

DATED THIS 26 DAY OF November 2020

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) REDROW HOMES LIMITED

DEED OF VARIATION UNDER
SECTIONS 106 AND 106A OF THE
TOWN AND COUNTRY PLANNING
ACT 1990

Relating to land known as Angels Nursery, on South West side of Yapton Road,
Barnham, West Sussex

Planning Ref: BN/84/20/PL

(Cross referenced to BN/42/16/PL and BN/93/19/PL)

Arun District Council
The Civic Centre
Maltravers Road
LITTLEHAMPTON
BN17 5LF
DX57406 LITTLEHAMPTON

Ref: CMS8196

Date: 26 November.

2020

PARTIES:

- 1 **ARUN DISTRICT COUNCIL** of The Civic Centre, Maltravers Road,
LITTLEHAMPTON BN17 5LF ("the Council")
- 2 **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street,
Chichester, PO19 1RQ ("the County Council")
- 3 **REDROW HOMES LIMITED (Registered No. 01990710)** of Redrow House,
St David's Park, Ewloe, Flintshire CH5 3RX ("the Owner")

WHEREAS

1. The Council is the Local Planning Authority, the Local Housing Authority and the Local Authority responsible for Leisure and Open Spaces for the area in which the Land is situated
2. The County Council is a county planning authority and the highway authority, the education authority and the authority responsible for the provision of libraries and fire and rescue services
3. The County Council transferred the Land to the Owner on 4 February 2020 and the Owner is registered as freehold owner of the Land at HM Land Registry and allocated title number WSX415865 (formerly comprised in title number WSX259090).
4. On 22 September 2017 the Council and the County Council, as owner and local planning authority entered into the First Deed of Variation of the Unilateral Undertaking under section 106 and section 106A of the Act in respect of Application BN/43/16/PL.
5. On 7 March 2019 the Council and County Council as owner and local planning authority entered into the Second Supplemental Deed of Variation of the Unilateral Undertaking under section 106 and 106A of the Act in respect of Application BN/42/18/PL.

6. On 26 February 2020 the Council, County Council and Owner entered into the Third Supplemental Deed of Variation of the Unilateral Undertaking under section 106 and section 106A of the Act in respect of Application BN/93/19/PL.
7. The Owner has now applied to the Council under section 73 of the Act to vary Condition 2 of Planning Permission BN/93/19/PL and the Council has resolved to grant the Third Section 73 Permission subject to the prior completion of this Deed.
8. The Owner has also applied for planning permission under planning application reference BN/97/20/PL for the construction of 3 No. units to be used as show home and marketing suite, creation of 8 parking spaces and associated landscaping.
9. The Owner has also applied to vary the Unilateral Undertaking (as varied by the First Deed of Variation, the Second Supplemental Deed of Variation and Third Supplemental Deed of Variation) in accordance with clause 4.3.
10. The Owner has agreed that following the grant of the Third Section 73 Permission it is liable to pay CIL to the Council in accordance with the CIL Charging Schedule. Liability to pay CIL only applies in respect of an increase in the gross internal area of the Development resulting from the grant of the Third Section 73 Permission from 8,571.1 square metres in the Second Section 73 Permission to 10,149.9 square metres in the Third Section 73 Permission.
11. The Council agrees to co-operate with the Owner in respect of any steps that need to be taken to claim Social Housing Relief pursuant to Regulation 49 of the CIL Regulations 2010 arising as a result of the grant of the Third Section 73 Permission on the basis that 30% of the liability for CIL referred to in Recital 10 above qualifies for Social Housing Relief.

12. This Agreement is made as a Deed

NOW THIS DEED WITNESSETH as follows:

1. Interpretation

- 1.1 In this Deed unless otherwise stated the following expressions shall where the context so admits have the following meanings:

"Act"	means the Town and Country Planning Act 1990 as amended
"First Deed of Variation"	means the agreement entered into by (1) Arun District Council and (2) West Sussex County Council and (3) West Sussex County Council on 22 September 2017
"Land"	means the land known as Angels Nursery, Yapton Road, Barnham, West Sussex, PO22 0AY shown for identification purposes only edged red on the Plan
"Parties"	means the Council, the County Council and the Owner
"Plan"	means the plan attached to this Deed as Appendix 1
"Planning Permission"	means the planning permission issued on 3 May 2017 for the development of the Land under planning reference BN/43/16/PL
"Second Supplemental Deed of Variation"	means the agreement entered into by (1) Arun District Council (2) West Sussex County Council and (3) West Sussex County Council on 7 March 2019
"Second Section 73 Application"	means the application registered by the Council under reference BN/93/19/PL to continue use without compliance with condition 18 of the Planning Permission relating to the development not being occupied until the access and associated off-site highway works have been constructed in accordance with the plans so as to allow development to be brought forward in two phases
"Second Section 73 Permission"	means the planning permission issued on 4 March 2020 referenced BN/93/19/PL granted pursuant to the Second Section 73 Application following completion of the Third Supplemental Deed of Variation
"Section 73 Application"	means the application registered by the Council under reference BN/42/18/PL to vary condition 2 of the Planning Permission

"Section 73 Permission"	means the planning permission issued on 31 January 2019 referenced BN/42/18/PL granted pursuant to the Section 73 Application following completion of the Second Supplemental Deed of Variation
"Third Supplemental Deed of Variation"	means the agreement entered into by (1) Arun District Council and (2) West Sussex County Council and (3) Redrow Homes Limited on 26 February 2020
"Third Section 73 Application"	means the application registered by the Council under reference BN/84/20/PL for the variation of condition 2 (approved plans) imposed on planning permission BN/93/19/PL for the development of 95 dwellings and consequential changes to other conditions following commencement of development
"Third Section 73 Permission"	means the planning permission referenced BN/84/20/PL granted pursuant to the Third Section 73 Application following completion of this Deed
"Unilateral Undertaking"	means the Unilateral Undertaking given by the County Council in favour of the Council and County Council in connection with the Planning Permission on 12 April 2017

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Section 106 Agreement shall have the same meaning in this Deed.
- 1.3 Clause headings shall not affect the interpretation of this Deed.
- 1.4 A "**person**" includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5 A reference to a "**company**" shall include any company, corporation or other body corporate, where and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.

- 1.8 A reference to any party shall include that party's representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.9 Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to "**writing**" and "**written**" does not include fax or email.
- 1.12 Any words following the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. Legal Basis

- 2.1 This Deed is made under Section 106 and 106A of the Act and its purpose is to further vary the Unilateral Undertaking (as varied by the First Deed of Variation, the Second Supplemental Deed of Variation and Third Supplemental Deed of Variation) with the intention that the planning obligations contained in the Unilateral Undertaking (as varied by the First Deed of Variation, the Second Supplemental Deed of Variation and Third Supplemental Deed of Variation) shall also apply to development to be undertaken in accordance with the Third Section 73 Permission save for any variations contained within this Deed .
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations under Section 106 and Section 106A of the Act and are enforceable by the Council and County Council (as appropriate) in accordance with Section 106 of the Act as local planning authorities against the Owner.
- 2.3 The planning obligations contained in this Deed shall bind the Land.

3. Variation of the Unilateral Undertaking

The Parties agree that the Unilateral Undertaking (as varied by the First Deed of Variation, the Second Supplemental Deed of Variation and the Third Supplemental Deed of Variation) shall be varied as follows:

4.1 The following new definitions shall be included in the Unilateral Undertaking (as varied by the First Deed of Variation and Second Supplemental Deed of Variation and Third Supplemental Deed of Variation):

4.1.1 *"CIL" means the Community Infrastructure Levy*

4.1.2 *"CIL Charging Schedule" means the Charging Schedule adopted by the Council in April 2020 in accordance with the CIL Regulations"*

4.1.2 *"CIL Regulations" means the Community Infrastructure Regulations 2010 (as amended)*

4.1.3 *"Third Section 73 Application" means the application registered by the Council under reference BN/84/20/PL for variation of condition 2 (approved plans) imposed on planning permission BN/93/19/PL for the development of 95 dwellings and consequential changes to other conditions following commencement of development"*

4.1.2 *"Third Section 73 Permission" means the planning permission granted pursuant to the Third Section 73 Application following completion of this Deed"*

4.2 The definition of "Planning Permission" in the Unilateral Undertaking (as varied by the First Deed of Variation and the Second Supplemental Deed of Variation and the Third Supplemental Deed of Variation) shall be deleted and replaced with:

"Planning Permission" means the planning permission granted by the Council pursuant to the Application, the Section 73 Application, the Second Section 73 Application, the Third Section 73 Application or under planning application BR/97/20/PL"

