

Dated:

9th June 2017

Between:

- [1] RJ Gould and M Gould [The Owner]
[2] Halifax Royal Bank of Scotland PLC The Mortgagee]
[3] Arun District Council [ADC]
[4] West Sussex County Council [WSCC]

~~Second draft 10-5-17~~

~~FIRST DRAFT 20-4-17~~

PLANNING OBLIGATION

under Section 106 of the Town & Country Planning Act 1990
and other powers relating to Land at Westholme Nursery Toddington Lane Littlehampton
BN17 7PP West Sussex

To pay :-

ADC Public Open Space Contribution of £10,000 .00
WSCC School Infrastructure Contribution

Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF
DX57406 LITTLEHAMPTON
Reference: LU/94/17/OUT

1. **THIS DEED** is by undertaking and is dated 9th June 2017 and is a Planning Obligation for the purposes of Section 106 Town and Country Planning Act 1990 ("The Act") and is made in favour of Arun District Council

2. PARTIES

Owners	Robert John Gould and Maureen Gould his wife both of Anggerik Toddington Lane Littlehampton West Sussex BN17 7PP
Mortgagee	Halifax Royal Bank of Scotland PLC Co reg No SC327000 Of Halifax Division 1 Lovell Park Road Leeds LS1 1NS
ADC	Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF
WSCC	West Sussex County Council of County Hall West Street Chichester PO 19 1RQ

3. CAPACITIES TO ENTER INTO DEED AND BASIC DEFINITIONS

Party	Capacity
Owner	Freehold owner under HMLR registered Title no WSX231791 of land at Westholme Nursery Toddington Lane Littlehampton BN17 7PP West Sussex ("The Land") shown for identification only edged black on the attached plan and the applicant for planning permission described below
Application	Outline Planning Permission under Application Ref: LU/94/17/OUT for Outline planning permission with all matters reserved for residential re-development comprising of 10 No. dwellings & associated works (resubmission following LU/327/16/OUT) and "Planning Applications" and "Development" shall be construed accordingly has been sought
Mortgagee	Mortgagee of the Land
ADC	Local Planning Authority under Town and Country Planning Act 1990 and (as relevant) as payee in relation to the statutory functions and purposes identified herein in clause 5 namely public open space provider / facilitator.
WSCC	Education services provider

4. BACKGROUND

- 4.1 The Planning Application has been submitted to ADC subject to the making of the payments specified within this Deed which are required under the Act and Planning Policy Guidance to mitigate any ill effects of the Development and in particular the shortage of Public Open Spaces serving the Development
- 4.2 The Mortgagee consents to this agreement and acknowledges that the agreement binds the Land and the mortgagee shall only be liable for a breach of the Agreement that it has itself caused whilst mortgagee in possession but shall not be liable for any pre existing breach

5. CONTRIBUTIONS PAYABLE

- 5.1 The Owner and the Applicant undertakes with the ADC and WSCC to:-

- (i) make the payments specified below
- (ii) to the payee specified below
- (iii) for the purposes specified below
- (iv) and at the time specified below

Payee	Time for Payment ("the Due Date")	Amount	Statutory Function and Purpose
ADC	On start of the Development	£10,000.00 Calculated at	Public Open Space Contribution for use to maintain and upgrade

WSSC		£1000 per dwelling Education Contribution calculated in accordance with the formula at Schedule 3	public open spaces serving the parish where the development is located or adjacent parishes namely ... <i>Primary Education</i> The contributions generated by this proposal shall be spent on additional facilities at Lyminster Primary school. <i>Secondary Education</i> The contributions generated by this proposal shall be spent on additional equipment at The Littlehampton Academy. <i>Sixth Form Education</i> The contributions generated by this proposal shall be spent on additional equipment at The Littlehampton Academy Sixth Form. *****
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- 5.2 The Owner undertakes with ADC and WSSC not to start the Development until the payments are made.

