

AND DISTRICT COUNCIL BE/63/17/OUT

Dated:

13th December 2017

From:

- [1] MAURICE PHILIP BAILLIE (The Owner)
- [2] CASTLE PROPERTY DEVELOPMENTS LIMITED (The Applicant)

To:

- [3] Arun District Council (ADC)

UNILATERAL UNDERTAKING

under Section 106 of the Town & Country Planning Act 1990
and other powers

Land at The Cottage, Shripney Road, Bognor Regis PO22 9PA

Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF
DX 57406 LITTLEHAMPTON

Reference: BE/63/17/OUT

This Unilateral Undertaking is dated 13th December 2017

From:

- [1] MAURICE PHILIP BAILLIE of The Cottage, Shripney, Bognor Regis, West Sussex PO22 9PA ("the Owner")
- [2] CASTLE PROPERTY DEVELOPMENTS LIMITED (Company Number 09842142) whose registered office is at 1&2 The Barn, West Stoke Road, Lavant, Chichester, West Sussex PO18 9AA ("the Applicant")

To:

- [3] ARUN DISTRICT COUNCIL of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("ADC")

1. Background

- 1.1 The Owner is the registered proprietor under title number WSX224893 of land at The Cottage, Shripney, Bognor Regis, West Sussex PO22 9PA comprising the Application Site
- 1.2 ADC is the Local Planning Authority and the local housing authority for the area in which the Application Site is situated and the local authority responsible for parks and leisure services
- 1.3 The Applicant is interested in the Application Site for the purposes of Section 106 of the Act under a sale contract dated 22 December 2016 between the Owner (1) and the Applicant (2) and consents to its interest taking subject to the terms of this Undertaking
- 1.4 The Applicant has submitted the Application to ADC to carry out the Development on the Application Site
- 1.5 This Undertaking is given to secure a Planning Obligation which ADC considers is necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development
- 1.6 This Undertaking is supplemental and collateral to an agreement under Section 106 of the Act dated 10 November 2017 also entered into in connection with the Application

2. Definitions & Interpretation

Definitions

In this Undertaking the following words and expressions shall have the following meanings:

- 2.1 "the Act" means the Town & Country Planning Act 1990

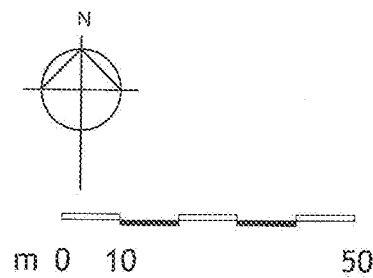
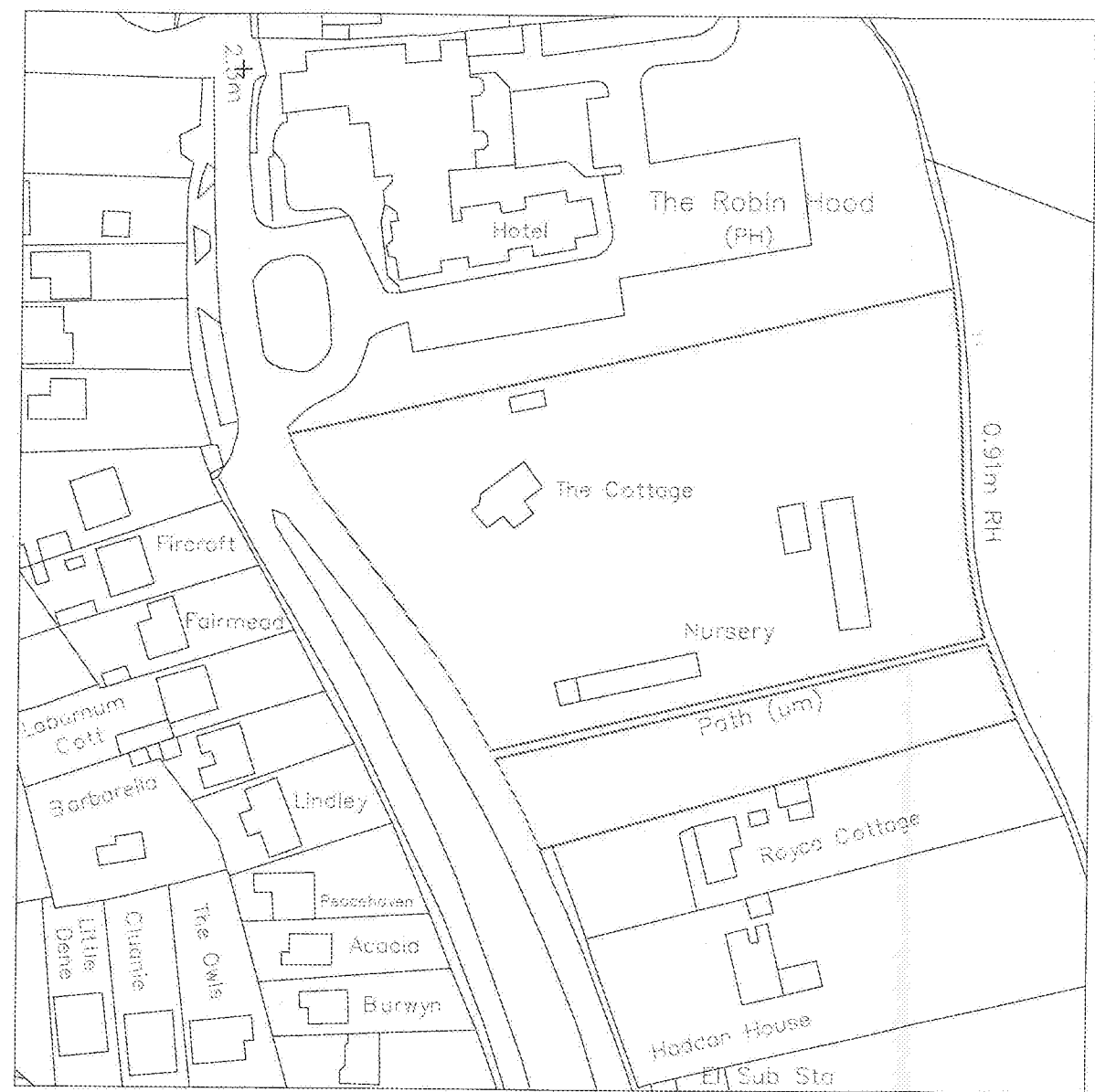
- 2.2 **"the Application"** means outline planning application number BE/63/17/OUT for 20 No. houses & flats, 1 No. replacement dwelling (21 No. units in total) with car parking, landscaping & associated infrastructure & access off Shripney Road (A29), following the demolition of the existing dwelling & outbuildings on the Application Site
- 2.3 **"the Application Site"** means the land shown for the purposes of identifying only edged red on the Plan
- 2.4 **"Commencement of the Development"** means the date on which any material operation as defined in Section 56(4) of the Act forming part of the Development is begun excluding (for the purpose of this Undertaking and for no other purpose) any works in connection with:
- a) operations consisting of site clearance and preparation;
 - b) archaeological, ecological and environmental investigations and surveys;
 - c) investigations and surveys for the purpose of assessing ground conditions;
 - d) remedial work in respect of any contamination or other adverse ground conditions;
 - e) removal diversion and laying of service media;
 - f) removal relocation and construction of accesses;
 - g) erection of any temporary means of enclosure including hoardings and fences; and
 - h) the temporary display of site notices or advertisements.

and the term **"Commence the Development"** and **"Commencement of the Development"** shall be construed accordingly.

