

DATED THIS *26<sup>th</sup>* DAY OF *February* 2020

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

DEED OF VARIATION UNDER  
SECTION 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  
BN/93/19/PL  
(Cross referenced to BN/43/16/PL)

Arun District Council  
Maltravers Road  
Littlehampton  
West Sussex  
BN17 5LF  
DX 57406 LITTLEHAMPTON  
CMS7510

Date:

*26 February*

*2020*

**PARTIES:**

1. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("the Council")
2. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, CHICHESTER, West Sussex 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 [30 January 2020] and the Owner is entitled to be registered as freehold owner of the Land at HM Land Registry formerly comprised in title number WSX259090 and allocated title number WSX[ ] (application pending)
4. On 12<sup>th</sup> April 2017 the County Council as owner entered into a Unilateral Undertaking under Section 106 of the Act in favour of the Council and the County Council, as local planning authorities, in connection with planning application reference BN/43/16/PL and subsequent to the completion of the Unilateral Undertaking the Council issued the Planning Permission.
5. On 22<sup>nd</sup> 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
6. On 7<sup>th</sup> March 2019 the Council and the County Council as Owner and local planning authority entered into the Second Supplemental Deed of Variation of the Unilateral Undertaking under section 106 and section 106A of the Act in respect of Application BN/42/18/PL
7. The Owner has now applied to the Council under section 73 of the Act to vary Condition 18 of the Planning Permission and the Council has resolved to grant the Second Section 73 Permission subject to the prior completion of this Deed

8. This Agreement is made as a Deed

NOW THIS DEED WITNESSETH as follows:

**1. Interpretation**

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

|                                                |                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Act"</b>                                   | means the Town and Country Planning Act 1990 as amended                                                                                                                                                                                                                                                                                                                              |
| <b>"First Deed of Variation"</b>               | means the agreement entered into by (1) Arun District Council and (2) West Sussex County Council and (3) West Sussex County Council on 22 <sup>nd</sup> September 2017.                                                                                                                                                                                                              |
| <b>"Land"</b>                                  | means the land known as Angels Nursery, Yapton Road, Barnham, West Sussex, PO22 0AY shown for identification purposes only edged red on the Plan                                                                                                                                                                                                                                     |
| <b>"Parties"</b>                               | means the Council, the County Council and the Owner                                                                                                                                                                                                                                                                                                                                  |
| <b>"Plan"</b>                                  | means the plan attached to this Deed as Appendix 1.                                                                                                                                                                                                                                                                                                                                  |
| <b>"Planning Permission"</b>                   | means the planning permission issued on 3 <sup>rd</sup> May 2017 for the development of the Land under planning reference BN/43/16/PL                                                                                                                                                                                                                                                |
| <b>"Second Supplemental Deed of Variation"</b> | means the agreement entered into by (1) Arun District Council (2) West Sussex County Council and (3) West Sussex County Council on 7 <sup>th</sup> March 2019.                                                                                                                                                                                                                       |
| <b>"Second Section 73 Application"</b>         | 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. |

|                                       |                                                                                                                                                                                                  |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Second Section 73 Permission”</b> | means the planning permission referenced BN/93/19/PL granted pursuant to the Second Section 73 Application following completion of this Deed.                                                    |
| <b>“Section 73 Application”</b>       | means the application registered by the Council under reference BN/42/18/PL to vary condition 2 of the Planning Permission                                                                       |
| <b>“Section 73 Permission”</b>        | 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. |
| <b>“Unilateral Undertaking”</b>       | means the Unilateral Undertaking given by the County Council in favour of the Council and the County Council in connection with the Planning Permission on 12 April 2017.                        |

## **2. INTERPRETATION**

- 2.1 Clause headings shall not affect the interpretation of this Deed.
- 2.2 A **“person”** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 2.3 A reference to a **“company”** shall include any company, corporation or other body corporate, where and however incorporated or established.
- 2.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 2.5 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
- 2.6 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.
- 2.7 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.

- 2.8 Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.9 A reference to “**writing**” and “**written**” does not include fax or email.
- 2.10 References to clauses and Schedules are to the clauses and schedules of this deed
- 2.11 An obligation on a party not to do something includes an obligation not to allow that thing to be done
- 2.12 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.
- 2.13 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.

### **3. LEGAL BASIS**

- 3.1 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 and Second Supplemental Deed of Variation) with the intention that the planning obligations contained in the Unilateral Undertaking (as varied by the First Deed of Variation and Second Supplemental Deed of Variation) shall also apply to development to be undertaken in accordance with the Second Section 73 Permission save for any variations contained within this Deed
- 3.2 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.
- 3.3 The planning obligations contained in this Deed shall bind the Land.

### **4 COMMENCEMENT**

This Deed shall come into effect on the date of issue of the Second Section 73 Permission.