6. ADDITIONAL CLAUSES

The Owner undertakes with ADC and WSSC as follows:-

6.1 Start Date of this Deed and Obligations

- 6.1.1. This Deed will take effect on the grant of the Planning Permission.
- 6.1.2. S56 of the Act will apply to determine commencement of the Development and in the event of any uncertainty or disagreement concerning this date the determination of ADC shall be final.
- 6.1.3. On Commencement of the Development the Owner will send to ADC and WSSC written Notice of that event in the Form of the Notice in Schedule 1.

6.2 Index Linking

General

6.2 The Owner undertake to ADC that any sums payable by the Owner under this agreement shall be increased by the application of the following formula:

$$A = B \times \frac{C}{D}$$

where:

- A is the sum actually payable on the Specified Date/ Payment Date
B is the original sum mentioned in this agreement
C is the Building Cost Information Service National All-In Tender Price Index for the quarter preceding the Specified Date/Payment Date

D is the Building Cost Information Service National All-In Tender Price Index for the quarter preceding the date of this agreement

C

D is equal to or greater than 1

The adjustment in this clause shall only be made where the Specified /Payment Date is more than 6 months after the date of this undertaking

6.3 Interest of Payments

The Owner undertakes with ADC and WSCC pay interest on sums due to ADC and WSCC under this Deed but not paid on the Due Date from the Due Date until actual payment. The rate of interest shall be 4% above the Lloyds Bank PLC bank base rate from time to time.

6.4 Payment Notice

All payments due under this Deed will be sent to the payee with a duly completed Notice in the Form of Schedule 2.

6.5 Legal and Administrative Costs

The Owner agree with ADC and WSCC :

Legal Costs of ADC and WSCC

6.5.1 The Owner has prior to completion of this Deed paid to ADC the reasonable legal costs of ADC on entering into this Deed in the sum of £200 receipt of which ADC hereby acknowledges and The Owner has prior to completion of this Deed paid to WSCC the reasonable legal costs of WSCC on entering into this Deed in the sum of £ 200 _____ receipt of which WSCC hereby acknowledges

6.5.2 For the avoidance of doubt ADC shall be entitled to utilise a proportion of any monetary contributions specified in this Deed for related project costs up to a maximum of 5% of the sum or £15,000 which ever shall be the larger

6.5.3 For the avoidance of doubt the above charges are standard charges and shall not preclude ADC from claiming and receiving any additional monitoring and legal or enforcement costs above and beyond these standard charges when circumstances require that they be incurred in pursuing full compliance with this Deed whether through the courts or otherwise

7. GENERAL

7.1 This Deed is not a Planning Permission or any other form of consent under any other function of ADC .

7.2 This Deed does not restrict or fetter the statutory powers of ADC or WSCC .

7.3 If more than one party to this Deed agrees or undertakes with another then that agreement or undertaking shall be enforceable against that person jointly or severally.

- 7.4 This Deed confers no benefit on any Third Party under Contracts (Third Party Rights) Act 1999.
- 7.5 This Deed shall apply to the Development as authorised by the Planning Permission or as varied or renewed from time to time.
- 7.6 This Deed is a Local Land Charge and shall be registered as such.
- 7.7 This Deed shall not bind or be enforceable against individual buyers of individual dwelling plots and shall not bind or be enforceable against statutory undertakers as defined in S262 in the Act

THIS DEED is signed and sealed by the parties as a Deed on the date first appearing.

SCHEDULE 1

COMMENCEMENT NOTICE

Pursuant to Relevant Clause in Planning Obligation Described Below

I advise you that the Development described below was commenced on the start date as stated in this notice.

