

Dated:

24 February 2009

Between:

[1] Joy Margaret Lee [The Owner]

[2] Arun District Council [ADC]

AGREEMENT

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

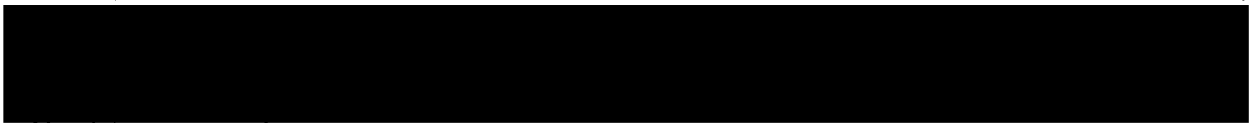
Land at Barnham Windmill and Barnham Windmill House Yapton Road Barnham West
Sussex PO22 0BD

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

Reference: BN/10/07 and BN/11/07/L
Committee: DCC 16/1/08

This Agreement is dated _____ and is made between:

[1]

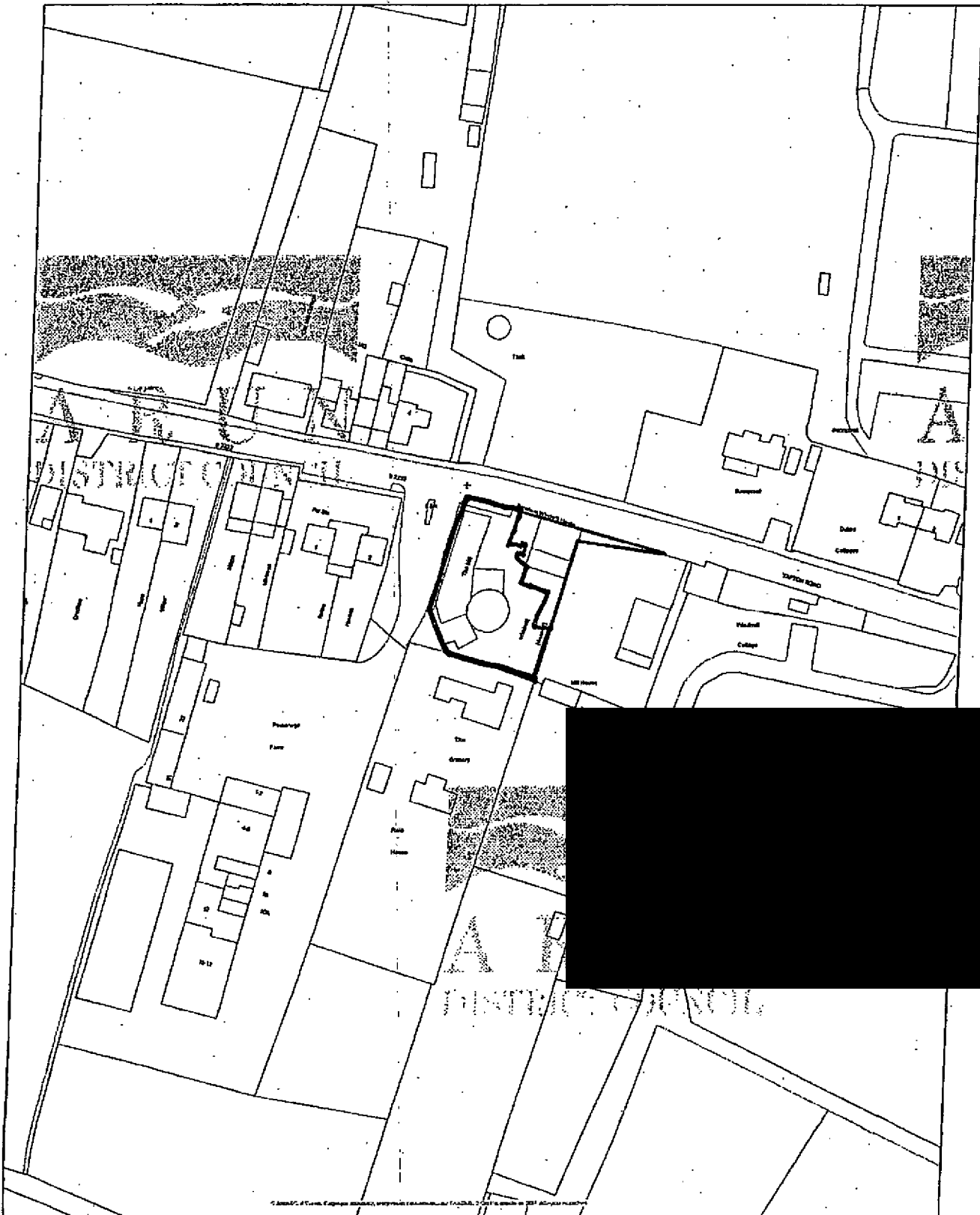


[2] Arun District Council of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex,
BN17 5LF ["ADC"]

1.0 Background

- 1.1 The Owner is freehold owner of the Land under title No WSX 325063 the Land being Barnham Windmill House Yapton Road Barnham West Sussex PO 22 0BD shown for identification purposes only edged black on the attached plan [and hereinafter called "the Land"].
- 1.2 ADC is the local planning authority .
- 1.3 The Owner has by planning application number BN /10/07 A applied to ADC for full planning permission to develop the Land by conversion of mill to form four separate dwellings together with revised entrance layout , garaging associated parking and garaging for existing dwelling on site .

BN/11/07 - General location plan only, not part of application.



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Arun District Council 100018487.

119

Scale 1/1250

Date 18/12/2007

Centre = 496791 E 103963 N

Plan may not be up to date.

- 1.5 The Owner has by Listed Building Consent application number BN /11/07 applied to ADC for Listed Building Consent to develop the Land by conversion of mill to form four separate dwellings together with revised entrance layout garaging associated parking and garaging for existing dwelling on site .

2. Interpretation

In this Agreement:

- 2.1 Words importing the masculine include the feminine and vice versa.
- 2.2 Words importing the singular include the plural and vice versa.
- 2.3 Words importing persons include companies and corporations and vice versa.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.5 Any reference to a clause or schedule or plan is to one in to our attached to this Agreement.
- 2.6 Any reference to a colour or letter is to be on the plans attached to this Agreement.
- 2.7 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.
- 2.8 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the ADC the successors to their respective functions.

2.9 "the Act" means the Town & Country Planning Act 1990

2.10 "agreed" or "approved" means agreed or approved in writing and given for the purpose of this Agreement.

2.11 "the Planning Application" means the planning application number BN/10/07

2.12 "the LB Application" means the application for Listed Building consent under ref BN 11/07/L

2.13 "Barnham Windmill Preservation Project" means the project referred to in Clause 5 of this Agreement to restore retain and maintain the Barnham Wind Mill on the Land in accordance with the Barnham Wind Mill Restoration Specification

2.14 "Barnham Wind Mill Restoration Specification" means :-

(i) a Specification of the Works required to achieve the "Barnham Windmill Preservation Project"

(ii) which works shall as a minimum contain works of restoration and preservation of these parts of the Barnham Wind Mill :-

(a) the cap and stocks

(b) Internal Wind Mill Works

(c) fantail

(d) all other parts and internal works detailed in the Planning Statement Appendix F

as detailed within the Planning Application and LB Application and in particular within paragraph 5.8 "Policy Dev 12 Protection and Reinstatement of Original Features in Listed Buildings " of the Planning Statement and the Photographs at Appendix F

(iii) and which Specification shall be agreed between the Owner and ADC in accordance with Clause 5

2.15 "the Development" means the development of the Land proposed by the Planning Application or the LBC Application or permitted by planning permission granted pursuant to the Application or carried out substantially in accordance with such planning permission.

2.16 " First occupation " means permanent residential use of the dwelling within Use Classes Order 1987 Use Class C3

2.16 "Specified Date" means the date upon which an obligation arising under this Agreement is due to be performed.

3. Enabling Provisions

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

4. Commencement

4.1 This Agreement shall come into effect upon grant of the Planning Application and the LB Application but the obligations in Clause 5 shall become effective only on the commencement of the Development in accordance with Section 56 of the Act.

4.2 On Commencement of the Development the Owner will give to ADC notice in writing of that commencement in the form of The Commencement Notice annexed to this Deed as Schedule 1 addressed to ADC's Head of Planning Services.

5. Provision and Execution of Barnham Wind Mill Preservation Project

The Owner agrees with ADC

5.1 Prior to Commencement of the Development to submit to ADC and agree with ADC (agreement not to be unreasonably withheld) the Barnham Wind Mill Restoration Specification

5.2 to carry out the works detailed within the Barnham Wind Mill Restoration Specification to the reasonable satisfaction of ADC .

5.3 to complete the works the works detailed within the Barnham Wind Mill Restoration Specification no later than the first occupation of the second dwelling forming part of the Development on the Land .

6. Costs

The Owner agrees with ADC :-

- 6.1 to pay to the ADC its reasonable legal costs incurred in preparing and entering into this Agreement

7. General

The parties agree that:

- 7.1 nothing in this Agreement constitutes or constitutes an obligation to grant planning permission
- 7.2 nothing in this Agreement grants planning permission or any other approval consent or permission required from ADC in the exercise of any other statutory function
- 7.3 nothing in this Agreement fetters or restricts the exercise by ADC of any of their powers
- 7.4 the obligations contained in Clause 5 are planning obligations for the purpose of Section 106 of the Act
- 7.5 this Agreement constitutes a deed
- 7.6 this Agreement is enforceable by ADC
- 7.7 nothing in this Agreement confers or is intended to confer a benefit on a third party under the Contracts [Rights of Third Parties] Act 1999 save for the transfer provisions at clause 5
- 7.8 This Agreement shall apply to the Development as authorised by the planning permission issued pursuant to the planning application or to the Development after variation or renewal of the planning permission from time to time
- 7.9 This Agreement is a Local Land Charge and shall be registered as such

SCHEDULE 1

Commencement Notice

Pursuant to Clause 4.2 in Planning Obligation Described Below

I advise you that the Development described below was commenced on the Start Date stated in this Notice.

