


DATED ~~13TH APRIL 2022~~

24 May 2022

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990**

RELATING TO LAND AT 42 SUDLEY ROAD BOGNOR REGIS PO21 1ER

Parties:

OWNER DOWNVIEW DEVELOPMENTS LIMITED

and

ARUN DISTRICT COUNCIL

CONTENTS

CLAUSE

1.	Interpretation	1
2.	Statutory provisions	3
3.	The Owner's Covenant with the Council	4
4.	The Council's Covenant with the Owner	4
5.	Release	4
6.	Determination of deed	4
7.	Local land charge	4
8.	Interest on late payment	4
9.	Council's costs.....	5
10.	Ownership	5
11.	Notices	5
11.	Third party rights.....	6
12.	Governing law	6

THIS DEED is dated [DATE]

24 May 2022

(1)

DOWNVIEW DEVELOPMENTS LIMITED incorporated and registered in England and Wales with company number 3728588 whose registered office is at 98 LONDON ROAD BOGNOR REGIS PO21 1DD Owner

(2)

* Arun District Council of Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 5LF Council

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is **DOWNVIEW DEVELOPMENTS LIMITED** the registered proprietor with Title Absolute of the land registered at HM Land Registry under known as land at rear of 42 SUDLEY ROAD BOGNOR REGIS PO21 1ER Title number WSX350293.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.
- (D) In consideration of Pagham Harbour policy ENV DM2 of the Local Plan 2011-2031, and Cabinet's approval of the tariff based system on 20 July 2015 and reduction in the tariff on 10 April 2017, the Owner gives this undertaking to perform the obligations set out in this deed.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Access Management Contribution: the sum of £1742 (ONE THOUSAND SEVEN HUNDRED AND FORTY TWO POUNDS) towards the cost of delivering measures to avoid, or mitigate to an acceptable level, the harm caused to Pagham Harbour by the Development.

Base Rate: the higher of [5%] and the base rate from time to time of Barclays Bank plc.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 [but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works;

archaeological investigation; and erection of any fences and hoardings around the Property.] Commenced and Commences shall be construed accordingly.

Default Interest Rate: [4%] per annum above the Base Rate.

Development: the development of the Property by 2 No. semi-detached 3-storey houses with parking and new vehicular access, as described in the Planning Application.

Pagham Harbour: A Special Protection Area, also known as a Natura 2000 site, based in Pagham, West Sussex in the District of Arun, identified as being of international importance for the breeding, feeding, wintering or migration of rare and vulnerable species of European Union birds.

Plan: the plan attached to this deed.

Planning Application: an application for planning permission registered by the Council under reference number BR/77/22/PL.

Planning Permission: means a Planning Permission for the Development pursuant to the Planning Application.

Property: the freehold land at rear of 42 SUDLEY ROAD BOGNOR REGIS PO21 1ER shown edged red on the Plan and registered at HM Land Registry with absolute title under WSX350293

7 Known as Land on the South Side of Lyon Street, Bognor Regis.

TCPA 1990: Town and Country Planning Act 1990

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in [England OR Wales].

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.

- 1.8 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.
- 1.9 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.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses are to the clauses of this deed.
- 1.13 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.
- 1.14 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. STATUTORY PROVISIONS**
- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, Localism Act 2011 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 This deed shall come into effect on the date of grant of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. THE OWNER'S COVENANT WITH THE COUNCIL

The Owner covenants with the Council to pay the Access Management Contribution to the Council at the date of this deed.

4. THE COUNCIL'S COVENANT WITH THE OWNER

In the event that clause 6 applies, the Council covenants to repay the Access Management Contribution to the Owner that paid the Access Management Contribution upon receipt of a written request for repayment.

5. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

6. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

7. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

8. INTEREST ON LATE PAYMENT

If the Access Management Contribution has not been paid to the Council prior to or at the date of this deed, the Owner shall pay the Council interest on the Access Management Contribution at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the date of this deed until and including the date of payment.

