

DATED

10th February 2023

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

**RELATING TO LAND AT ALDWICK HOUSE CARE HOME, 41-45 NYEWOOD
LANE, BOGNOR REGIS, PO21 2SJ**

GIVEN BY:

Parties:

GATWICK BEDSITS LIMITED

TO:

ARUN DISTRICT COUNCIL

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THIS DEED is dated

10 February 2028

GIVEN BY:

Gatwick Bedsits Limited incorporated and registered in England and Wales with company number 07314597 whose registered office is at 249 Cranbrook Road, Ilford, Essex, IG1 4TG **Owner**

and creates planning obligations which are enforceable by:-

Arun District Council of The Civic Centre Maitravers Road Littlehampton 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 and the authority by whom the obligations in this Deed are enforceable.
- (B) The Owner is the owner of the freehold interest in the Property that is registered at H M Land Registry under Title Numbers WSX43348, WSX55766 and WSX40282.
- (C) A planning application under reference BR/86/20/PL has been submitted to the Council by the Owner for planning permission for the Development.
- (D) The Council has refused the application and an appeal has been made pursuant to section 78 of the TCPA 1990. The Appeal will be considered by an Inspector appointed by the Secretary of State and in the event that the Inspector or the Secretary of State decides to uphold the appeal and grant planning permission the Owner agrees that planning permission should be granted subject to the planning obligations set out herein.
- (E) This Deed is entered into for the purposes of providing planning obligations binding the estate and interest of the Owner in the Property under Section 106 of the TCPA 1990 in the event that Planning Permission is issued.
- (F) 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, the Owner enters into this agreement to perform the obligations contained in Schedule 1 of this Deed.
- (G) This Deed is intended to replace and supersede the obligations set out in the Unilateral Undertaking dated 25 June 2021.

AGREED TERMS

I. INTERPRETATION

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

1.1 Definitions:

Access Management Contribution: the sum of either £33,098.00 or £11,032.87 (the relevant sum to be determined by the Inspector or Secretary

of State upon determination of the Appeal) towards the cost of delivering measures to avoid, or mitigate to an acceptable level, the harm caused to Pagham Harbour by the Development.

Appeal: means the appeal lodged with the Secretary of State pursuant to Section 78 of the 1990 Act under reference number APP/C3810/W/20/3264847 against the refusal of the Council to grant planning permission for the Development.

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

Bedsit Accommodation: a residential unit in the Development capable of being let as a single residential dwelling.

Commencement of Development: means the implementation of the Planning Permission by the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 PROVIDED THAT (for the purposes of this Deed and for no other purpose) operations consisting of site clearance and demolition work where it forms part of the Development shall be a material operation. **Commenced** and **Commences** shall be construed accordingly.

Commencement Date: the date of Commencement of Development.

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

Development: the development of the Property by Part change of use from a 32-bed nursing home (C2 Residential Institutions) to a 38-bedsit House in Multiple Occupation (sui generis) comprising 24 No single person & 14 No two-person bedsits along with separate shower rooms & wcs, demolition of rear conservatory & store & erection of single storey rear extension & with minor external alterations to side elevations & insertion of 4 No roof lights on rear elevation & insertion of dormer window serving Room 38 (as detailed in amended plans dated 30 April 2020) as described in the Planning Application.

Inspector: an officer of the Planning Inspectorate.

Occupation: means occupation of a building constructed as part of the Development for the purposes permitted by the Planning Permission and shall not include day time occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for the storage of plant and materials and "Occupy" and "Occupied" shall mutatis Mutandis be construed accordingly.

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: the application for planning permission registered by the Council under reference number BR/86/20/PL.

Planning Permission: the planning permission to be granted by the Inspector or the Secretary of State in respect of the Appeal.

Property: Aldwick House Care Home, 41-45 Nyewood Lane, Bognor Regis, PO21 2SJ registered with title absolute at the HM Land Registry under title numbers WSX43348 WSX55766 and WSX40282 as shown edged red on the Plan.

Secretary of State: the Secretary of State for Levelling Up, Housing and Communities.

