PLANNING OBLIGATION BY DEED

(SECTION 106 PLANNING ACT 1990)

RELATING TO

LAND AT THE BEACH, FELPHAM, BOGNOR REGIS WEST SUSSEX

L E WALWIN & PARTNERS LIMITED

TO

ARUN DISTRICT COUNCIL

27a High Street
Heathfield
East Sussex
TN21 8JR

[redacted]

[redacted]

Date: 2010

Parties: 1. **L E WALWIN & PARTNERS LIMITED** whose registered office is c/o Cedar House Services Ltd, Dartel House, 39-41 High Street, Horley, Surrey RH6 7BN ("the Owner")

2. **ARUN DISTRICT COUNCIL** of Civic Centre Maltravers Road Littlehampton BN17 5LF ("the Council")

1. INTRODUCTION

1.1 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Site is situated

1.2 The Owner is the freehold owner of the Site free of mortgage or charge

1.3 The Owner has submitted the Application to the Council and has agreed to enter into this Deed in order to secure the planning obligations contained in it

NOW THIS DEED WITNESSES as follows:

2. OPERATIVE PARTS

2.1 Definitions

For the purposes of this Deed the following expressions shall have the following meanings:

The Act"	The Town & Country Planning Act 1990 (as amended)
"the Application"	The application for full planning permission dated [ ] submitted to the Council for the Development and allocated reference number [ ]
"Beach Hut"	As the context so admits one or more than one of the Beach Huts to be constructed on the Site as part of the Development
"Beach Hut Owner"	Any person or persons from time to time who is the freehold owner or lessee or tenant of a Beach Hut
"Commencement of Development"	The date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed only) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, remedial work in respect of contamination or other adverse ground conditions, diversion and laying of services, erection of temporary means of enclosure, the temporary display of site notices or advertisements and "Commencement of Development" should be construed accordingly
"Development"	The erection of 30 beach huts and one amenity hut for private leisure use for

	local people
"Plans"	The plans (identifying the Site edged red in one case and the Qualifying Radius in the other case) attached to this Deed
"Planning Permission"	The planning permission subject to conditions to be granted by the Council pursuant to the Application in the form of the draft planning permission annexed in the First Schedule hereto
"Site"	The land against which this Deed may be enforced as shown edged red on Site Layout Plan annexed *(note this is the same plan as the site layout plan in the Planning Application)*
"Qualifying Persons"	(1.) Any person who owns any freehold or leasehold property or has a tenancy of any such property or whose normal place of abode is within in each case the Qualifying Radius (2.) any person who is related by blood or marriage to any person in (1) above or who has entered into a civil ceremony with such person (3.) Any person who has bona fide rented a house or apartment for the purposes of a holiday in the Qualifying Radius (during the period only when they rent such property for such purpose) (4.) The children (including step-children and adopted children) of any of the above persons
"the Qualifying Radius"	The land falling within the red line on the Plan titled "Property/Household Area Map Drawing Number 624/001d annexed *" (note : this is the plan so called in the report on Highway and Transportation matters Appendix E lodged with the Planning Application)*

2.2 Construction of this Deed

2.2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed

2.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa. Words of a masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner

2.2.3 Where 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 unless there is express provision to the contrary.

2.2.4 Any reference to an Act of Parliament includes any modification extension or re-enactment of that Act for the time being in force and all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under such Act or deriving from it

2.2.5 References to any party to this Deed include their successors in title and to any person deriving title through or under that party and in the case of the Council its successors in title to its statutory functions

2.3 Legal Basis

2.3.1 This Deed is made pursuant to Section 106 of the Act

2.3.2 The covenants and restrictions imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as Local Planning Authority

2.4 Conditionality

This Deed is conditional upon:

2.4.1 The grant of Planning Permission

2.4.2 Commencement of the Development

Save for the provisions as to payment of the Council's legal costs jurisdiction and delivery clauses and other relevant provisions which will come into effect immediately on completion of this Deed

2.5 Owner's Covenants

The Owner covenants with the Council as set out in the Second Schedule

2.6 Miscellaneous

2.6.1 The Owner agrees to pay to the Council on completion of this Deed the Council's reasonable legal costs in connection with the negotiation and completion of this Deed