Dated this ____ day of ____ 200

Signed _____

On Behalf Of: _____

To:	[1] Head of Planning Services, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF [DX: 57406] Littlehampton
FROM:	
DEVELOPMENT AT:	
NATURE OF DEVELOPMENT:	
PLANNING PERMISSION DATE & REFERENCE	
PLANNING OBLIGATION DATE & PARTIES	
START DATE:	

SIGNED and DELIVERED

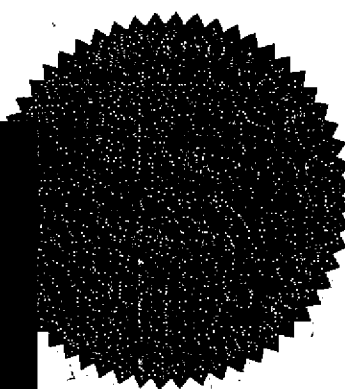
by Joy Margaret Lee as her Deed in the
presence of:

SEALED with the COMMON SEAL
of ARUN DISTRICT COUNCIL

in the pre

Seal Boo

Authorise



Planning Application Reference:	BN/24/99
Document Type:	Section 106 Agreement
Date of Agreement:	26th January 2000

NB: Above text in bold to be included in free text field.

Check thoroughly for **telephone numbers/email addresses & signatures** and block.
Check **maps** for signatures and block.

Please return original to s106 Monitoring Officer

S.106 T.C.P.A. 1990

LAND AT THE REAR OF BARNHAM COUNTY PRIMARY SCHOOL,
BARNHAM, WEST SUSSEX

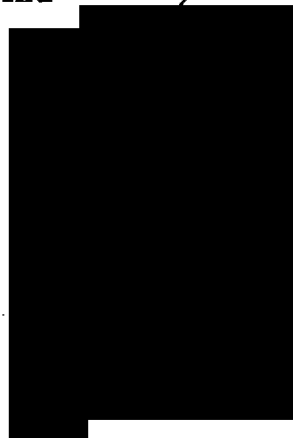
UNILATERAL UNDERTAKINGS

G H Goatcher, N J Adames, S M Herman & R H J V Kyrke And
Croudace Homes Limited

TO:

Arun District Council

Relating to: *'PUBLIC OPEN SPACE'*



LPA Reference BN 24/99

DETR Reference APP/C3810/A/99/1029652



Dutton Gregory
Solicitors

PUBLIC OPEN SPACE PROVISION

THIS PLANNING OBLIGATION BY UNDERTAKING is given this *26 January* 2000
BY

- 1) **Geoffrey Herbert Goatcher, Nicholas John Adames, Susan Mary Herman and Richard Henry Julian Venables Kyrke**, all care of Messrs Thomas Eggar Church Adams of Sussex House, North Street, Horsham, West Sussex (hereinafter together referred to as "the Trustees") and
- 2) **CROUDACE HOMES LIMITED** whose registered office is at Croudace Caterham, Surrey CR3 6XQ ("the Developer")

TO

ARUN DISTRICT COUNCIL of Arun Civic Centre Maltravers Road, Littlehampton, Sussex BN17 5LF ("The Council") the District Planning Authority

WHEREAS

- 1) The Council is the District Council for the district within which is situated the land shown edged red on the plan annexed hereto ("the Plan") which land ("the Land") is known as land to the rear of Barnham County Primary School, Yapton Road, Barnham, West Sussex.
- 2) The Trustees are the unencumbered freehold owners of the Land
- 3) The Developer has an interest in the land by virtue of an Option Agreement dated 18 December 1998 and made between the Trustees (1) and the Developer (2).
- 4) The Developer has by written application under reference BN 24/99 ("The Application") applied to the Council for planning permission to develop the Land for residential purposes ("The Development")

- 5) The Council has failed to determine the Application
- 6) The Developer has submitted an appeal to the Secretary of State for the Environment appeal reference APP/ C3810/A/99/1029652
- 7) The Developer is mindful of the requirements of the West Sussex Structure Plan and of the Arun District Local Plan and is desirous of making the provision hereinafter contained in order to address those requirements reasonably related to the Development.
- 8) The provisions of this unilateral Undertaking are conditional upon the matters hereinafter appearing

NOW THIS DEED WITNESSES:

Interpretation

In this Deed the following expressions shall have the meanings given to them in this clause.

- (a) "Affordable Housing" means Social Housing and Low Cost Housing where
 - i) "Social Housing" means a form of housing for people whose incomes are such that without some form of subsidy they would not be able to house themselves, and
 - ii) "Low Cost Housing" means housing primarily aimed at those households who may be able to purchase or rent without subsidy, but only at the lower end of the market.
- (b) "Affordable Housing Units" means such number of units of residential accommodation within the Development as equates to 30% of those permitted to be constructed upon the Land by or consequential upon the Planning Permission of

which not less than 15 shall be Social Housing (the Social Housing Units) and the remainder shall be Low Cost Housing (the Low Cost Housing Units).

- (c) The 'Financial Contribution' shall mean the sum to be agreed with the Council or otherwise determined by the Expert to be paid to the Council pursuant to paragraph 3 of the First schedule hereto as the cost to the Council of maintaining Public Open Space as hereinafter defined for a period of 10 years.
- (d) "Material Operation" shall have the meaning set out in sub-sections 56 (4) (a) (b) (c) and (d) inclusive of the Town and Country Planning Act 1990 provided that the carrying out upon the Land of any archaeological work or excavations or other ground investigations or demolition, or site clearance or the erection of fences and hoardings shall not be deemed to be a Material Operation for the purposes of this Deed.
- (e) "Plan" means the plan annexed hereto
- (f) "Planning Permission" means the planning permission for the Development granted by the Secretary of State pursuant to the Appeal
- (g) 'Public Open Space' shall mean areas of open space within the Development available to residents of the Development and to the public generally and includes informal grassed areas and a Locally Equipped Area for Play (a 'LEAP') as defined by the National Playing Fields Association.
- (h) "Residential Units" means the units of residential accommodation comprised in the Development together with any amenity space parking space garage or rights to use the same (whether or not in common with others) provided therewith
- (i) "Remaining Units" means all the Residential Units save the Affordable Housing Units
- (j) "Schedule 1" means Schedule 1 annexed to this Deed
- (k) "Secretary of State" means to the Secretary of State for the Environment Transport & The Regions for the time being or the person lawfully acting on his behalf

- (l) "Undertaking" means planning obligation by undertaking and any modification thereof approved by the Council or the Secretary of State
- (m) "1990 Act" means the Town & Country Planning Act 1990 as amended
- (n) "Trustees" and "Developer" respectively shall include their successors in title and assigns
- (o) Where the Trustees or the Developer shall consist of two or more persons all covenants by them shall be deemed to be by such persons jointly and severally
- (p) Words importing the one gender include all other genders and the words importing the singular include the plural and vice versa

Legal Effect

1. This undertaking is given by the Trustees and the Developer
 2. This Undertaking is given pursuant to Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 to the intent that the covenants and undertakings herein contained on the part of the Trustees and the Developer shall bind their respective interests in the Land
 3. This Undertaking is a planning obligation for the purposes of Section 106 of the 1990 Act
 4. This Undertaking shall be enforceable by the Council as local planning authority
 5. No person shall be liable for any breach of this Undertaking unless he or it holds an interest in the part of the Land in respect of which such breach occurs or held such interest at the date of the breach
- 2.6 This Undertaking is executed as a deed by the Trustees and the Developer

2.7 This Undertaking shall not take effect until

- (a) the Planning Permission has been granted; and
- (b) the Planning Permission has been implemented by the carrying out of a Material Operation ("the Implementation Date")

2.8 If the Planning Permission expires within the meaning of Sections 91 92 or 93 of the Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Trustees and the Developer this undertaking shall cease to have effect

2.9 Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop the Land or any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted by the Council or the County Council or by the Secretary of State after the date of this Undertaking

3. Covenants

Subject to the provisions of clause 2 the Trustees and the Developer hereby covenant with the Council that they will perform and observe the agreements obligations covenants restrictions and other provisions set out in this Deed and Schedule 1;

4. Amendment or Discharge

This Undertaking may neither be amended nor discharged without the consent in writing of the parties

5. Expert

5.1 In the event of any dispute arising between the parties hereto in respect of any matter contained in this Deed the same shall be referred to an expert ("the Expert") being an independent person of at least ten (10) years standing in the area of expertise relevant to the dispute to be agreed between the parties hereto or failing agreement at the

request or option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Law Society and the Expert appointed shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties and whose costs shall be in his/her award

5.2 The Expert shall be appointed subject to an express requirement that he/she reaches his/her decision and communicates it to the parties to the dispute within the minimum practical time scale allowing for the nature and complexity of the dispute and in any event not more than thirty (30) working days from the date of his/her appointment to act

5.3 The Expert shall be required to give notice to each of the said parties to the dispute inviting each of them to submit to the Expert within ten (10) working days submissions and supporting material and shall afford to the said parties an opportunity to make counter submissions and material and his decision shall be given in writing within thirty (30) working days of his/her appointment with the reasons and in the absence of any manifest error shall be binding on the said parties

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

SCHEDULE 1

AGREEMENTS OBLIGATIONS COVENANTS RESTRICTIONS AND OTHER PROVISIONS TO BE PERFORMED AND OBSERVED (Public Open Space)

1. Subject to the provisions of this Schedule the Developer covenants to provide the Public Open Space so that is available before the occupation of the last of the Remaining Units.
2. Within 3 months of the carrying out of a Material Operation upon the Land the Developer shall submit to the Council its proposals as to the size and location of the Public Open Space.