### **5. VARIATION OF THE UNILATERAL UNDERTAKING**

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

- 5.1 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):

5.1.1 *"Second Section 73 Application" means the application registered by the Council under reference BN/93/19/PL for continuance of use without compliance with condition 18 following the grant of planning permission BN/43/16/PL relating to 'the development, hereby permitted, shall not be occupied until the access and associated off-site highway works have been constructed in accordance with plans and details (including recommendations of any associated Road Safety Audits) to be submitted to and approved by the LPA after consultation with the Local Highway Authority'*

5.1.2 *"Second Section 73 Permission" means the planning permission granted pursuant to the Section 73 Application following completion of this Deed.*

- 5.2 The definition of "Development" in the Unilateral Undertaking (as varied by the First Deed of Variation and the Second Supplemental Deed of Variation) shall be deleted and replaced with:

*"Development" means the development of the Land for residential development comprising up to 95 dwellings (with up to 30% Affordable Housing) pursuant to the Application or permitted by the Planning Permission the Section 73 Permission or by the Second Section 73 Permission.*

- 5.3 The definition of "Planning Permission" in the Unilateral Undertaking (as varied by the First Deed of Variation and the Second 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, or the Second Section 73 Application."*

## **6 CONTINUATION OF THE TERMS OF THE UNILATERAL UNDERAKING**

The Parties agree that with effect from the date on which the Second Section 73 Permission is granted the Unilateral Undertaking (as varied by the First Deed of Variation and the Second 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 the Second Supplemental Deed of Variation) shall continue in full force and effect

## **7 COSTS**

- 7.1 The Owner covenants with the Council to pay prior to the issue of the Second Section 73 Permission the sum of £500.00 being the Council's reasonable legal costs and disbursements in connection with this Deed.
- 7.2 The Owner covenants with the County Council to pay prior to the issue of the Second Section 73 Permission the County Council's reasonable legal costs and disbursements in connection with this Deed.

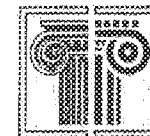
## **8 MISCELLANEOUS**

- 8.1 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.
- 8.2 Upon completion this Deed shall be registered as a Local Land Charge by the Council.

## **9 GOVERNING LAW AND JURISDICTION**

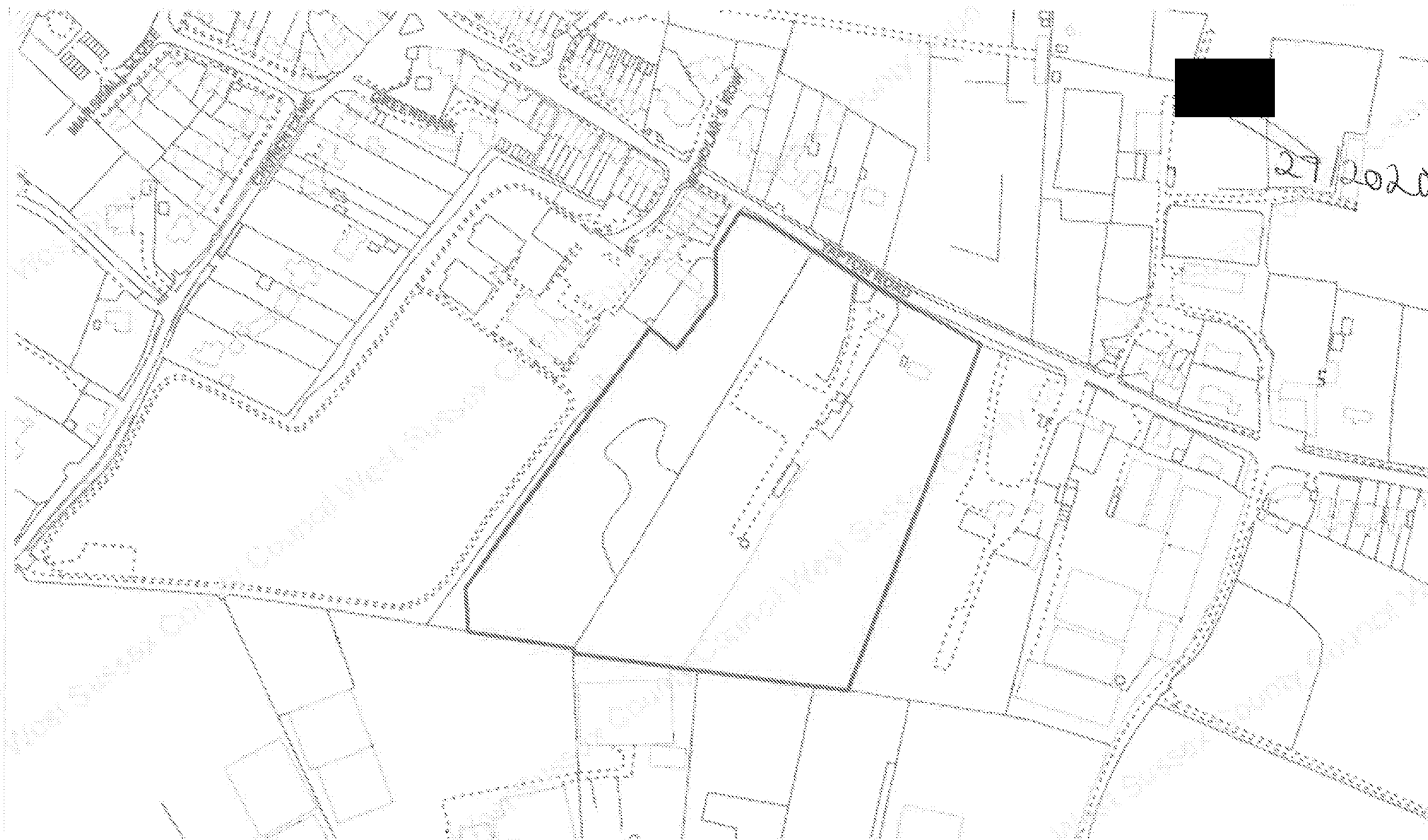
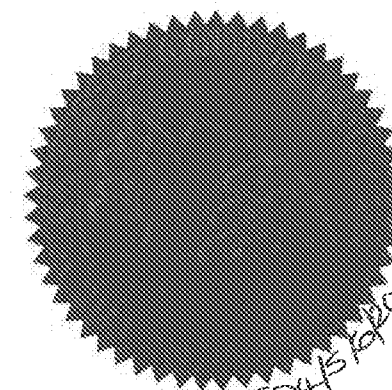
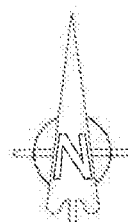
This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the jurisdiction of the courts of England.