2.6.2 No provision of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999

2.6.3 This Deed shall be registerable as a Local Land Charge by the Council

2.6.4 Where the Council's approval or consent is required under the terms of this Deed such agreement, approval or consent shall not be unreasonably withheld or delayed and any such agreement, consent or approval shall be given on its behalf by [its Head of Development and Building Control] from time to time

2.6.5 Any notices shall be deemed to have been properly served if sent by recorded delivery to the registered office of the Owner or to the principal office of the Council

2.6.6 In so far as any clause of this Deed is found for whatever reason to be invalid, illegal or enforceable then such invalidity, illegality or enforceability shall not affect the validity or enforceability of the other provisions of this Deed

2.6.7 This Deed shall cease to have effect if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure or expires prior to Commencement of Development

2.6.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest

2.6.9 The obligations in Part 1 of the Second Schedule shall be enforceable against the Owner or its successors in title to the freehold of the Site or any part of it but not against the Beach Hut Owners

2.6.10 The obligations in Part 2 of the Second Schedule shall only be enforceable against the Beach Hut Owners

2.6.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with the planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed

2.6.12 No waiver express or implied by the Council of any breach or default in performing or observing any of the covenants or terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions of/or for acting upon any such breach or default

3. JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England and Wales

4. DELIVERY

The provisions of this Deed (other than this clause which will be of immediate effect) shall be of no effect until this Deed has been dated.

In witness whereof the Owner has executed this Deed on the day and year first before written

First Schedule

(Planning Permission)

Second Schedule

(Owner's Covenants with the Council)

(Part 1 Covenants by the Landowner - L E Walwin & Partners Limited or its successors in title to the freehold of the Site)

1. Not to sell or transfer a Beach Hut other than to a Qualifying Person without the prior consent of the Council
2. Not to transfer the freehold of the Site otherwise than to a person, firm or company who undertakes to comply with the covenants on the part of the Owner contained in this part of this Schedule and who undertakes the role of manager for the purposes of the continuing management of the Site

(Part 2 Obligations to be enforceable against Beach Hut Owners)

1. Not to occupy or permit the occupation of any Beach Hut by a person who is not a Qualifying Person
2. Not to transfer assign or sub-let any Beach Hut to a person who is not a Qualifying Person

SIGNED AS A DEED by

L E WALWIN & PARTNERS LIMITED

acting by:

.....

Director

.....