3. Following upon approval by the Council of the Developers proposals or any agreed variation thereof or in default of agreement upon any determination in respect thereof made by the Expert the Developer will (i) proceed to carry out and complete the works necessary to provide the Public Open Space in accordance with the 6 Acre standard published by the National Playing Fields Association and to the reasonable satisfaction of the Council and (ii) upon completion thereof pay the Financial Contribution to the Council PROVIDED that the Council shall first have entered into an agreement with the Developer to purchase the Public Open Space for the sum of £1 the Developer also paying the Council's reasonable legal costs in connection therewith and shall covenant for itself and its successors in title with the Developer its successors in title and assigns to the intent and so as to bind the Public Open Space and every part thereof into whosoever's hands it may come and to benefit the remainder of the Development and each and every part thereof not to use or permit the Public Open Space to be used for any other purpose and thereafter properly and adequately to maintain repair renew and manage the Public Open Space .

SIGNED as a deed and **DELIVERED** by
the said **Geoffrey Herbert Goatcher**
in the presence of:-

Name:

Address:

Occupation.

SUSSEX HOUSE
NORTH STREET
HORSHAM
WEST SUSSEX RH12 1BJ
DX 57303 HORSHAM

SIGNED as a deed and **DELIVERED** by
the said **Nicholas John Adames**
in the presence of:-

Name:

Address:

Occupation.

SIGNED as a deed and **DELIVERED** by
the said **Susan Mary Herman**
in the presence of:-

Name:

Address:

Occupation.

SIGNED as a deed and **DELIVERED** by
the said **Richard Henry Julian Venables Kyrke**
in the presence of:-

Name:

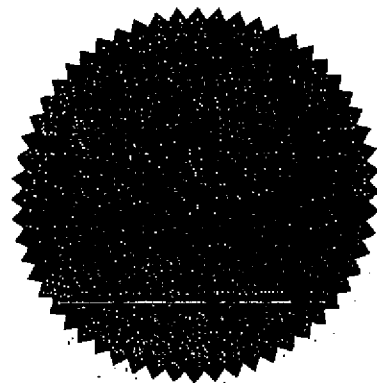
Address:

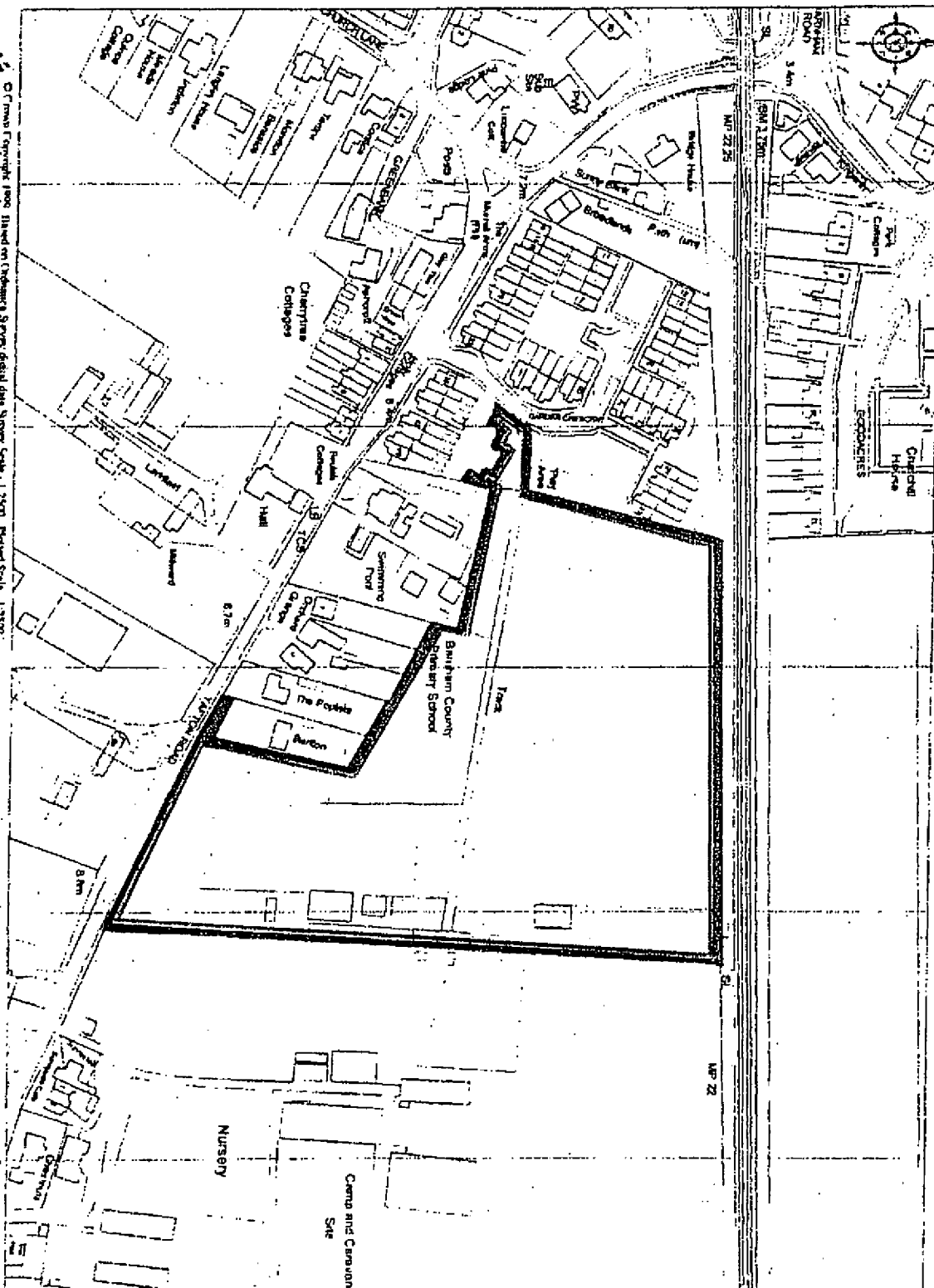
Occupation.

THE COMMON SEAL of
CROUDACE HOMES LIMITED was
hereunto affixed in the presence of:-

Authorised signat

Authorised signat





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DRG. NO. : 1250/02

S.106 T.C.P.A. 1990

LAND AT THE REAR OF BARNHAM COUNTY PRIMARY SCHOOL,
BARNHAM, WEST SUSSEX

UNILATERAL UNDERTAKINGS

G H Goatcher, N J Adames, S M Herman & R H J V Kyrke And
Croudace Homes Limited

TO:

Arun District Council

West Sussex County Council

Relating to: *'LIBRARY INFRASTRUCTURE PROVISION'*

LPA Reference BN 24/99

DETR Reference APP/C3810/A/99/1029652



Dutton Gregory

Verdicts

LIBRARY INFRASTRUCTURE PROVISION

THIS PLANNING OBLIGATION BY UNDERTAKING is given this
BY

26th January
2000

- 1) **Geoffrey Herbert Goatcher, Nicholas John Adames, Susan Mary Herman and Richard Henry Julian Venables Kyrke**, all care of Messrs Thomas Eggar Church Adams of Sussex House, North Street, Horsham, West Sussex (hereinafter together referred to as "the Trustees") and
- 2) **CROUDACE HOMES LIMITED** whose registered office is at Croudace House, Caterham, Surrey CR3 6XQ ("the Developer")

TO

ARUN DISTRICT COUNCIL of Arun Civic Centre Maltravers Road, Littlehampton, West Sussex BN17 5LF ("The Council") the District Planning Authority and

WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (the County Council)

WHEREAS

- 1) The Council is the District Council for the district within which is situated the land shown edged red on the plan annexed hereto ("the Plan") which land ("the Land") is known as land to the rear of Barnham County Primary School, Yapton Road, Barnham, West Sussex.
- 2) The County Council is the Authority responsible for the making of public library provision for the area in which the Land is situated
- 3) The Trustees are the unencumbered freehold owners of the Land

- 4) The Developer has an interest in the land by virtue of an Option Agreement dated 18 December 1998 and made between the Trustees (1) and the Developer (2).
- 5) The Developer has by written application under reference BN 24/99 ("The Application") applied to the Council for planning permission to develop the Land for residential purposes ("The Development")
- 6) The Council has failed to determine the Application
- 7) The Developer has submitted an appeal to the Secretary of State for the Environment appeal reference APP/ C3810/A/99/1029652
- 8) The Developer is mindful of the requirements of the West Sussex Structure Plan and the Arun District Local Plan and is desirous of making the provision hereinafter contained in order to address those requirements reasonably related to the Development.
- 9) The provisions of this unilateral Undertaking are conditional upon the matters hereinafter appearing

NOW THIS DEED WITNESSES:

Interpretation

In this Deed the following expressions shall have the meanings given to them in this clause.

- (a) "Affordable Housing" means Social Housing and Low Cost housing where

- i) "Social Housing" means a form of housing for people whose incomes are such that without some form of subsidy they would not be able to house themselves, and

ii) "Low Cost Housing" means housing primarily aimed at those households who may be able to purchase or rent without subsidy, but only at the lower end of the market.

(b) "Affordable Housing Units" means such number of units of residential accommodation within the Development as equates to 30% of those permitted to be constructed upon the Land by or consequential upon the Planning Permission of which not less than 15 shall be Social Housing (the Social Housing Units) and the remainder shall be Low Cost Housing (the Low Cost Housing Units).

(c) 'Financial Contribution' shall mean a contribution to the cost of provision of public library facilities in the vicinity of the Land calculated in accordance with the Formula.

(d) The 'Formula' shall mean the sum of £1750 being the County Council's estimated cost per square metre of small scale additional library floor space provision (index linked from the date hereof to the date of actual payment by reference to the All-in Tender Price Index of the Building Costs Information Service of the Royal Institution of Chartered Surveyors) multiplied by 'x' where 'x' is:-

(the number of Residential Units x 2.5 x 30) divided by 1000.