Dated this day of 20

Signed

On behalf of

To:	[1] Director of Planning and Economic Regeneration, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF (DX:57406 Littlehampton) [2] County Planning Officer, West Sussex County Council, County Hall, Chichester, West Sussex, PO19 1RQ (DX: 30330 Chichester)
From:	
Development at:	
Nature of development:	
Planning Permission Reference:	
Agreement Date:	
Parties subject to the Agreement:	
Start Date:	

SCHEDULE 2

Payment Notice

Payment of Monies due under a Section 106 Planning Obligation/Agreement

1. Payment to be made by/on behalf of:
2. Development at:
3. Agreement dated:
4. Planning application reference number:
5. Obligation in Agreement (Please continue on a separate sheet if necessary):

Clause no(s):	
Contribution towards:	
Amount of contribution: due:	

Date upon which contribution is due:	
Amount of monitoring sum due/paid:	
Method of Payment:	
If you require an invoice please provide the full postal address here	

SCHEDULE 3

The Owner UNDERTAKES to WSCC :-

That upon Commencement of Development the Owner and/or the Developer shall pay to the County Council the School Infrastructure Contribution as calculated by the County Council in accordance with the following formula:-

DfE Figure x ACP = School Infrastructure Contribution where:

Note: x = multiplied by.

4

ACP (Additional Child Product) = The estimated additional number of school age children likely to be generated by the development calculated by reference to the total number of dwellings, less any allowance for affordable dwellings, as approved by a subsequent reserve matters planning application. The following criteria are used to generate a child product:

Dwelling Size | Occupancy

House Flat

1 bed = 1.5 1.3

2 bed = 1.9 1.9

3 bed = 2.5 2.4

4+ bed = 3.0 2.8

Using the above occupancy rates to determine an overall population increase the following factors are applied. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and 5 persons per 1000 population in each school year group for flats. There are 7 year groups for primary (years R to 6) and 5 for secondary (years 7 to 11). For Sixth Form, a factor of 0.54 is applied to the Child Product figure as this is the average percentage of year 11 school leavers who continue into Sixth Form colleges in West Sussex.

DfE Figure = Department for Education (DfE) school building costs per pupil place (for pupils aged 4 to 16) as adjusted for the West Sussex area applicable at the date when the School Infrastructure Contribution is paid (which currently for the financial year 2014/2015 are – Primary £15,558, Secondary £23,442, Further Secondary £25,424), updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

1.4 The contributions generated by this proposal shall be spent on additional facilities at Lyminster Primary school.

The contributions generated by this proposal shall be spent on additional equipment at The Littlehampton Academy.

The Owner UNDERTAKES to WSCC :-

That upon Commencement of Development the Owner and/or the Developer shall pay to the County Council the School Infrastructure Contribution as calculated by the County Council in accordance with the following formula:-

(DfE figure (Primary) x ACP = Primary Education Contribution) + (DfE figure (Secondary) x ACP = Secondary Education Contribution) + (DfE figure (Further Secondary) x ACP = Further Secondary Education Contribution) = School Infrastructure Contribution where:

Note: x = "multiplied by ..."

ACP (Additional Child Product) = The estimated additional number of school age children likely to be generated by the development calculated by reference to the total number of Open Market Units and shared Ownership Affordable Housing Units as approved by a subsequent reserved matters planning application. The following criteria are used to generate a child product:

Dwelling Size		Occupancy	
		House	Flat
1 bed	=	1.5	1.3
2 bed	=	1.9	1.9
3 bed	=	2.5	2.4
4+ bed	=	3.0	2.8

Using the above occupancy rates to determine an overall population increase the following factors are applied. According to 2001 census data, there are 14 persons per 1000 population in each school year group for houses and 5 persons per 1000 population in each school year group for flats. There are 7 year groups for primary (years R to 6) and 5 for secondary (years 7 to 11).

DfE Figure = Department for Education (DfE) Primary/Secondary/Sixth Form school building costs per pupil place) as adjusted for the West Sussex area applicable at the date when the School Infrastructure Contribution is paid (which currently for the financial year 2016/2017 is £15,558 – Primary, £23,442 – Secondary; £25,424 for Sixth Form, updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

3. Governing law:

This power of attorney shall be governed by, and construed in accordance with, the laws of England and Wales.

