SS2 5TE or their conveyancer that the provisions of paragraph 3 of Part 4 of the Schedule of the Transfer dated 20 December 2018 referred to in the Charges Register have been complied with.

The electronic official copy of the register follows this message.

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Title number WSX405871

C: Charges Register

This register contains any charges and other matters that affect the land.

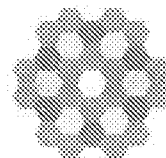
- 1 (22.01.2019) A Transfer of the land in this title dated 20 December 2018 made between (1) Linden Limited (2) Mulberry (North Bersted) Management Company Limited and (3) Optivo contains restrictive covenants.

NOTE: Copy filed.

- 2 (22.01.2019) The Transfer dated 20 December 2018 referred to above contains a provision as to the grant of rights in the events therein mentioned.

End of register

Title number **WSX405871**
Ordnance Survey map reference **SU9101SE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **West Sussex : Arun**



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This title is dealt with by the HM Land Registry, Durham Office.

The common seal of ARUN DISTRICT COUNCIL
was affixed to this document in the presence of:

Authorised signatory

Seal Book No. 113 / 2020

Name: EDWARD O'BRIEN

Job Title: PROPERLY LAMBERT

The COMMON SEAL of
WEST SUSSEX COUNTY COUNCIL

was hereunto affixed in the presence of:-

Authorised Office

EXECUTED as a DEED by
LINDEN LIMITED

acting by [YVRO BREENICK],
in the presence of:-

Witness signature

[Redacted]

Name

FAY CARTMILGAT

Address

[Redacted]

[Redacted]

Occupation

[Redacted]

PA to MD / Office Manager
VISTLY Homes Southern
1a Guildford Business Park
Guildford
Surrey
GU2 8XG

THE COMMON SEAL of OPTIVO
was hereunto affixed in the presence of:-

Authorised Signatory

[Redacted]

Authorised Signatory

4316