So that, assuming 84 Residential Units, the Financial Contribution at the date hereof would be £1750:-

(i) multiplied by 84×2.5 (being the average number of persons per dwelling) x 30 (being the County Council's adopted standard of square metres of space per 1000 population) = 6300 and

(ii) divided by 1000 = 6.3

namely £11025

(e) "Material Operation" shall have the meaning set out in sub-sections 56 (4) (a) (b) (c) and (d) inclusive of the Town and Country Planning Act 1990 provided that the carrying out upon the Land of any archaeological work or excavations or other ground investigations or demolition or site clearance or the erection of fences and hoardings shall not be deemed to be a Material Operation for the purposes of this Deed.

(f) "Plan" means the plan annexed hereto

- (g) "Planning Permission" means the planning permission for the Development granted by the Secretary of State pursuant to the Appeal
- (h) "Residential Units" means the units of residential accommodation comprised in the Development together with any amenity space parking space garage or rights to use the same (whether or not in common with others) provided therewith
- (i) "Remaining Units" means all the Residential Units save the Affordable Housing Units
- (j) "Schedule 1" means Schedule 1 annexed to this Deed
- (k) "Secretary of State" means to the Secretary of State for the Environment Transport and the Regions for the time being or the person lawfully acting on his behalf
- (l) "Undertaking" means planning obligation by undertaking and any modification thereof approved by the Council or the Secretary of State
- (m) "1990 Act" means the Town & Country Planning Act 1990 as amended
- (n) "Trustees" and "Developer" respectively shall include their successors in title and assigns
- (o) Where the Trustees or the Developer shall consist of two or more persons all covenants by them shall be deemed to be by such persons jointly and severally
- (p) Words importing the one gender include all other genders and the words importing the singular include the plural and vice versa

Legal Effect

1. This undertaking is given by the Trustees and the Developer

2. This Undertaking is given pursuant to Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 to the intent that the covenants and undertakings herein contained on the part of the Trustees and the Developer shall bind their respective interests in the Land
3. This Undertaking is a planning obligation for the purposes of Section 106 of the 1990 Act
4. This Undertaking shall be enforceable by the Council as local planning authority
5. No person shall be liable for any breach of this Undertaking unless he or it holds an interest in the part of the Land in respect of which such breach occurs or held such interest at the date of the breach
- 2.6 This Undertaking is executed as a deed by the Trustees and the Developer
- 2.7 This Undertaking shall not take effect until
 - (a) the Planning Permission has been granted; and
 - (b) the Planning Permission has been implemented by the carrying out of a Material Operation ("the Implementation Date")
- 2.8 If the Planning Permission expires within the meaning of Sections 91 92 or 93 of the Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Trustees and the Developer this undertaking shall cease to have effect
- 2.9 Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop the Land or any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted by the Council or the County Council or by the Secretary of State after the date of this Undertaking

3. Covenants

Subject to the provisions of clause 2 the Trustees and the Developer hereby covenant with the Council that they will perform and observe the agreements obligations covenants restrictions and other provisions set out in this Deed and Schedule 1;

4. Amendment or discharge

This Undertaking may neither be amended nor discharged without the consent in writing of the parties

5. Expert

5.1 In the event of any dispute arising between the parties hereto in respect of any matter contained in this Deed the same shall be referred to an expert ("the Expert") being an independent person of at least ten (10) years standing in the area of expertise relevant to the dispute to be agreed between the parties hereto or failing agreement at the request or option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Law Society and the Expert appointed shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties and whose costs shall be in his/her award

5.2 The Expert shall be appointed subject to an express requirement that he/she reaches his/her decision and communicates it to the parties to the dispute within the minimum practical time scale allowing for the nature and complexity of the dispute and in any event not more than thirty (30) working days from the date of his/her appointment to act

5.3 The Expert shall be required to give notice to each of the said parties to the dispute inviting each of them to submit to the Expert within ten (10) working days submissions and supporting material and shall afford to the said parties an opportunity to make counter submissions and material and his decision shall be given in writing within thirty (30) working days of his/her appointment with the reasons and in the absence of any manifest error shall be binding on the said parties

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

SCHEDULE 1

AGREEMENTS OBLIGATIONS COVENANTS RESTRICTIONS AND OTHER PROVISIONS TO BE PERFORMED AND OBSERVED (Library Infrastructure)

1. the Developer shall offer to pay the Financial Contribution to the County Council as to one half of the said sum upon completion of the construction of not more than 50% of the Remaining Units and as to the balance thereof upon completion of the construction of the penultimate Remaining Unit upon condition that the County Council
 - (a) shall earmark ringfence or by some other means keep the Financial Contribution separate from its other funds and
 - (b) shall ensure that for such period as it or any part of it shall remain unspent it shall accrue interest or be deemed to accrue interest at a rate not less than 1.5% above Lloyds Bank Base Rate from time to time and
 - (c) shall use the Financial Contribution only for the purposes for which it is tendered within 3 years of receipt of the second tranche thereon

PROVIDED THAT in default thereof it or the unspent part of it shall be repaid to the Developer without deduction together with the interest accrued thereon or such sum as shall represent the interest deemed to have accrued thereon.

SIGNED as a deed and DELIVERED by
the said Geoffrey Herbert Goatcher
in the presence of:-

Name:

Address:

Occupation:

THOMAS EGGAR CHURCH ADAMS
SOLICITORS
SUSSEX HOUSE
NORTH STREET
HORSHAM
WEST SUSSEX RH12 1BJ
DX 57000 HORSHAM

SIGNED as a deed and **DELIVERED** by
the said **Nicholas John Adames**
in the presence of:-

Name:

Address:

Occupation:

SIGNED as a deed and **DELIVERED** by
the said **Susan Mary Herman**
in the presence of:-

Name:

Address:

Occupation:

SIGNED as a deed and **DELIVERED** by
the said **Richard Henry Julian Venables Kyrke**
in the presence of:-

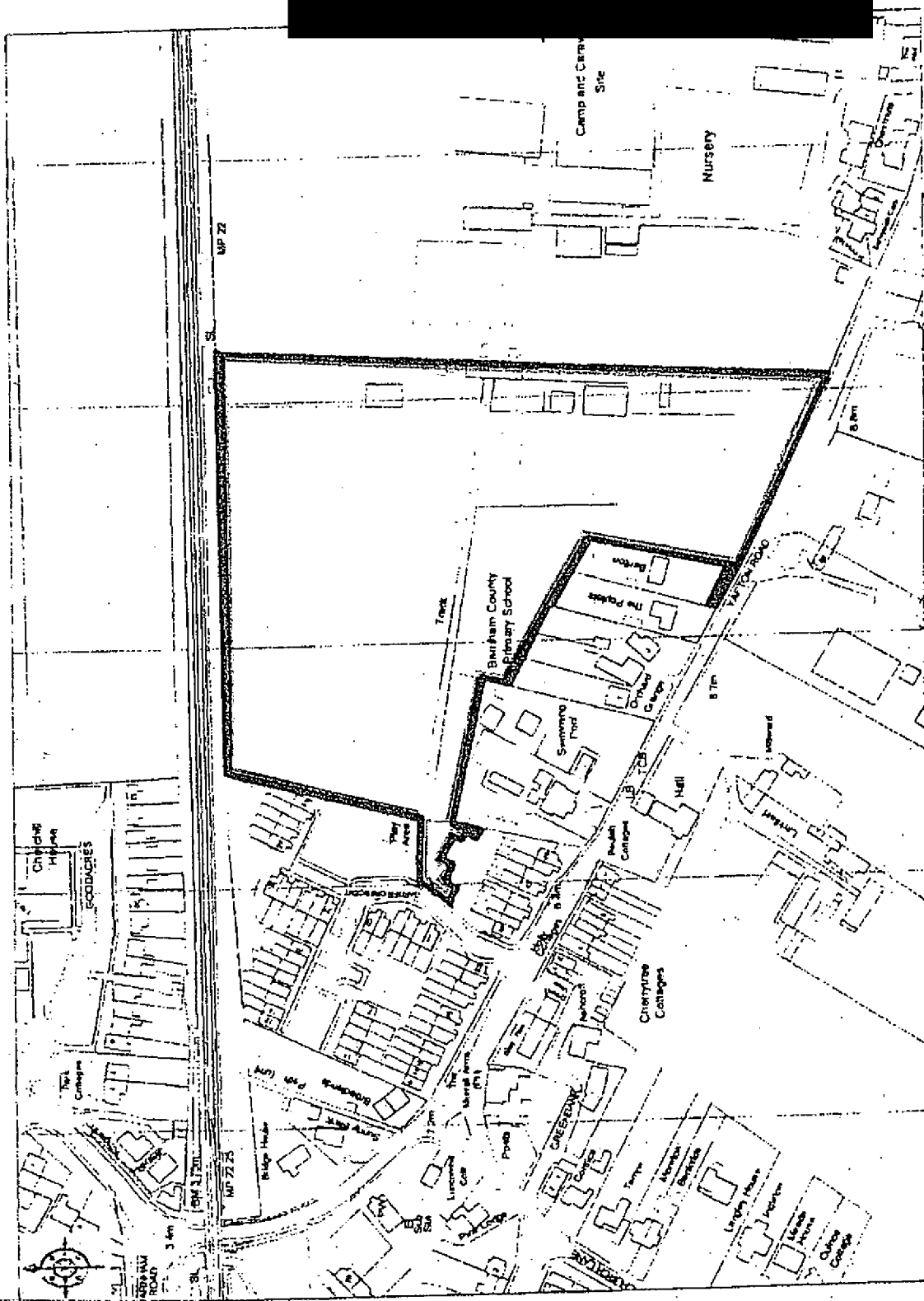
Name:

Address:

Occupation:

THE COMMON SEAL of
CROGDACE HOMES LIMITED was
hereunto affixed in the presence of:-

Director
Authorised signatory
Authorised signatory



DRG. No. : 1280/c2

[illegible]

S.106 T.C.P.A. 1990

**LAND AT THE REAR OF BARNHAM COUNTY PRIMARY SCHOOL,
BARNHAM, WEST SUSSEX**

UNILATERAL UNDERTAKINGS

**G H Goatcher, N J Adames, S M Herman & R H J V Kyrke And
Croudace Homes Limited**

TO:

Arun District Council

West Sussex County Council

Relating to:

'HIGHWAY INFRASTRUCTURE – BUS STOPS'

LPA Reference

BN 24/99

DETR Reference

APP/C3810/A/99/1029652



Dutton Gregory
Solicitors

HIGHWAY INFRASTRUCTURE PROVISION

(BUS STOPS.)