4.3 The definition of "Affordable Housing Units" in the Unilateral Undertaking (as varied by the First Deed of Variation and the Second Supplemental Deed of Variation and the Third Supplemental Deed of Variation) shall be deleted and replaced with:

"Affordable Housing Units" means twenty eight (28) of the Dwelling Units to be provided as Affordable Housing with a tenure split of:

- *Affordable Rented Dwellings – 14 (50%) being:*
 - *5 x 1 bedroom flats and*
 - *9 x 2 bedroom flats and*
- *Intermediate Affordable Housing – 14 (50%) being:*
 - *3 x 1 bedroom flats and*
 - *11 x 2 bedroom houses"*

4.4 A following new clause [12.4] shall be included in the Unilateral Undertaking as follows

"12.4 CIL applies in respect of the increase in the gross internal area of the Development as a consequence of the grant of the Third Section 73 Permission from 8,571.1 square metres authorised by the Second Section 73 Permission to 10,149.9 square metres authorised by the Third Section 73 Permission and Social Housing Relief applies to this increase".

5. Continuation of the terms of the Unilateral Undertaking

The Parties agree that with effect from the date of this Deed the Unilateral Undertaking (as varied by the First Deed of Variation and Second Supplemental Deed of Variation and Third Supplemental Deed of Variation) shall be construed as having been amended by the terms of this Deed but otherwise the terms of the Unilateral Undertaking (as varied by the First Deed of Variation and Second Supplemental Deed of Variation and Third Supplemental Deed of Variation) shall continue in full force and effect.

6. Costs

- 6.1 The Owner covenants with the Council prior to the completion of this Deed to pay to the Council the Council's reasonable legal costs and disbursements in connection with this Deed.
- 6.2 The Owner covenants with the County Council prior to the completion of this Deed to pay to the County Council the County Council's reasonable legal costs and disbursements in connection with this Deed.

7. Miscellaneous

- 7.1 Unless expressly stated to the contrary, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person or persons other than the Parties shall have any rights under it nor shall it be enforceable by any person other than the Parties.
- 7.2 Upon completion this Deed shall be registered as a Local Land Charge by the Council.

8. Governing Law and Jurisdiction

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the jurisdiction of the courts of England.

Appendix 1
Plan

This Agreement is executed as a deed by the parties and is delivered and takes effect on the date at the beginning hereof:

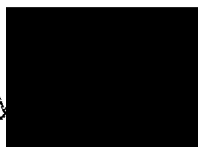
THE COMMON SEAL of ARUN)

DISTRICT COUNCIL)

was affixed to this deed in the)

presence of:)

Authorised Signatory

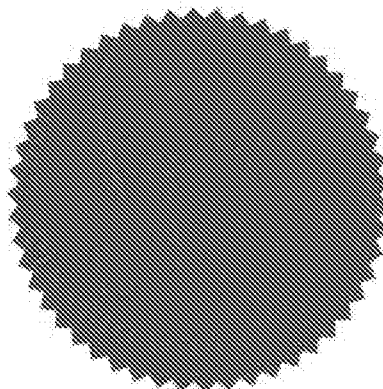


Name



Seal Book No.

189/2020



189/2020

THE COMMON SEAL of)

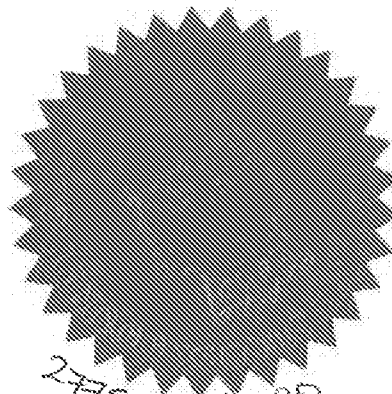
WEST SUSSEX COUNTY COUNCIL)

was affixed to this deed in the presence of:)

Authorised Signatory:



Seal Book No: }



2752/34/2020

Name (in BLOCK CAPITALS)

Address

.....

.....