## APPENDIX 1 PLAN



Maize House  
Southgate Street  
Wincchester  
Hampshire  
SO12 2ER

Tel: 01962 856180  
Fax: 01962 877752  
Email: mail@huwthomas-architects.co.uk



## Location Plan

OS Licence number - 100012422

metres (1:2500)

0 10 20 30 40 50

THIS DRAWING IS THE COPYRIGHT OF HUW THOMAS ASSOCIATES AND MAY NOT BE COPIED, ALTERED, OR REPRODUCED IN ANY WAY OR PASSED TO A THIRD PARTY WITHOUT THEIR WRITTEN AUTHORITY. ALL DIMENSIONS TO BE CHECKED ON SITE BEFORE COMMENCING WORK.  
ANY DISCREPANCIES SHOULD BE REPORTED TO THE PROJECT ARCHITECT IMMEDIATELY

## PLAN

REVISIONS

**JOB: Angel's Nursery, Barnham**

FOR: West Sussex County Council

TITLE:  
**Location Plan**

SCALE:  
**1:2500 @ A3**

DATE:  
**AUGUST 2016**

DRAWING NO:  
**2124/00**

REV:  
-



This Agreement is executed as a deed by the parties and is delivered and takes effect on the date at the beginning of the agreement.

THE COMMON SEAL of ARUN  
DISTRICT COUNCIL  
was affixed to this deed in the  
presence of:

)  
)  
)  
)



Authorised Signatory:

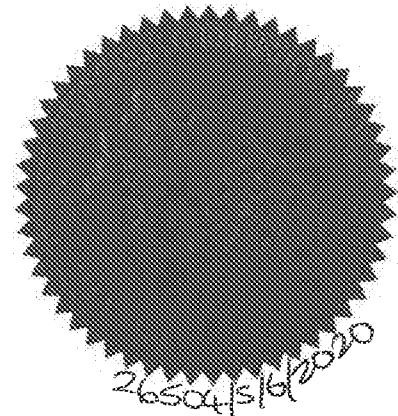


Name: SARAH CHARLES  
PROPERTY LAWYER

Seal Book No. 27/2020

THE COMMON SEAL of  
WEST SUSSEX COUNTY COUNCIL  
was affixed to this deed in the presence of:

)  
)  
)



Authorised Signatory:



Seal Book No:

EXECUTED as a DEED by  
as attorney for  
REDROW HOMES LIMITED  
in the presence of:-

LEE HURVILL



as attorney for REDROW HOMES  
LIMITED

Signature of witness .....



Name (in BLOCK CAPITALS) CAISE BIEDEN  
Address REDROW HOUSE, UNIT 1, FARADAY OFFICE PARK,  
BASINGSTOKE, RG24 8QQ

EXECUTED as a DEED by DAN SHEDDEN  
as attorney for  
**REDROW HOMES LIMITED**  
in the presence of:-

as attorney for RE  
**LIMITED**

Signature of witness

Name (in BLOCK CAPITALS) CAISE BIEDEN  
Address REDROW HOUSE, UNIT 1, FARADAY OFFICE PARK,  
BASINGSTOKE, RG24 8QQ