THIS PLANNING OBLIGATION BY UNDERTAKING is given this 26 January 2000
BY

- 1) Geoffrey Herbert Goatcher, Nicholas John Adames, Susan Mary Herman and Richard Henry Julian Venables Kyrke, all care of Messrs Thomas Eggar Church Adams of Sussex House, North Street, Horsham, West Sussex (hereinafter together referred to as "the Trustees") and
- 2) **CROUDACE HOMES LIMITED** whose registered office is at Croudace House, Caterham, Surrey CR3 6XQ ("the Developer")

TO

ARUN DISTRICT COUNCIL of Arun Civic Centre Maltravers Road, Littlehampton, West Sussex BN17 5LF ("The Council") the District Planning Authority and

WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (the County Council)

WHEREAS

- 1) The Council is the District Council for the district within which is situated the land shown edged red on the plan annexed hereto ("the Plan") which land ("the Land") is known as land to the rear of Barnham County Primary School, Yapton Road, Barnham, West Sussex.
- 2) The County Council is the Highway Authority for the area in which the Land is situated
- 3) The Trustees are the unencumbered freehold owners of the Land

- 4) The Developer has an interest in the land by virtue of an Option Agreement dated 18 December 1998 and made between the Trustees (1) and the Developer (2).
- 5) The Developer has by written application under reference BN 24/99 ("The Application") applied to the Council for planning permission to develop the Land for residential purposes ("The Development")
- 6) The Council has failed to determine the Application
- 7) The Developer has submitted an appeal to the Secretary of State for the Environment appeal reference APP/ C3810/A/99/1029652
- 8) The Developer is mindful of the requirements of the West Sussex Structure Plan and the Arun District Local Plan and is desirous of making the provision hereinafter contained in order to address those requirements reasonably related to the Development.
- 9) The provisions of this unilateral Undertaking are conditional upon the matters hereinafter appearing

NOW THIS DEED WITNESSES:

Interpretation

In this Deed the following expressions shall have the meanings given to them in this clause.

(a) "Affordable Housing" means Social Housing and Low Cost housing where

- i) "Social Housing" means a form of housing for people whose incomes are such that without some form of subsidy they would not be able to house themselves, and

- ii) "Low Cost Housing" means housing primarily aimed at those households who may be able to purchase or rent without subsidy, but only at the lower end of the market.
- (b) "Affordable Housing Units" means such number of units of residential accommodation within the Development as equates to 30% of those permitted to be constructed upon the Land by or consequential upon the Planning Permission of which not less than 15 shall be Social Housing (the Social Housing Units) and the remainder shall be Low Cost Housing (the Low Cost Housing Units).
- (c) 'Financial Contribution' shall mean a payment in the sum of £4000.
- (d) 'Maintenance Contribution' shall mean the sum of £3,700 being the Developer's estimate of the cost likely to be incurred by the Council of maintaining a bus shelter over a period of ten years.
- (e) "Material Operation" shall have the meaning set out in sub-sections 56 (4) (a) (b) (c) and (d) inclusive of the Town and Country Planning Act 1990 provided that the carrying out upon the Land of any archaeological work or excavations or other ground investigations or demolition, on site clearance or the erection of fences and hoardings shall not be deemed to be a Material Operation for the purposes of this Deed.
- (f) "Plan" means the plan annexed hereto
- (g) "Planning Permission" means the planning permission for the Development granted by the Secretary of State pursuant to the Appeal
- (h) "Residential Units" means the units of residential accommodation comprised in the Development together with any amenity space parking space garage or rights to use the same (whether or not in common with others) provided therewith.
- (i) "Remaining Units" means all the Residential Units save the Affordable Housing Units
- (j) "Schedule 1" means Schedule 1 annexed to this Deed.

- (k) "Secretary of State" means to the Secretary of State for the Environment Transport and the Regions for the time being or the person lawfully acting on his behalf
- (l) "Undertaking" means planning obligation by undertaking and any modification thereof approved by the Council or the Secretary of State
- (m) "1990 Act" means the Town & Country Planning Act 1990 as amended
- (n) "Trustees" and "Developer" respectively shall include their successors in title and assigns
- (o) Where the Trustees or the Developer shall consist of two or more persons all covenants by them shall be deemed to be by such persons jointly and severally
- (p) Words importing the one gender include all other genders and the words importing the singular include the plural and vice versa

Legal Effect

1. This undertaking is given by the Trustees and the Developer
2. This Undertaking is given pursuant to Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 to the intent that the covenants and undertakings herein contained on the part of the Trustees and the Developer shall bind their respective interests in the Land
3. This Undertaking is a planning obligation for the purposes of Section 106 of the 1990 Act
4. This Undertaking shall be enforceable by the Council as local planning authority

5. No person shall be liable for any breach of this Undertaking unless he or it holds an interest in the part of the Land in respect of which such breach occurs or held such interest at the date of the breach

2.6 This Undertaking is executed as a deed by the Trustees and the Developer

2.7 This Undertaking shall not take effect until

- (a) the Planning Permission has been granted; and
- (b) the Planning Permission has been implemented by the carrying out of a Material Operation ("the Implementation Date")

2.8 If the Planning Permission expires within the meaning of Sections 91 92 or 93 of the Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Trustees and the Developer this undertaking shall cease to have effect

2.9 Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop the Land or any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted by the Council or the County Council or by the Secretary of State after the date of this Undertaking

3. Covenants

Subject to the provisions of clause 2 the Trustees and the Developer hereby covenant with the Council that they will perform and observe the agreements obligations covenants restrictions and other provisions set out in this Deed and Schedule 1;

4. Amendment or discharge

This Undertaking may neither be amended nor discharged without the consent in writing of the parties

5. Expert

- 5.1 In the event of any dispute arising between the parties hereto in respect of any matter contained in this Deed the same shall be referred to an expert ("the Expert") being an independent person of at least ten (10) years standing in the area of expertise relevant to the dispute to be agreed between the parties hereto or failing agreement at the request or option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Law Society and the Expert appointed shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties and whose costs shall be in his/her award
- 5.2 The Expert shall be appointed subject to an express requirement that he/she reaches his/her decision and communicates it to the parties to the dispute within the minimum practical time scale allowing for the nature and complexity of the dispute and in any event not more than thirty (30) working days from the date of his/her appointment to act
- 5.3 The Expert shall be required to give notice to each of the said parties to the dispute inviting each of them to submit to the Expert within ten (10) working days submissions and supporting material and shall afford to the said parties an opportunity to make counter submissions and material and his decision shall be given in writing within thirty (30) working days of his/her appointment with the reasons and in the absence of any manifest error shall be binding on the said parties

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

SCHEDULE 1

AGREEMENTS OBLIGATIONS COVENANTS RESTRICTIONS AND OTHER PROVISIONS TO BE PERFORMED AND OBSERVED (Highway Infrastructure)

Prior to the occupation of the first of the Remaining Units

1. The Developer shall offer to pay the Financial Contribution to the County Council to enable it to provide and/or enhance bus stops and bus shelters in the vicinity of the Land such sum being tendered to the County Council upon condition that the County Council

- (a) shall earmark ringfence or by some other means keep the Financial Contribution separate from its other funds and
- (b) shall ensure that for such period as it or any part of it shall remain unspent it shall accrue interest or be deemed to accrue interest at a rate not less than 1.5% above Lloyds Bank Base Rate from time to time and
- (c) shall use the Financial Contribution only for the purposes for which it is tendered within 2 years of receipt

PROVIDED THAT in default thereof it or the unspent part of it shall be repaid to the Developer without deduction together with the interest accrued thereon or such sum as shall represent the interest deemed to have accrued thereon.

2. The Developer shall offer to pay the Maintenance Contribution to the Council upon condition that the Council:

- (a) shall earmark, ringfence or by some other means keep the Maintenance Contribution separate from its other funds
- (b) shall ensure that for such period as it or any part of it shall remain unspent it shall accrue interest or be deemed to accrue interest at a rate not less than 1.5% above the Lloyds Bank Base Rate from time to time and
- (c) shall use the Maintenance Contribution only for the purposes for which it is tendered within ten years of receipt.

PROVIDED THAT in default thereof it or the unspent part of it shall be repaid to the Developer without deduction together with the interest accrued thereon or such sum as shall represent the interest deemed to have accrued thereon.

3. The Developer covenants that the first of the Remaining Units shall not be occupied prior to compliance with the covenants contained in paragraphs 1 and 2.