- 2.5 **"the Development"** means the development of the Application Site pursuant to the Planning Permission
- 2.6 **"the Dwelling Unit"** any of the residential units comprised in the Development
- 2.7 **"NHS Contribution"** means a financial contribution towards The Croft Practice required as a result of the Development and calculated and paid in accordance with **Clause 5**
- 2.8 **"Occupation"** means occupation for the purposes of residential use permitted by the Planning 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 the terms **"Occupied"** **"Occupy"** and **"Occupier"** shall be interpreted accordingly
- 2.9 **"Plan"** means the plan attached to this Undertaking and marked "Application Site"
- 2.10 **"Planning Obligation"** the covenants, restrictions and obligations in **Clause 5**
- 2.11 **"Planning Permission"** means any planning permission granted pursuant to the Application
- 2.12 **"Section 73/96A Applications"** means applications for modifications and variations of the Planning Permission made under those sections of the Act
- 2.13 **"Specified Date"** means the date upon which an obligation arising under this Undertaking is due to be performed

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Notes:



Layout 1:1250

A : Planning boundary amended, 14/9/2017

Job Title :
SITE AT 'THE COTTAGE'
SHRIPNEY ROAD, BOGNOR,
WEST SUSSEX, PO22 9PA

Drawing Title :
SITE LOCATION PLAN

Drawn : ot
Scale : 1:1250 @ A3
Date : April 2017
Drg No. 334/P/01

MHD Architects
Downholm studio, Lewes Road, Ringmer, East Sussex, BN8 5QB.
Tel: 01273 814851 Fax: 01273 814884 Email: mhdarchitects@aol.com

- 2.14 "The Croft Practice" means the infrastructure needs associated with treatment rooms at the Croft Surgery Barnham Road, Eastergate, Chichester PO20 3RP or the LCN main site

Interpretation

- 2.15 Words importing the masculine include the feminine and vice versa.
- 2.16 Words importing the singular include the plural and vice versa.
- 2.17 Words importing persons include companies and corporations and vice versa.
- 2.18 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can unless expressly stated otherwise be enforced against all of them jointly and against each individually.
- 2.19 Any reference to a clause or schedule or plan is to one in to our attached to this Undertaking.
- 2.20 Any reference to a colour or letter is to be on the plans attached to this Undertaking.
- 2.21 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 2.22 References to any party to this Undertaking shall include the successors in title to that party and to any deriving title through or under that party and in the case of ADC the successors to its functions.

3. Enabling Provisions

This Undertaking is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

4. Commencement

- 4.1 This Undertaking shall come into effect upon the date of this Undertaking but the Planning Obligation is conditional on the grant of Planning Permission and the Commencement of the Development.

COVENANTS IN FAVOUR OF ADC

5. NHS Contribution

- 5.1 The NHS Contributions shall be calculated in accordance with the infrastructure costs, average patient square meter requirements and occupancy assumptions set out below:

- Infrastructure costs: £4,300 per square metre
- Average square metre per patient: 0.1142 square metres
- Average Occupancy assumptions:

House type	Persons in Occupation
1 bed	1.5
2 bed	1.9
3 bed	2.5
4 bed	3
5 bed	5

Giving rise to the following NHS Contribution multiplier:

House type	contribution Dwelling Unit	per
1 bed	£737	
2 bed	£933	
3 bed	£1,228	
4 bed	£1,473	

5.2 The Owner undertakes to ADC:

5.2.1 Prior to Commencement of the Development to pay to ADC the NHS Contribution attributable to the Development calculated by reference to the costs, requirements and assumptions and the NHS Contribution multiplier set out in **Clause 5.1**; and

5.2.2 Not to Commence or cause or allow the Commencement of the Development before the NHS Contribution calculated by reference to the costs, requirements and assumptions and the NHS Contribution multiplier **Clause 5.1** has been paid to ADC.

6. Certificates

6.1 The Owner Undertakes with ADC:

6.1.1 Where this Undertaking imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date the Owner shall give (or procure that the Applicant give) to ADC notice of the Specified Date not more than seven days after such Specified Date

6.1.2 If the Owner and/or Applicant fails to give the notice required under **Clause 6.1.1** above ADC shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Owner of its determination

7. Index Linking

7.1 The Owner undertakes to ADC that the NHS Contribution under this Undertaking shall be increased by the application of the following formula:

$$A = \frac{B \times C}{D}$$

where:

- A is the sum actually payable on the Specified Date
- B is the original sum mentioned in this Undertaking

- C is the Retail Price Index for the quarter preceding the Specified Date
 D is the Retail Price Index for the quarter preceding the date of this Undertaking
C
 D is equal to or greater than 1

- 7.2 The adjustment in **Clause 7.1** above shall only be made where the Specified Date is more than 6 months after the date of this Undertaking

8. Interest

The Owner undertakes to ADC to pay interest on sums due to ADC under this Undertaking but not paid on the Specified Date from the Specified Date until actual payment at a rate of interest 4% above the HSBC Bank base rate from time to time

9. Payment Notice

The Applicant confirms that all payments due under this Undertaking shall have attached to them a copy of the Payment Notice contained in **Schedule 1** to this Undertaking duly completed.