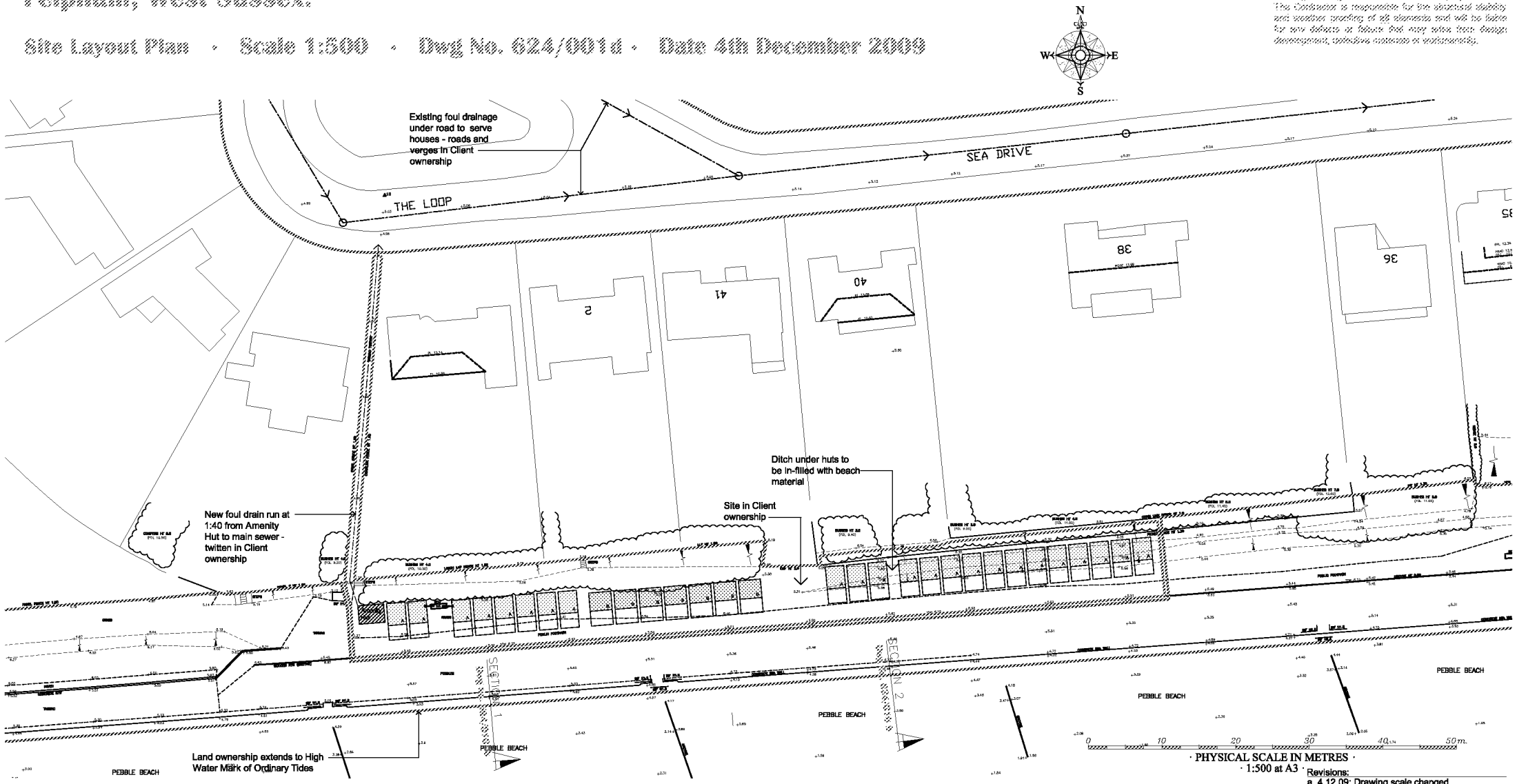
Director/Secretary

Proposals for New Beach Huts at Summerley, Felpham, West Sussex.

Site Layout Plan · Scale 1:500 · Dwg No. 624/001d · Date 4th December 2009

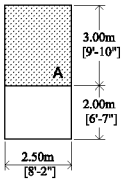
This drawing has been prepared based on survey drawings and information prepared by others. All dimensions and levels must be checked and verified on site before commencement of works.

These incidental details have been produced in order to illustrate the ideal visual profiles and relationships between the building's key elements and to give aesthetic guidance only. They do not purport to be working drawings and are for illustrative purposes only. The Contractor is responsible for the structural stability and weather proofing of all elements and will be liable for any defects or failure that may arise from design development, defective materials or workmanship.

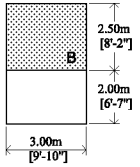


Revisions:
a. 4.12.09: Drawing scale changed
b. 02.07.10: Planning Issue
c. 26.07.10: Red & blue lines revised
d. 10.08.10: Ditch in-filled

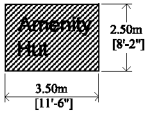
Beach Hut: Type A (23no.)



Beach Hut: Type B (7no.)



Amenity Hut: Type B (1no.)



Notes:

- Proposed Beach Huts have been positioned along the site so as not to interrupt the neighbouring properties sea views wherever possible (i.e. hidden behind existing tamarisk trees)
- Huts are generally set-out with a minimum 400mm gap between for maintenance access
- Existing beach access from neighbouring properties is maintained with a minimum gap between huts of 1.65m adjacent to private gates / steps
- Some sections of existing ground will require infilling, or, rear of huts could be supported on legs
- One Amenity Hut has been shown adjacent to an existing twitten (to more easily facilitate service connections)

Site Plan
Dwg No. 624/001 d

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