SIGNED as a deed and **DELIVERED** by
the said **Geoffrey Herbert Goatcher**
in the presence of:-

Name: [REDACTED]

Address: [REDACTED]

Occupation. [REDACTED]

SOLICITORS
SUSSEX HOUSE
NORTH STREET
HORSHAM
WEST SUSSEX RH12 1BJ
DX 57603 HORSHAM

SIGNED as a deed and **DELIVERED** by
the said **Nicholas John Adames**
in the presence of:-

Name: [REDACTED]

Address: [REDACTED]

Occupation. [REDACTED]

SIGNED as a deed and **DELIVERED** by
the said **Susan Mary Herman**
in the presence of:-

Name: [REDACTED]

Address: [REDACTED]

Occupation. [REDACTED]

SIGNED as a deed and **DELIVERED** by
the said **Richard Henry Julian Venables Kyrke**
in the presence of:-

Name:

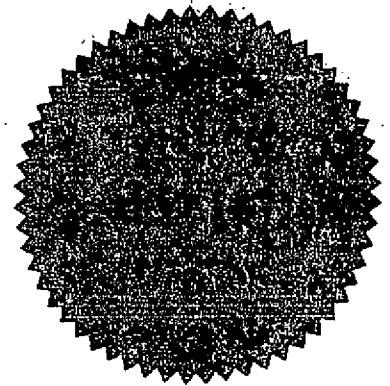
Address:

Occupation:

THE COMMON SEAL of
CROUDACE HOMES LIMITED was
hereunto affixed in the presence of:-

Authorised

Authorised



S.106 T.C.P.A. 1990

LAND AT THE REAR OF BARNHAM COUNTY PRIMARY SCHOOL,
BARNHAM, WEST SUSSEX

UNILATERAL UNDERTAKINGS

G H Goatcher, N J Adames, S M Herman & R H J V Kyrke And
Croudace Homes Limited

TO:

Arun District Council

West Sussex County Council

Relating to: *'EDUCATION PROVISION'*

LPA Reference BN 24/99

DETR Reference APP/C3810/A/99/1029652



Dutton Gregory
Solicitors

EDUCATION PROVISION

THIS PLANNING OBLIGATION BY UNDERTAKING is given this
BY

26th January 2000

- 1) Geoffrey Herbert Goatcher, Nicholas John Adames, Susan Mary Herman and Richard Henry Julian Venables Kyrke, all care of Messrs Thomas Eggar Church Adams of Sussex House, North Street, Horsham, West Sussex (hereinafter together referred to as "the Trustees") and
- 2) ~~CROUDACE HOMES LIMITED~~ whose registered office is at Croudace House, Caterham, Surrey CR3 6XQ ("the Developer")

TO

ARUN DISTRICT COUNCIL of Arun Civic Centre Maltravers Road, Littlehampton, Sussex BN17 5LF ("The Council") the District Planning Authority and

WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("the County Council")

WHEREAS

- 1) The Council is the District Council for the district within which is situated the land shown edged red on the plan annexed hereto ("the Plan") which land ("the Land") is known as land to the rear of Barnham County Primary School, Yapton Road, Barnham, West Sussex.
- 2) The County Council is the Local Education Authority for the area in which the Land is situated
- 3) The Trustees are the unencumbered freehold owners of the Land

- 4) The Developer has an interest in the land by virtue of an Option Agreement dated 18 December 1998 and made between the Trustees (1) and the Developer (2).
- 5) The Developer has by written application under reference BN 24/99 ("The Application") applied to the Council for planning permission to develop the Land for residential purposes ("The Development")
- 6) The Council has failed to determine the Application
- 7) The Developer has submitted an appeal to the Secretary of State for the Environment appeal reference APP/ C3810/A/99/1029652
- 8) The Developer is mindful of the requirements of the West Sussex Structure Plan and the Arun District Local Plan and is desirous of making the provision hereinafter contained in order to address those requirements reasonably related to the Development.
- 9) The provisions of this unilateral Undertaking are conditional upon the matters hereinafter appearing

NOW THIS DEED WITNESSES:

Interpretation

In this Deed the following expressions shall have the meanings given to them in this clause.

- (a) "Affordable Housing" means Social Housing and Low Cost housing where
 - i) "Social Housing" means a form of housing for people whose incomes are such that without some form of subsidy they would not be able to house themselves, and

- ii) "Low Cost Housing" means housing primarily aimed at those households who may be able to purchase or rent without subsidy, but only at the lower end of the market.
- (b) "Affordable Housing Units" means such number of units of residential accommodation within the Development as equates to 30% of those permitted to be constructed upon the Land by or consequential upon the Planning Permission of which not less than 15 shall be Social Housing (the Social Housing Units) and the remainder shall be Low Cost Housing (the Low Cost Housing Units).
- (d) 'Financial Contribution' shall mean a contribution to the cost of provision of primary school education facilities in the vicinity of the Land calculated in accordance with the Formula.
- (e) The 'Formula' shall mean the sum of £4913 (or such other sum as shall be estimated by the DFEE to be the cost per pupil of primary school building provision in the South East as at the date of actual payment) multiplied by 'x' where 'x' is:-
 (the number of Residential Units x 2.5 x 14 x 7) divided by 1000.
 So that assuming 84 Residential Units the Financial Contribution at the date hereof would be: £4913
- (i) multiplied by 84×2.5 (being the assumed average number of persons per dwelling) $\times 14$ (being the number of children per year of age per 1000 population) $\times 7$ (being the number of primary age year groups) = 20580 and
- (ii) divided by 1000 = 20.58
 namely £101,109
- (f) "Material Operation" shall have the meaning set out in sub-sections 56 (4) (a) (b) (c) and (d) inclusive of the Town and Country Planning Act 1990 provided that the carrying out upon the Land of any archaeological work or excavations or other ground investigations or demolition or site clearance or the erection of fences and hoardings shall not be deemed to be a Material Operation for the purposes of this Deed.
- (g) "Plan" means the plan annexed hereto

- (h) "Planning Permission" means the planning permission for the Development granted by the Secretary of State pursuant to the Appeal
- (i) "Residential Units" means the units of residential accommodation comprised in the Development together with any amenity space parking space garage or rights to use the same (whether or not in common with others) provided therewith
- (j) "Remaining Units" means all the Residential Units save the Affordable Housing Units
- (k) "Schedule 1" means Schedule 1 annexed to this Deed
- (l) "Secretary of State" means to the Secretary of State for the Environment for the time being or the person lawfully acting on his behalf
- (m) "Undertaking" means planning obligation by undertaking and any modification thereof approved by the Council or the Secretary of State
- (n) "1990 Act" means the Town & Country Planning Act 1990 as amended
- (o) "Trustees" and "Developer" respectively shall include their successors in title and assigns
- (p) Where the Trustees or the Developer shall consist of two or more persons all covenants by them shall be deemed to be by such persons jointly and severally
- (q) Words importing the one gender include all other genders and the words importing the singular include the plural and vice versa

Legal Effect

1. This undertaking is given by the Trustees and the Developer
2. This Undertaking is given pursuant to Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 to the intent that the covenants and undertakings

herein contained on the part of the Trustees and the Developer shall bind their respective interests in the Land

3. This Undertaking is a planning obligation for the purposes of Section 106 of the 1990 Act
4. This Undertaking shall be enforceable by the Council as local planning authority
5. No person shall be liable for any breach of this Undertaking unless he or it holds an interest in the part of the Land in respect of which such breach occurs or held such interest at the date of the breach

2.6 This Undertaking is executed as a deed by the Trustees and the Developer

2.7 This Undertaking shall not take effect until

- (a) the Planning Permission has been granted; and
- (b) the Planning Permission has been implemented by the carrying out of a Material Operation ("the Implementation Date")

2.8 If the Planning Permission expires within the meaning of Sections 91 92 or 93 of the Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Trustees and the Developer this undertaking shall cease to have effect

2.9 Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop the Land or any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted by the Council or the County Council or by the Secretary of State after the date of this Undertaking

3. Covenants

Subject to the provisions of clause 2 the Trustees and the Developer hereby covenant with the Council that they will perform and observe the agreements obligations

covenants restrictions and other provisions set out in this Deed and Schedule 1;

4. Amendment or Discharge

This Undertaking may neither be amended nor discharged without the consent in writing of the parties

5. Expert

5.1 In the event of any dispute arising between the parties hereto in respect of any matter contained in this Deed the same shall be referred to an expert ("the Expert") being an independent person of at least ten (10) years standing in the area of expertise relevant to the dispute to be agreed between the parties hereto or failing agreement at the request or option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Law Society and the Expert appointed shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties and whose costs shall be in his/her award

5.2 The Expert shall be appointed subject to an express requirement that he/she reaches his/her decision and communicates it to the parties to the dispute within the minimum practical time scale allowing for the nature and complexity of the dispute and in any event not more than thirty (30) working days from the date of his/her appointment to act

5.3 The Expert shall be required to give notice to each of the said parties to the dispute inviting each of them to submit to the Expert within ten (10) working days submissions and supporting material and shall afford to the said parties an opportunity to make counter submissions and material and his decision shall be given in writing within thirty (30) working days of his/her appointment with the reasons and in the absence of any manifest error shall be binding on the said parties

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

SCHEDULE 1

AGREEMENTS OBLIGATIONS COVENANTS RESTRICTIONS AND OTHER PROVISIONS TO BE PERFORMED AND OBSERVED (Education Infrastructure)

1. the Developer shall offer to pay the Financial Contribution to the County Council as to half of the said sum upon completion of the construction of not more than 50% of the Remaining Units and as to the balance thereof upon completion of the construction of the penultimate Remaining Unit upon condition that the County Council
 - (a) shall earmark ringfence or by some other means keep the Financial Contribution separate from its other funds and
 - (b) shall ensure that for such period as it or any part of it shall remain unspent it shall accrue interest or be deemed to accrue interest at a rate not less than 1.5% above Lloyds Bank Base Rate from time to time and
 - (c) shall use the Financial Contribution only for the purposes for which it is tendered within 3 years of receipt of the second tranche thereof

PROVIDED THAT in default thereof it or the unspent part of it shall be repaid to the Developer without deduction together with the interest accrued thereon or such sum as shall represent the interest deemed to have accrued thereto.