9. COUNCIL'S COSTS

The Owner shall pay to the Council on the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

10. OWNERSHIP

10.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

10.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 14 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) The name and address of the person to whom the disposition was made; and
- (b) The nature and extent of the interest disposed of.

11. NOTICES

11.1 A notice or other communication to be given under or in connection with this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

11.2 Any notice [or other communication] to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at: Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 5LF marked for the attention of the Planning Department and quoting the Planning Application number;
- (b) to the Owner at: 98 LONDON ROAD BOGNOR REGIS PO21 1DD marked for the attention of DAVID POOLE /DIRECTOR

11.3 Any notice or other communication given in accordance with clause 11.1 and clause 11.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the address] provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day,

the notice will be deemed to have been received at 9.00 am on the next Working Day;

- (b) if sent by pre-paid first class post or other next working day delivery service at [9.00 am] on the second Working Day after posting.

11.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.

11.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

13. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Signed as a Deed by **DAVID POOLE**

DIRECTOR DOWNVIEW DEVELOPMENTS LTD

In the presence of:-

[WITNESS FULL NAME]

[REDACTED]

[WITNESS FULL ADDRESS]

14 Henry Street, Bognor Regis,
PO21 1AR

[WITNESS OCCUPATION]

[REDACTED]

* OWNER SIGNATURE

* Director

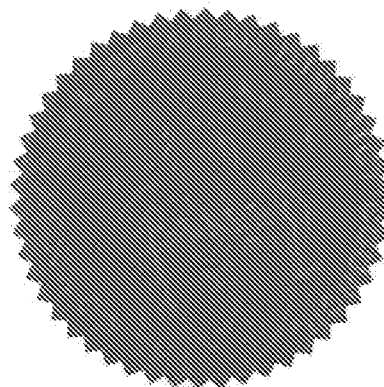
[REDACTED]

WITNESS SIGNATURE

Executed as a Deed by affixing
THE COMMON SEAL of
ARUN DISTRICT COUNCIL in the
presence of:

}

}



Authorised Signatory

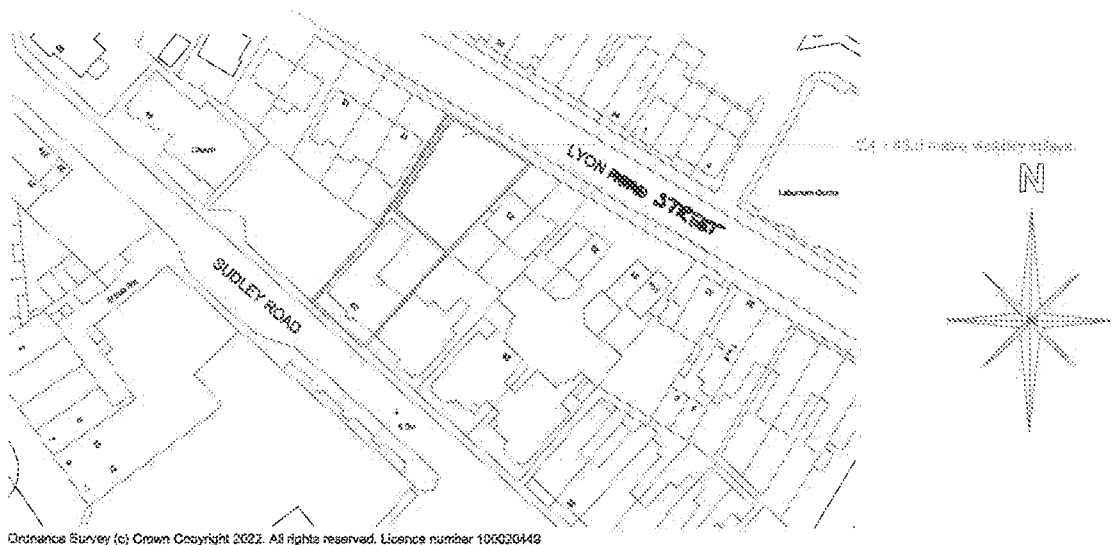
[REDACTED]

Signature ...