IN WITNESS whereof this power of attorney has been duly executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed
by Lord of Scotland etc.
acting by an authorized attorney

Authorized Attorney

In the presence of:

Witness signature:

Witness name:

Witness address:

Schedule One referred to in the foregoing Power of Attorney of Bank of Scotland plc

All jobs titles referred to are roles within Lloyds Banking Group plc, unless stated to the contrary

First Name	Surname	Job Title	Place of Work
Theresa Lorne	Smith	Mortgage Underwriting Support Administrator	Edinburgh
Brian James	Harvey	Mortgage Underwriting Support Administrator	Edinburgh
Sharon Jane	Hetherhead	Mortgage Underwriting Support Administrator	Edinburgh
Adam Jane	Lee	Practitioner Liaison & Business Fraud	Edinburgh
John	Stuart	Team Manager	Edinburgh
Orlaith	Paul	Mortgage Underwriting Support Administrator	Edinburgh
Caroline Dean	Pringle	Mortgage Underwriting Support Administrator	Edinburgh
Robert John	Stuart	Mortgage Underwriting Support Administrator	Edinburgh
Elaine Jane	Wade	Mortgage Underwriting Support Administrator	Edinburgh
Richard Philip	Watt	Mortgage Underwriting Support Administrator	Edinburgh

First Name	Surname	Job Title	Place of Work
Theresa Lorne	Smith	Mortgage Underwriting Support Administrator	Edinburgh
Brian James	Harvey	Mortgage Underwriting Support Administrator	Edinburgh
Sharon Jane	Hetherhead	Team Manager	Edinburgh
Adam Jane	Lee	Mortgage Underwriting Support Administrator	Edinburgh

Schedule Two referred to in the foregoing Power of Attorney of Bank of Scotland plc

Referred Property, including documents relating to:

- (1) The sale, transfer, assignment or disposition of any property held in possession by the Company pursuant to a power of sale arising under a mortgage, standard security or charge to which the Company is a party ("Referred Property"); and
- (2) The grant or release of consents or licences, powers or licences of any other rights or interests whatsoever over the Referred Property.

Deeds with Mortgage / Charged Property and Discharge of Mortgage / Standard Security, including documents relating to:

- (1) The variation, alteration, amendment, modification, replacement or substitution of any mortgage, standard security or charge to which the Company is a party;
- (2) The variation, amendment, modification, replacement or substitution of any mortgage, standard security, charge or other security held by the Company; and
- (3) The enforcement, defence, satisfaction or other regulation of the priority or ranking of any mortgage, standard security, charge or other security held by the Company; and
- (4) The grant or release of consents, licences or powers or licences, powers or licences of any other rights or interests whatsoever over the Referred Property.

Power of Attorney

1. Appointer

In this power of attorney made by deed on 20/4/18, we Bank of Scotland plc, a company incorporated in Scotland, registered number SC337000, with registered office at The Mound, Edinburgh, EH1 1YZ (the "Company"), hereby appoint the persons of the office set out in the first schedule to this power of attorney ("Attorneys"), jointly and severally, to be the Company's true and lawful attorneys (the "Attorneys"), and on its behalf and in its name of attorney, in connection with that role as detailed within Schedule One, to:

- execute documents, in particular documents relating to the matters detailed in the second schedule to this power of attorney ("Schedule Two"), which relate to the business of Mortgage Lending with Lloyds Banking Group, (the "Purpose");
- take any steps to do any thing which the Attorney in its or her absolute discretion considers necessary or desirable in connection with the Purpose, excluding the execution of other powers in relation to the Purpose of the authority contained herein.