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.

- 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 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990.
- 2.2 The Owner owns the freehold title to the Property.
- 2.3 The Council is the local planning authority entitled to enforce the obligations in this Deed and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.
- 2.4 This Deed is entered into in respect of the Property with the intent that it shall bind the Owner's freehold interest in the Property.
- 2.5 This Deed shall be binding on all successors and assigns in title of the Owner and any person claiming under or through them.
- 2.6 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.
- 2.7 Save in respect of the obligations in this Deed expressly requiring compliance prior to Commencement of Development and which shall become operative on the issue of the Planning Permission this Deed shall thereafter come into effect on the Commencement of Development PROVIDED ALWAYS THAT the obligations contained in this Deed are conditional upon confirmation by the Inspector or the Secretary of State in the decision notice or letter issued pursuant to the Appeal that the planning obligations contained in this Deed comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) SAVE THAT if the Inspector or the Secretary of State in the decision notice or letter issued pursuant to the Appeal states that a planning obligation contained in this Deed does not comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) that shall not affect the enforceability of the remaining planning obligations in this Deed.

- 2.8 Nothing in this Deed shall prohibit the rights to develop any part of the Property in accordance with a grant of further planning permission issued after the completion of this Deed.

3. COVENANTS WITH THE COUNCIL

The Owner covenants with the Council:-

- 3.1 Subject to a specific finding by the Inspector and Secretary of State in the Appeal decision notice or letter that the planning obligations contained in this Deed are compliant with regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), to observe the planning obligations contained in Schedule 1 to this Deed.
- 3.2 To serve on the Council a Notice of Commencement not less than four weeks before the expected date of Commencement of Development.

4. RELEASE

- 4.1 No person shall be liable for any breach of this Deed unless they hold an interest in that part of the Property in respect of which such breach occurs or held such an interest at the date of the breach. Neither the reservation of rights or the inclusion of any covenants or restrictions over the Property in any transfer of the Property will constitute an interest for the purposes of this clause.
- 4.2 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.
- 4.3 The obligations in this Deed will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker.
- 4.4 The obligations in this Deed will not be enforceable against an occupier or tenant of any completed Bedsit Accommodation.

5. 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.

6. LOCAL LAND CHARGE

- 6.1 This Deed has been executed by the Owner and the Owner shall supply a copy of it to the Council so that it may be registered by the Council against the Property as a local land charge and entered into the planning register maintained at the Council under the TPCA 1990.
- 6.2 Where the provisions of this Deed come to an end under clause 5, the Owner may request that the Council vacate or cancel the entry made in the local land charges register in relation to this Deed or otherwise to record the fact that it has come to an end and no longer affects the Property.

7. INTEREST ON LATE PAYMENT

If the Access Management Contribution has not been paid to the Council prior to or on the Commencement Date, 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 Commencement Date to and including the date of payment.

8. 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.

9. OWNERSHIP

- 9.1 The Owner warrants that no person other than the Owner has any legal or equitable Interest in the Property.
- 9.2 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.

10. NOTICES

- 10.1 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.

- 10.2 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 The Planning Department of Arun District Council, quoting the Planning Application number at the following address: The Civic Centre Maltravers Road Littlehampton BN17 5LF;
 - (b) to the Owner at: 132 High Street, Esher, Surrey, KT10 9QJ, attn.: James McKenzie Denney/Jamie Copland.
- 10.3 Any notice or other communication given in accordance with clause 10.1 and clause 10.2 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.
- 10.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.
- 10.5 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.

11. 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.

12. 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.

SCHEDULE 1

The payment of the Access Management Contribution prior to or on the Commencement Date towards the delivery of measures to avoid or mitigate to an acceptable level, the harm caused to Pagham harbour by the Development.

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 Gatwick Bedsits Limited
acting by
James McKenzie Denney, a director and

Director

In the presence of:-

Name of witness:

SUSAN MEGIC

Address of witness:

12a Carl Chambers

Dulton St

Carl Carth Wex

Occupation:

BARRISTER