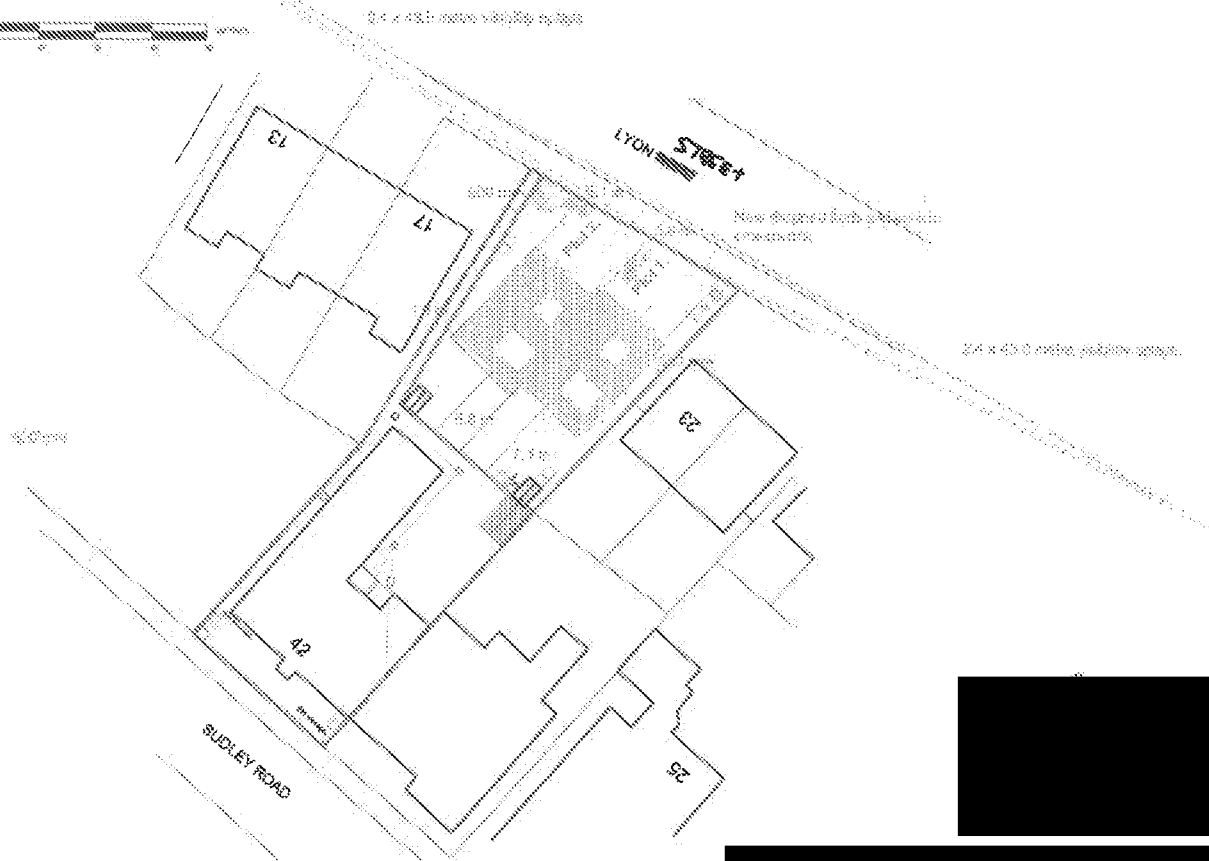
Name..... APRIL HEASMAN

Job Title..... LAWYER

Seal Book No. 291/2022



LOCATION PLAN - 1/1250



SITE PLAN - 1/500



SUSSEX BUILDING CONSULTANTS

REAR OF 42 SUDLEY ROAD,
BOGNOR REGIS, WEST SUSSEX.