2. Ratification and indemnity

By this deed the Company undertakes to:

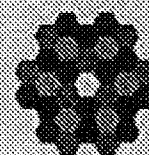
- ratify and confirm any lawful act that the Attorney undertakes or purports to undertake in good faith in the exercise of the powers conferred by this power of attorney; and
- indemnify the Attorney against all legal liability (including reasonable or pecuniary costs, fees, disbursements, interest, costs, expenses, damages or liability which he or she sustains or incurs as a result of any lawful action taken by him or her in good faith pursuant to this power of attorney, including any costs incurred in enforcing this indemnity).

3. Duration

This power of attorney shall be valid for a period of 12 months from the date hereof. Notwithstanding the provision hereinafter, this power of attorney shall remain in force until if the Attorney ceases to hold the role and / or carry the title set out in Schedule One to this power of attorney, or he or she resigns, or is removed by the Company at any time then by writing notice in writing to the Attorney.

4. Third parties

The Company declares that a person who deals with the Attorney in good faith may accept a written statement signed by the Attorney to the effect that this power of attorney has not been revoked as conclusive evidence of that fact.



Official copy of register of title

Title number WSX231791

Edition date 05.08.2014

- This official copy shows the entries on the register of title on 20 APR 2017 at 11:24:24.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 20 Apr 2017.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Durham Office.

A: Property Register

This register describes the land and estate comprised in the title.

WEST SUSSEX : ARUN

- 1 (25.11.1986) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Anggerik, Toddington Lane, Wick, Littlehampton (BN17 7PP).

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (16.05.1999) PROPRIETOR: ROBERT JOHN GOULD and MAUREEN GOULD of Anggerik, Toddington Lane, Wick, Littlehampton BN17 7PP.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (22.08.2002) REGISTERED CHARGE dated 29 July 2002 to secure the moneys including the further advances therein mentioned.
- 2 (14.01.2008) Proprietor: BANK OF SCOTLAND PLC (Scot. Co. Regn. No. SC327000) of Halifax Division, 1 Lovell Park Road, Leeds LS1 1NS.
- 3 (05.08.2014) By a discharge dated 4 August 2014 the land tinted pink on the title plan is no longer charged by the charge dated 29 July 2002.

NOTE: Copy discharge filed.

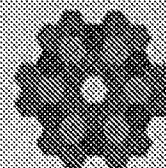
End of register

The electronic official copy of the register follows this message.