SIGNED as a deed and DELIVERED by
the said Geoffrey Herbert Goatcher
in the presence of:-

Name:

Address:

Occupation:

SOLICITORS
SUSSEX HOUSE
NORTH STREET
HORSHAM
WEST SUSSEX RH12 1BJ
DN 57000 HORSHAM

SIGNED as a deed and **DELIVERED** by
the said **Nicholas John Adames**
in the presence of:-

Name:

Address:

Occupation:

SIGNED as a deed and **DELIVERED** by
the said **Susan Mary Herman**
in the presence of:-

Name:

Address:

Occupation:

SIGNED as a deed and **DELIVERED** by
the said **Richard Henry Julian Venables Kyrke**
in the presence of:-

Name:

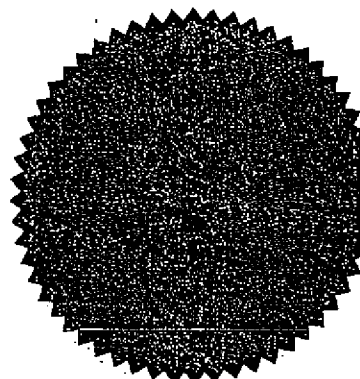
Address:

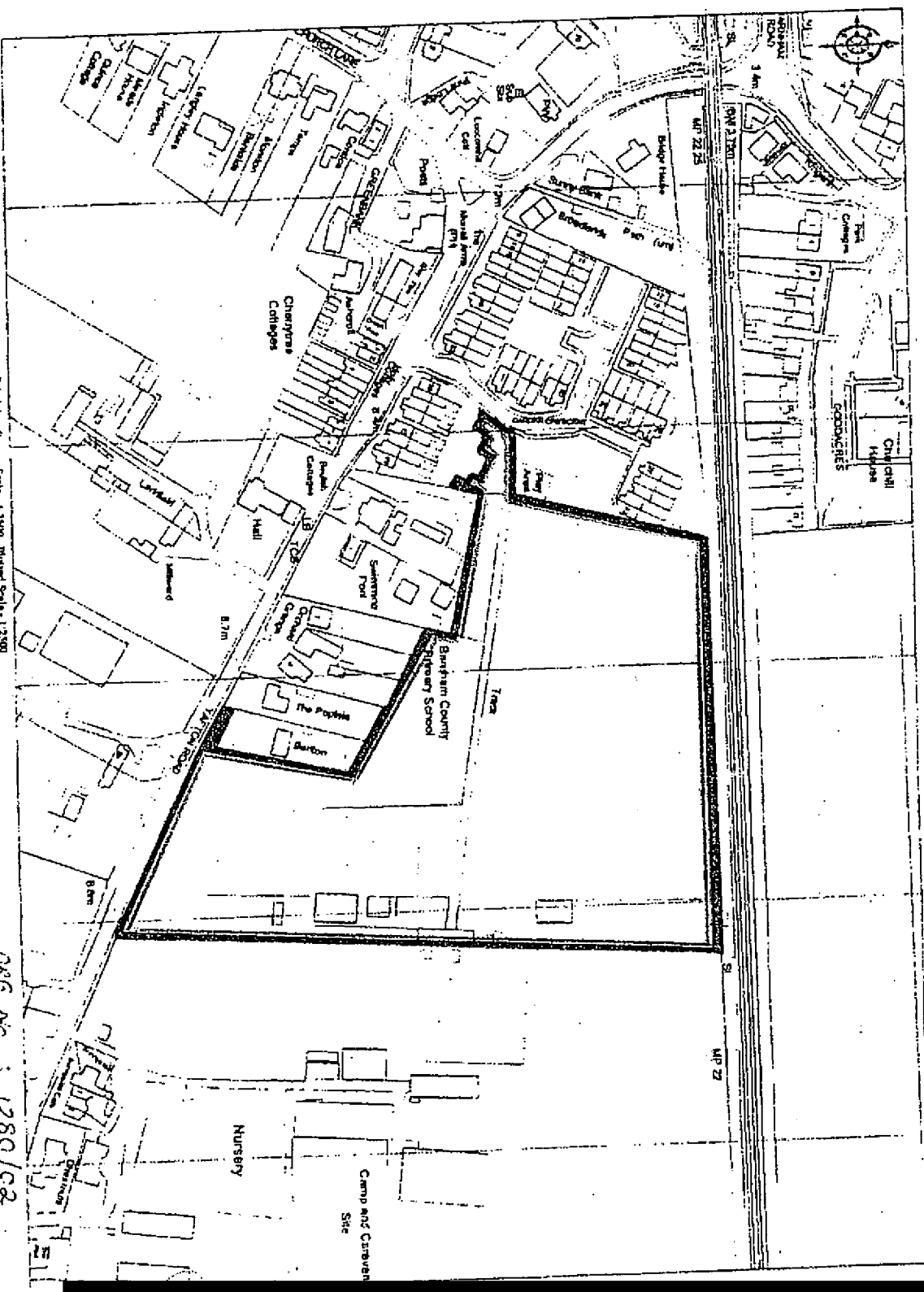
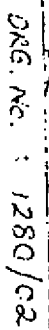
Occupation:

THE COMMON SEAL of
Arj **CROUDACE HOMES LIMITED** was
hereunto affixed in the presence of:-

Authorised sign

Authorised sign





S.106 T.C.P.A. 1990

LAND AT THE REAR OF BARNHAM COUNTY PRIMARY SCHOOL,
BARNHAM, WEST SUSSEX

UNILATERAL UNDERTAKINGS

G H Goatcher, N J Adames, S M Herman & R H J V Kyrke And
Croudace Homes Limited

TO:

Arun District Council

Relating to: *'AFFORDABLE HOUSING PROVISION'*



LPA Reference BN 24/99

DETR Reference APP/C3810/A/99/1029652



Dutton Gregory

Signature

AFFORDABLE HOUSING PROVISION

THIS PLANNING OBLIGATION BY UNDERTAKING is given this
BY

26th January 2000

- 1) **Geoffrey Herbert Goatcher, Nicholas John Adames, Susan Mary Herman and Richard Henry Julian Venables Kyrke**, all care of Messrs Thomas Eggar Church Adams of Sussex House, North Street, Horsham, West Sussex (hereinafter together referred to as "the Trustees") and
- 2) **CROUDACE HOMES LIMITED** whose registered office is at Croudace House, Caterham, Surrey CR3 6XQ ("the Developer")

TO

ARUN DISTRICT COUNCIL of Arun Civic Centre Maltravers Road, Littlehampton, West Sussex BN17 5LF ("The Council") the District Planning Authority

WHEREAS

- 1) The Council is the District Council for the district within which is situated the land shown edged red on the plan annexed hereto ("the Plan") which land ("the Land") is known as land to the rear of Barnham County Primary School, Yapton Road, Barnham, West Sussex.
- 2) The Trustees are the unencumbered freehold owners of the Land.
- 3) The Developer has an interest in the Land by virtue of an Option Agreement dated 18 December 1998 and made between the Trustees (1) and the Developer (2).
- 4) The Developer has by written application under reference BN 24/99 ("The Application") applied to the Council for planning permission to develop the Land for residential purposes ("The Development")

- 5) The Council has failed to determine the Application
- 6) The Developer has submitted an appeal to the Secretary of State for the Environment appeal reference APP/C3810/A/99/102 9652
- 7) The provisions of this unilateral Undertaking are conditional upon the matters hereinafter appearing

NOW THIS DEED WITNESSES:

Interpretation

In this Deed the following expressions shall have the meanings given to them in this clause.

- (a) "Affordable Housing" means social housing and low cost housing where
 - i) "Social Housing" means a form of housing for people whose incomes are such that without some form of subsidy they would not be able to house themselves, and
 - ii) "Low Cost Housing" means housing primarily aimed at those households who may be able to purchase or rent without subsidy, but only at the lower end of the market.
- (b) "Affordable Housing Units" means such number of units of residential accommodation within the Development as equates to 30% of those permitted to be constructed upon the Land by or consequential upon the Planning Permission of which not less than 15 shall be Social Housing (the Social Housing Units) and the remainder shall be Low Cost Housing (the Low Cost Housing Units).
- (c) "Affordable Housing Land" shall mean the land upon which the Affordable Housing Units shall be constructed.

- (d) "Social Housing Land" shall mean that part of the Affordable Housing Land upon which the Social Housing Units are to be constructed.
- (e) "Material Operation" shall have the meaning set out in sub-sections 56 (4) (a) (b) (c) and (d) inclusive of the Town and Country Planning Act 1990 provided that the carrying out upon the Land of any archaeological work or excavations or other ground investigations or demolition or site clearance or the erection of fences and hoardings shall not be deemed to be a Material Operation for the purposes of this Deed.
- (f) "Plan" means the plan annexed hereto
- (g) "Planning Permission" means the planning permission for the Development granted by the Secretary of State pursuant to the Appeal
- (h) "Residential Units" means the units of residential accommodation comprised in the Development together with any amenity space parking space garage or rights to use the same (whether or not in common with others) provided therewith
- (i) "Remaining Units" means all the Residential Units save the Affordable Housing Units
- (j) "Schedule 1" means Schedule 1 annexed to this Deed
- (k) "Secretary of State" means to the Secretary of State for the Environment Transport and the Regions for the time being or the person lawfully acting on his behalf
- (l) "Social Housing Provider" means a body registered with the Housing Corporation under the provisions of Part 1 of the Housing Act 1996 or a Housing Association within the meaning of Part 1 of the Housing Associations Act 1985
- (m) "Undertaking" means planning obligation by undertaking and any modification thereof approved by the Council or the Secretary of State
- (n) "1990 Act" means the Town & Country Planning Act 1990 as amended

- (o) "Trustees" and "Developer" respectively shall include their successors in title and assigns
- (p) Where the Trustees or the Developer shall consist of two or more persons all covenants by them shall be deemed to be by such persons jointly and severally
- (q) Words importing the one gender include all other genders and the words importing the singular include the plural and vice versa