SCALE - 1/1250 REV - E DATE - 31/03/2022

partner
LABC
3 NORTHCOOTE ROAD
BOGNOR REGIS
PO21 9LZ
TEL/FAX - 01243 681379

Seal book 29/2022

Sofina Ahmed

From: Daniel Vick
Sent: 20 May 2022 12:56
To: Sofina Ahmed
Cc: Maria Tomalova
Subject: RE: Authorisation required - Land at the Rear of 42 Sudley Road, Bognor Regis - BR/77/22/PL [DPS:LM:9075:B]

I give my authorisation under Part 4, Section 3, Paragraph 2.1.1 of the constitution.

Daniel Vick
Team Leader, Development Control



T: 01903 737771
E: daniel.vick@arun.gov.uk

Arun District Council, Civic Centre, Maltravers Rd, Littlehampton, West Sussex, BN17 5LF
www.arun.gov.uk

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From: Sofina Ahmed <Sofina.Ahmed@arun.gov.uk>
Sent: 20 May 2022 11:35
To: Daniel Vick <Daniel.Vick@arun.gov.uk>
Cc: Maria Tomalova <Maria.Tomalova@arun.gov.uk>
Subject: Authorisation required - Land at the Rear of 42 Sudley Road, Bognor Regis - BR/77/22/PL [DPS:LM:9075:B]

Good Morning Dan,

In this matter, the applicant is entering into an "Alternative Deed" instead of providing a Unilateral Undertaking in favour of the Council. The applicant will be paying the Pagham Harbour access management contribution on the date of the deed rather than at commencement. The Council will need to enter into the agreement as well because we are covenanting to repay the contribution if planning permission is not granted.

If you are happy with this arrangement, please can you provide your authority under Part 4, Section 3, Paragraph 2.1.1 for Legal Services to seal/complete the agreement?

Kind regards

Sofina Ahmed
Trainee Solicitor, Legal
Services



T: 01903 737976
DX: DX57406 Littlehampton
E: sofina.ahmed@arun.gov.uk

28/ 29/2022

Sofina Ahmed

From: David Poole [REDACTED]
Sent: 05 May 2022 12:03
To: Sofina Ahmed
Cc: 'Chris Moore'
Subject: FW: Land at the Rear of 42 Sudley Road, Bognor Regis - BR/77/22/PL [DPS:LM:9075:B]
Attachments: UU for checking.pdf; MapSearch- 42 Sudley Road.pdf; MapSearch- Land on south side Lyon Street.pdf

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Dear Sofina

Thanks for your email.

I write to confirm that you can amend the 106 agreement in accordance with your points detailed below.

Kind regards.

Dave

Downview Developments Ltd
Accounting Centre
98, London Road
Bognor Regis
West Sussex
PO21 1DD

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From: Chris Moore [REDACTED]
Sent: 05 May 2022 11:45
To: David Poole; Esprit Accounting
Cc: Sofina Ahmed
Subject: FW: Land at the Rear of 42 Sudley Road, Bognor Regis - BR/77/22/PL [DPS:LM:9075:B]

Dear Dave and Alan,

Please see the email below from Arun DC legal, please can you reply direct regarding their queries.

Kind regards,

Chris Moore

BSc (Hons), C.Build E MCABE
Sussex Building Consultancy Limited
3 Northcote Road
BOGNOR REGIS
PO21 5LZ

From: Sofina Ahmed <Sofina.Ahmed@arun.gov.uk>
Sent: 05 May 2022 11:41
To: Chris Moore
Cc: Maria Tomalova <maria.tomalova@arun.gov.uk>
Subject: Land at the Rear of 42 Sudley Road, Bognor Regis - BR/77/22/PL [DPS:LM:9075:8]

Good Morning,

I am instructed by Planning Services with regards to the attached Section 106 Unilateral Undertaking. I have reviewed this and have the following queries:

- Please can you clarify why the Alternative Deed is being used instead of the usual Pagham Harbour UU which is available on the Council's website?
- Recital 1, page 3 - this should state 'IN FAVOUR OF...the Council...'
- Recital (B), page 3 – the title number should be entered here i.e. WSX350293.
- I note that the title register refers to the address as "Land on the south side of Lyon Street". I would suggest that the description of the property is amended to 'rear of 42 Sudley Road known as land on the south side of Lyon Street, Bognor Regis.'
- The attestation clause refers to Mr Poole (director) as 'owner'. I would suggest that reference to 'owner' is amended to 'director' to avoid ambiguity. Please note that the Companies House website is down at the moment so I have been unable to check the status of the company. I will revert to you if I have any further queries on this point.

I am happy to make the above changes to the agreement if the applicant confirms in writing.

I look forward to hearing from you.

Kind regards

Sofina Ahmed
Trainee Solicitor, Legal
Services



T: 01903 737976
DX: DX57406 Littlehampton
E: sofina.ahmed@arun.gov.uk

Arun District Council, Civic Centre, Maltravers Rd LITTLEHAMPTON BN17 5LF
www.arun.gov.uk

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Sofina Ahmed

From: David Poole [REDACTED]
Sent: 18 May 2022 17:31
To: Sofina Ahmed
Cc: [REDACTED]
Subject: RE: Land at the Rear of 42 Sudley Road, Bognor Regis - BR/77/22/PL [DPS:LM:9075:B]
Attachments: Make a payment BR 77 22 PL.pdf

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Hi Sofina

Please see attached payment confirmation as requested.

Please amend the date as necessary.

Thanks for your help

Kind regards.

Dave

Downview Developments Ltd
Accounting Centre
98, London Road
Bognor Regis
West Sussex
PO21 1DD
[REDACTED]

Director: D.L.Poole Registered Office: 98 London Road, Bognor Regis, West Sussex, PO21 1DD Company No. 11723833

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From: Sofina Ahmed [mailto:Sofina.Ahmed@arun.gov.uk]
Sent: 18 May 2022 12:22
To: David Poole
Cc: 'Chris Moore'; Maria Tomalova
Subject: RE: Land at the Rear of 42 Sudley Road, Bognor Regis - BR/77/22/PL [DPS:LM:9075:B]

Dear David,

Thank you for providing the title for 42 Sudley Road. There are just two final points to attend to as follows:

1. The Agreement provides that the contribution is to be paid on the date of the deed. I have provided a link below for you to arrange payment of the sum of £1742.00. You should select 'Building, planning and land'

followed by 'Planning Fee' and then enter the planning application number before making payment: [Make a payment \(arun.gov.uk\)](http://Make a payment (arun.gov.uk)). I'd be grateful if you could let me know when the payment has been sent.

2. I note that the Agreement has already been dated. Please can you confirm that it may be re-dated to the day that the Council seals it? The Council's sealing day is Wednesday, so this will most likely take place next week.

I have sought the Group Head's authorisation to proceed with the sealing and completion of this Agreement next week. The amendments agreed previously will be incorporated and then a copy of the completed Agreement will be sent to you in the post.

Please let me know if you have any queries.

Kind regards

Sofina Ahmed
Trainee Solicitor, Legal
Services



From: David Poole

T: 01903 737976
DX: DX57406 Littlehampton
E: sofina.ahmed@arun.gov.uk

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[REDACTED]
Sent: 05 May 2022 12:05

To: Sofina Ahmed <Sofina.Ahmed@arun.gov.uk>

Cc: 'Chris Moore' [REDACTED]

Subject: FW: Land at the Rear of 42 Sudley Road, Bognor Regis - BR/77/22/PL [DPS:LM:9075:B]

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Kind regards.

Dave

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Accounting Centre
98, London Road
Bognor Regis