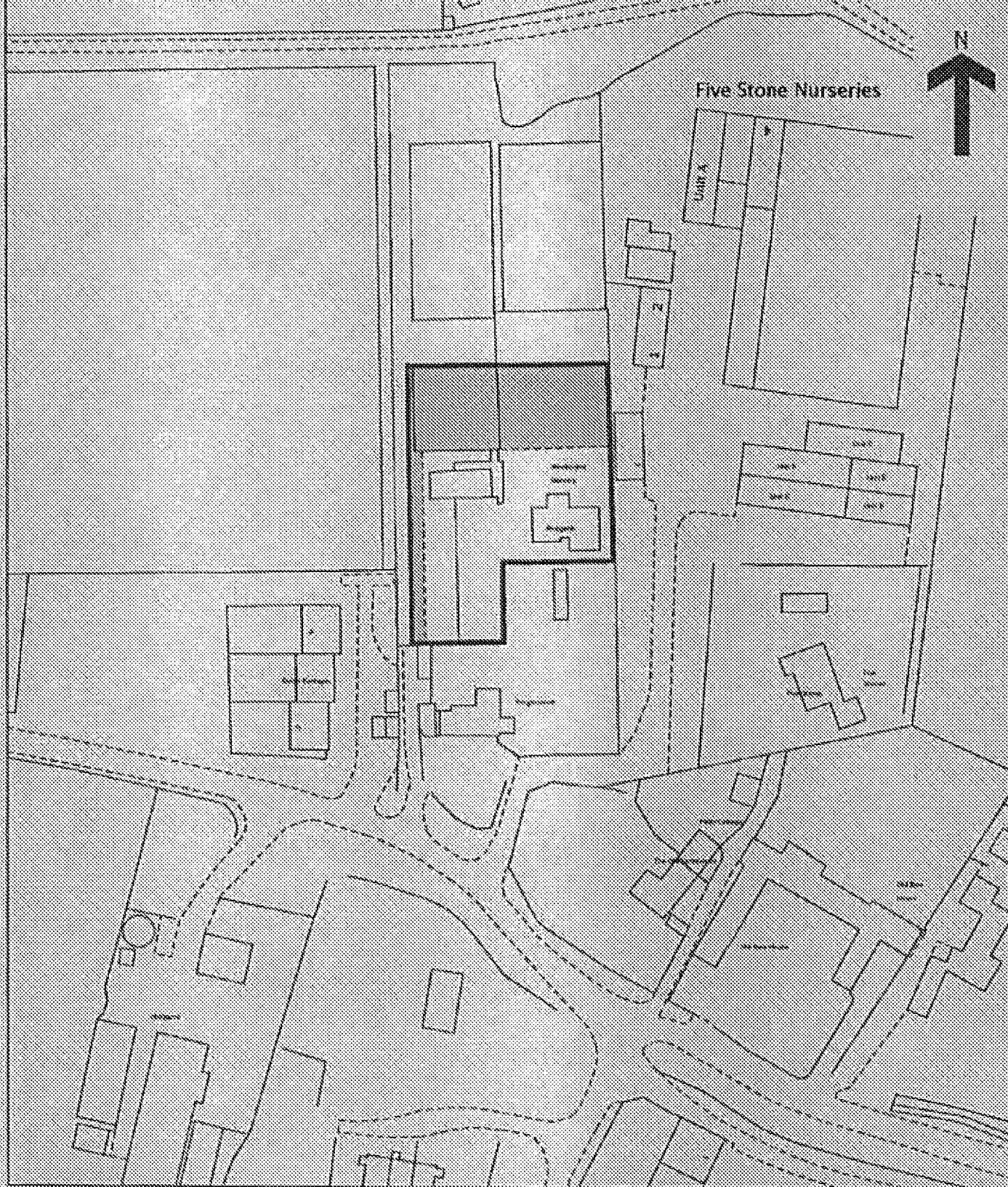
Please note that this is the only official copy we will issue. We will not issue a paper official copy.

Land Registry
Official copy of
title plan

Title number **WSX231791**
Ordnance Survey map reference **TQ0303NW**
Scale **1:1250 enlarged from 1:2500**
Administrative area **West Sussex : Arun**