Legal Effect

1. This undertaking is given by the Trustees and the Developer
2. This Undertaking is given pursuant to Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 to the intent that the covenants and undertakings herein contained on the part of the Trustees and the Developer shall bind their respective interests in the Land
3. This Undertaking is a planning obligation for the purposes of Section 106 of the 1990 Act
4. This Undertaking shall be enforceable by the Council as local planning authority
5. No person shall be liable for any breach of this Undertaking unless he or it holds an interest in the part of the Land in respect of which such breach occurs or held such interest at the date of the breach
- 2.6 This Undertaking is executed as a deed by the Trustees and the Developer
- 2.7 This Undertaking shall not take effect until
 - (a) the Planning Permission has been granted; and
 - (b) the Planning Permission has been implemented by the carrying out of a Material Operation ("the Implementation Date")

2.8 If the Planning Permission expires within the meaning of Sections 91 92 or 93 of the Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Trustees and the Developer this undertaking shall cease to have effect

2.9 Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop the Land or any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted by the Council or the County Council or by the Secretary of State after the date of this Undertaking

3. Covenants

Subject to the provisions of clause 2 the Trustees and the Developer hereby covenant with the Council that they will perform and observe the agreements obligations covenants restrictions and other provisions set out in this Deed and Schedule 1;

4. Amendment or discharge

This Undertaking may neither be amended nor discharged without the consent in writing of the parties

5. Expert

5.1 In the event of any dispute arising between the parties hereto in respect of any matter contained in this Deed the same shall be referred to an expert ("the Expert") being an independent person of at least ten (10) years standing in the area of expertise relevant to the dispute to be agreed between the parties hereto or failing agreement at the request or option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Law Society and the Expert appointed shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties and whose costs shall be in his/her award

- 5.2 The Expert shall be appointed subject to an express requirement that he/she reaches his/her decision and communicates it to the parties to the dispute within the minimum practical time scale allowing for the nature and complexity of the dispute and in any event not more than thirty (30) working days from the date of his/her appointment to act
- 5.3 The Expert shall be required to give notice to each of the said parties to the dispute inviting each of them to submit to the Expert within ten (10) working days submissions and supporting material and shall afford to the said parties an opportunity to make counter submissions and material and his decision shall be given in writing within thirty (30) working days of his/her appointment with the reasons and in the absence of any manifest error shall be binding on the said parties

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

SCHEDULE 1

AGREEMENTS OBLIGATIONS COVENANTS RESTRICTIONS AND OTHER PROVISIONS TO BE PERFORMED AND OBSERVED (AFFORDABLE HOUSING)

1. To the extent that it has not already done so before the Implementation Date the Developer shall submit to the Council as soon as practicable thereafter details of the Developer's proposals in relation to provision of Affordable Housing Units on the Affordable Housing Land (which may be schemes involving low rent shared equity multi-tenure properties or other such schemes as the Developer considers will satisfy the Council's requirements) including but not by way of limitation identifying the preferred Social Housing Provider to whom the Developer proposes to dispose of the Social Housing Land and the Developer's proposals to seek to ensure the construction of the Affordable Housing Units and their utilisation and retention as Affordable Housing (subject to any tenant or occupier acquiring any such units under the statutory right to buy under the Housing Act 1985 or any statute or legislation

replacing or amending or supplementing the same) and to obtain the Council's approval thereof such approval not to be unreasonably withheld or delayed

2. The Developer may submit more than one proposal in relation to the provision of Affordable Housing Units including as an alternative to the provision of the Social Housing on the Land to provide a financial contribution, in such sum and to such body as shall be agreed with the Council, towards the provision of Social Housing other than on the Land

3. The Developer covenants that prior to the occupation of the penultimate Remaining Unit on the Land the Low Cost Housing Units shall have been constructed and completed ready for occupation and EITHER

3.1 The Developer has entered into an agreement with the Social Housing Provider for (a) the construction by the Developer of the Social Housing Units on the Social Housing Land which contract provides for the construction and completion of the Social Housing Units and (b) the transfer of the Social Housing Land to the Social Housing Provider,

OR

3.2 The Developer has transferred the freehold interest in the Social Housing Land to a Social Housing Provider having

(a) imposed a covenant in the transfer that the Social Housing Provider complies with the obligations in this Agreement to construct and complete the Social Housing Units
and

(b) retained an Option in the transfer to take back the Social Housing Land in the event that the Social Housing Units have not been constructed and are not ready for occupation after three (3) years from the date thereof

OR

3.3 The financial contribution has been made in the manner agreed with the Council in accordance with paragraphs 1 and 2 hereof.

4. In the event that the Developer exercises the option referred to at paragraph 3.2(b) the Developer shall construct and complete the same number of Low Cost Housing Units on the Social Housing Land as shall have been approved by the Council for occupation as Social Housing Units in accordance herewith
5. The Developer covenants to implement the proposals approved by the Council in accordance with paragraph 1 for the utilisation of the Affordable Housing Units as Affordable Housing.

SIGNED as a deed and **DELIVERED** by
the said **Geoffrey Herbert Goatcher**
in the presence of:-

Name:

Address:

Occupation:

WILLIAMSEX RH12 1BJ
OX 57G03 HORSHAM

SIGNED as a deed and **DELIVERED** by
the said **Nicholas John Adames**
in the presence of:-

Name:

Address:

Occupation:

SIGNED as a deed and **DELIVERED** by
the said **Susan Mary Herman**
in the presence of:-

Name:

Address:

Occupation:

SIGNED as a deed and **DELIVERED** by
the said **Richard Henry Julian Venables Kyrke**
in the presence of:-

Name:

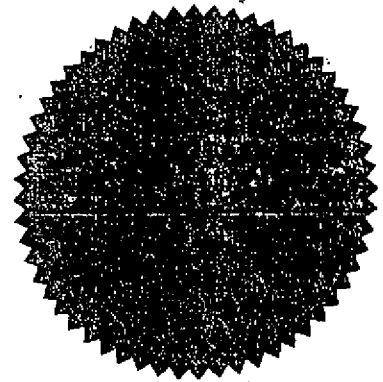
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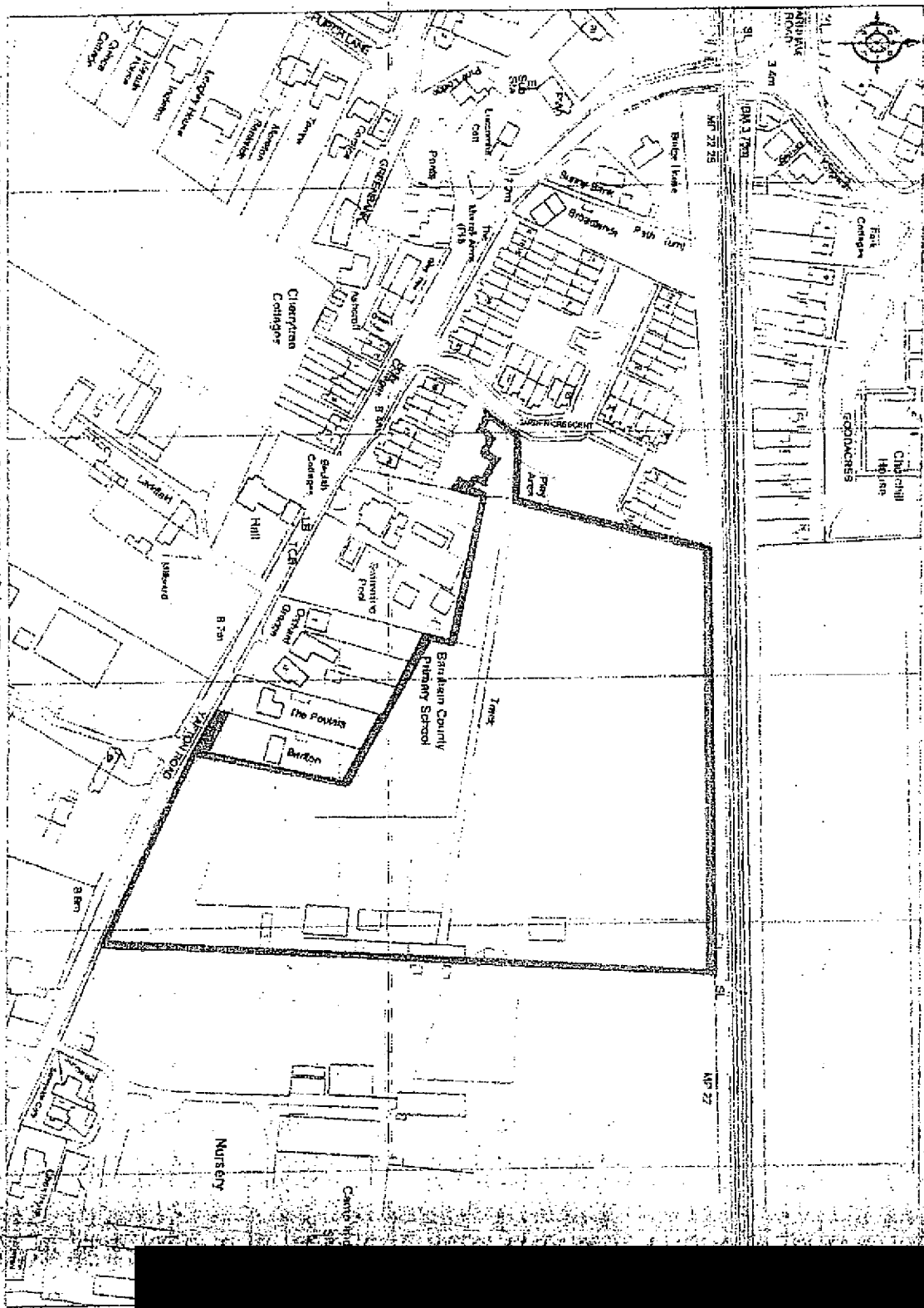
Occupation:

THE COMMON SEAL of
CROUDACE HOMES LIMITED was
hereunto affixed in the presence of:-

Director
Authorised signatory.

Authorised signatory.





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