10. Section 73/96A Applications

In the event that any new planning permission(s) are granted by ADC in relation to the Planning Permission pursuant to Section 73 of the Act or any amendment pursuant to Section 96A of the Act is granted the obligations in this Undertaking shall relate to and bind any subsequent planning permission(s) or the Planning Permission as amended in respect of the Application Site and the definitions of Application, Planning Permission and Development in this Undertaking shall be construed to include reference to any application in relation to the Planning Permission under Sections 73 or 96A of the Act the planning permission granted or the Planning Permission as amended thereunder and the development permitted by such subsequent planning permission or the Planning Permission as amended.

11. CIL

ADC have confirmed that they are satisfied that the Planning Obligation set out herein accords with the statutory tests set out in Regulations 122 and 123 of The Community Infrastructure Levy Regulations 2010 and shall be in full and final settlement of any infrastructure levy which may apply to the Application Site due to and following the grant of the Planning Permission.

12. General

- 12.1 The Applicant confirms that:

12.1.1 this Undertaking constitutes a deed;

12.1.2 the Planning Obligation in this Undertaking is enforceable by ADC;

12.1.3 nothing in this Undertaking confers or is intended to confer a benefit on a third party under the Contracts Rights of Third Parties Act 1999 (save for any successor in function to ADC);

12.1.4 no person shall be liable for a breach of any covenant restriction or obligation in this Undertaking after he shall have parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenants prior to parting with such interest; and

12.1.5 nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop any part of the Application Site in accordance with a planning permission other than the Planning Permission granted by ADC or by the Secretary of State on appeal or reference to him after the date of this Undertaking.

12.1.6 this Undertaking is a Local Land Charge and shall be registered as such.

12.1.7 no covenants or obligations contained in this Undertaking shall be binding upon:

- a) any part of the Application Site that may in future be acquired by a statutory undertaker for the purposes of its undertaking or operational land as defined in Section 262 of the Act
- b) the owner, occupier or tenant (or their chargee or successors in title) of any Dwelling Unit

13. Arbitration

Any dispute or difference arising between the parties to this deed with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Undertaking (save for the operation of the Review Mechanism) shall be referred to the decision of a single arbitrator (acting as an expert and not as an arbitrator) to be agreed by the parties or failing Undertaking between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996.

14. Severability

The invalidity or unenforceability of any provisions of this Undertaking shall not affect the validity or enforceability of any other provision of this Undertaking, which shall remain in full force and effect.

SCHEDULE 1 Payment Notice

Payment of Monies due under a Section 106 Undertaking

1. Payment to be made by/on behalf of:
2. Development at:
3. Undertaking dated:
4. Planning application reference number:
5. Undertaking (Please continue on a separate sheet if necessary):

Clause no(s):	
Contribution towards:	
Amount of contribution: due:	
Date upon which contribution is due:	
Method of Payment:	
<i>If you require an invoice please provided the full postal address here</i>	

EXECUTED as a DEED by)
CASTLE DEVELOPMENTS)
LIMITED)
acting by:)



Director:

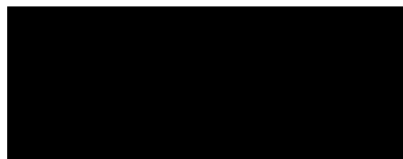
In the presence of:



Signature of Witness:

Name: Nathan Brennan
Address: Mabruk, Preston Avenue, Rustington, BW16 2PF
Occupation: Estate Agent

EXECUTED as a DEED by)
MAURICE PHILIP BAILLIE)



In the presence of:



Signature of Witness:

Name: Robert Elliott
Address: 52 North Street
Occupation: Chichester
PO19 1NQ