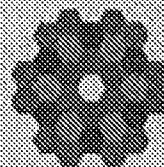
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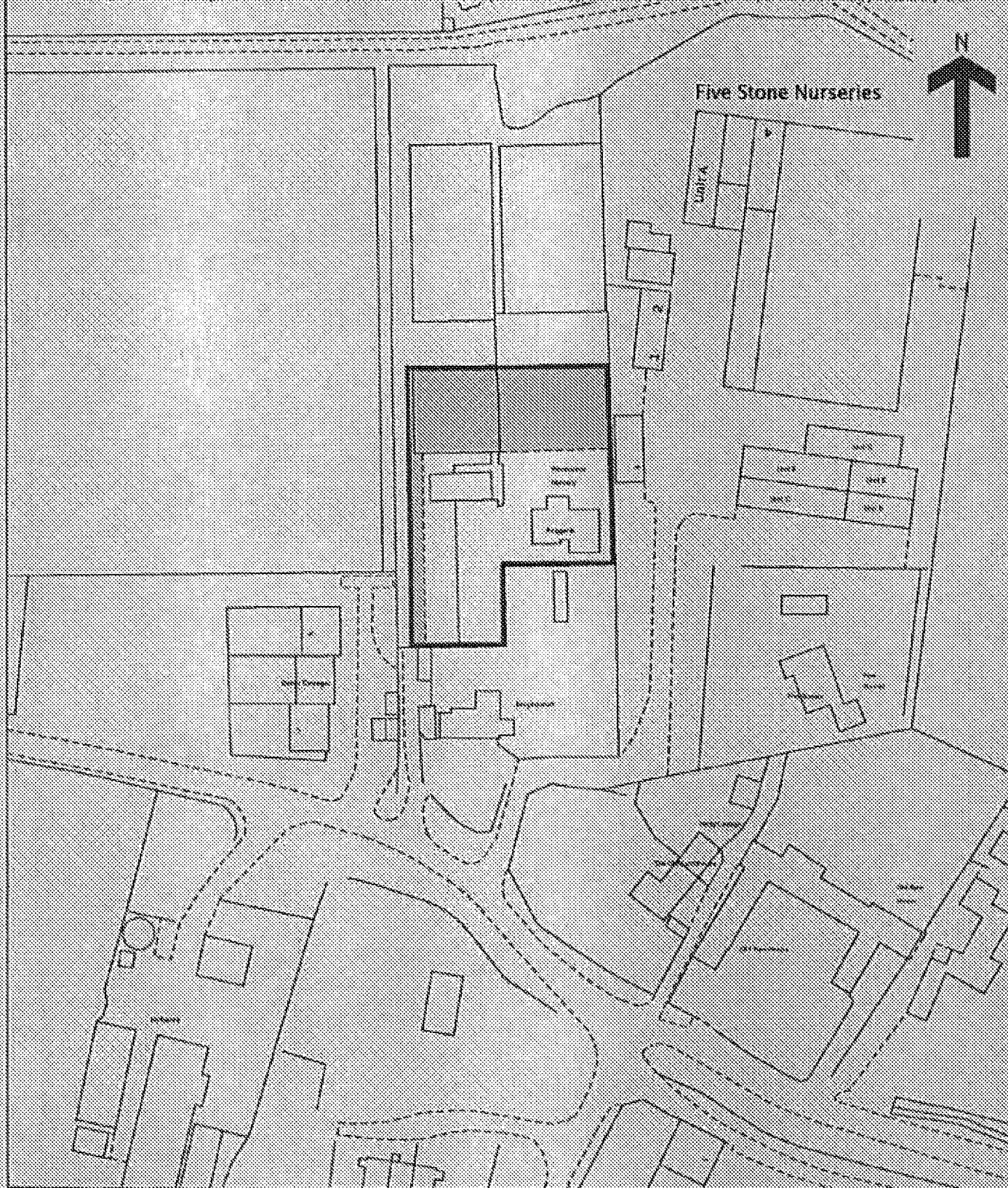
This official copy is incomplete without the preceding notes page.

Land Registry
Official copy of
title plan

Title number **WSX231791**
Ordnance Survey map reference **TQ0303NW**
Scale **1:1250 enlarged from 1:2500**
Administrative area **West Sussex : Arun**



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This official copy is incomplete without the preceding notes page.

The contributions generated by this proposal shall be spent on additional equipment at The Littlehampton Academy Sixth Form.

SIGNED AS A DEED BY
THE OWNER IN THE
PRESENCE OF



OLIVER



OLIVER

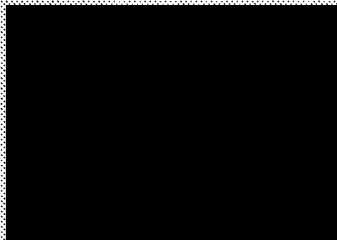
NAME
ADDRESS
OCCUPATION

SIGNED AS A DEED BY
THE SECOND OWNER IN THE
PRESENCE OF

J R Oliver
3 Dutch Cottages
Taddington Lane
BN17 7PP

WITNESS

NAME
ADDRESS
OCCUPATION



EXECUTED AS A DEED BY
AS AN ATTORNEY FOR AND ON BEHALF OF
BANK OF SCOTLAND PLC
IN THE PRESENCE OF
HALIFAX PLC
TRINITY ROAD
HALIFAX
HX1 2RG