EXECUTED as a **DEED** by

nd

as attorneys for

REDROW HOMES LIMITED

as attorney for

REDROW HOMES LIMITED

as attorney for

REDROW HOMES LIMITED

in the presence of:

Signature of witness

Name (in BLOCK CAPITALS)

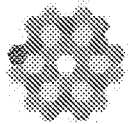
Address ..Unit one..Faraday...office...Park

...Basingstoke

...RG24 3QB

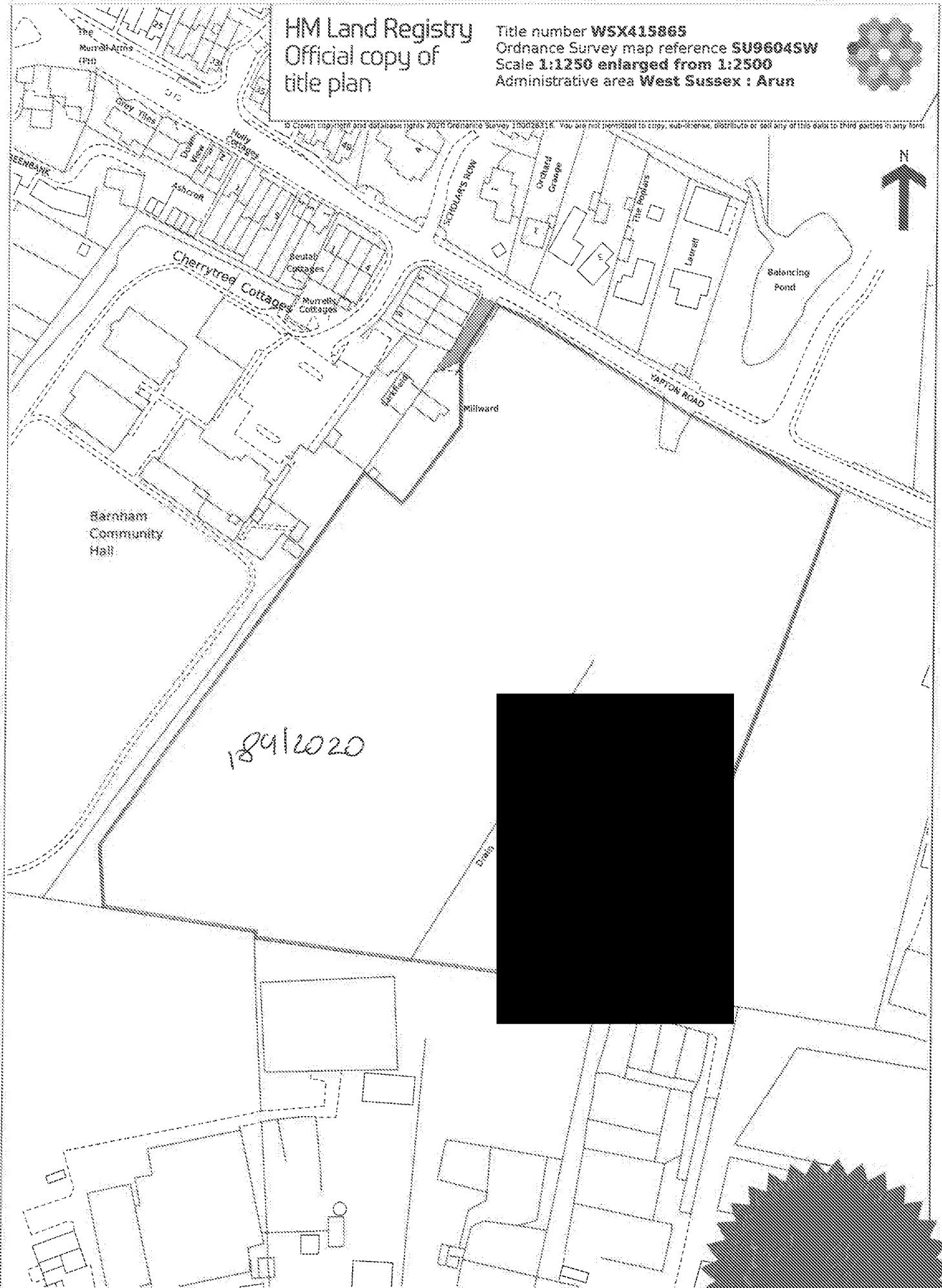
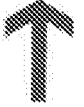
HM Land Registry
Official copy of
title plan

Title number **WSX415865**
Ordnance Survey map reference **SU9604SW**
Scale **1:1250 enlarged from 1:2500**
Administrative area **West Sussex : Arun**



© Crown copyright and database rights 2020 Ordnance Survey 100028816. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.

N



18/9/2020

27/5/2020