Rec'D
2/6/17

Mr R J & Mrs M Gould
Westholme Nurseries/Anggerik
Toddington Lane
Littlehampton
West Sussex
BN17 7PP

2nd June 2017

Mrs Anita Gardner
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Dear Mrs Gardner

Reference: LU327/16/OUT – Your Ref: LU/94/17/OUT

As you are aware of our situation and with regards to the new 106 form, which was supplied to us on the 19th May. We have now have had this form (fourth form) duly completed and returned today in this mornings post. Please find enclosed as requested this form had to be in your offices on the 2nd June 2017 and no later.

We do trust this is correct! As nobody from the 19th May to date either from West Sussex County Council or Arun District Council has contacted us otherwise.

Yours sincerely,



R J & M Gould
Westholme Nurseries/Anggerik

Encs

Dated 8 June 2017

Dear Mr Jones

Please find attached a more formal notification giving you authorization to alter the wording on the s106 deed.

We have asked our Solicitor Mr Geoff Sinerton to phone the Halifax for a quicker response. We have written to Ms Floodgate with a cheque enclosed for payment of two hundred pounds in today's post. We are disappointed to hear from Mrs Gardner that she will only discuss through our then agent Richard Vickery, who has been paid in full and no longer is appointed?

Yours faithfully R J & M Gould

Dated 7 June 2017

Delwyn

Thank you for your email. Please my responses to your email in green.

While far from ideal, I am content in this instance to agree to your first suggestion, which is that Mr and Mrs Gould be asked to authorise the dating and insertion of manuscript amendments to clause 5.1 references to Primary, Secondary and Sixth Form Education and Cl. 6.5.1 and WSCC legal fees. What does slightly concern me however is that there is clearly a mortgagee here and they should consent to such manuscript change as well in order for the amendments to the Deed to be binding. I am not seeking a counsel of perfection just concerned that the amendments, which should have been in there in the first place, need to be agreed by all parties.

Regards, Laura Floodgate | Solicitor | West Sussex County Council

Please note that I work part time and my working days are Monday to Wednesday 8am to 4pm. Telephone: [REDACTED]

[REDACTED] Address: Room 202, County Hall, West Street, Chichester, West Sussex, PO19 1RQ. DX: 157410 Chichester 8

Mr R J & Mrs M Gould
Anggerik/Westholme Nurseries
Toddington Lane
Littlehampton
West Sussex
BN17 7PP

7th June 2017

Mr D Jones - Solicitor
Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Dear Mr Jones

Reference: LU/327/16/OUT & LU/94/17/OUT

As our conversation this morning, we hereby give you, authorization to alter the 106 form in any way to complete the process.

Thank you for your expertise and time this morning, we will be sending an explanation to Ms L Floodgate as mentioned.

Yours faithfully



R J & M Gould

Delwyn Jones

From: Mia Webster [REDACTED]
Sent: 23 June 2017 15:00
To: Delwyn Jones; Laura Floodgate
Subject: Mr & Mrs R Gould - Westholme Nursery/Anggerik, Toddington Lane, Littlehampton
BN17 7PP - LU/94/17/OUT PTL:0015814

Our Ref: GOU002/0001/GIS/MW

Dear Sirs

We refer to the above matter and as solicitors for the Halifax we can confirm that they consent to the manual amendment to the Section 106 Agreement as is suggested in the email from Laura to Delwyn on 7 June 2017 at 14:13. The Halifax are providing a written letter of confirmation to ourselves in this regard which we shall email you upon receipt so that the amendments can be made and the matter placed before the July committee.

Yours faithfully,

Sinnertons

Sinnertons is a trading name of Gowen and Stevens LLP, 175 High Street, Banstead, Surrey, SM7 2NT.

[REDACTED]

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