

DATED

2017

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

RELATING TO LAND AT

CHURCH FARM HOLIDAY VILLAGE ,CHURCH LANE, PAGHAM PO21 4NR

PARTIES

COUNCIL - ARUN DISTRICT COUNCIL (1)

OWNER - HAVEN LEISURE LIMITED (2)

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THIS DEED is dated

2017

- (1) **ARUN DISTRICT COUNCIL** of The Civic Centre Maltrovers Road Littlehampton BN17 5LF (**Council**)
- (2) **HAVEN LEISURE LIMITED** incorporated and registered in England and Wales with company number 01968698 whose registered office is at No. 1 Park Lane Hemel Hempstead Hertfordshire HP2 4YL (**Owner**)

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 owns the Property subject to a mortgage in favour of the Mortgagee.
- (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 emerging Local Plan 2011-2031, and Cabinet's approval of the tariff based system on 20 July 2015, 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 £32,286.66 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 base rate from time to time of Barclays Bank plc.

Commencement Date: the date of this deed.

Default Interest Rate: 3% per annum above the Base Rate.

Development: the development of the Property by extending the occupancy period at Church Farm Holiday Village by one month to allow occupation between 1 March and 30 November in any year as described in the Planning Application.

Mortgagee: Barclays Bank Plc (company registration number 1026167) of 1 Churchill Place, London, Greater London E14 5HP who is the registered proprietor of the charges dated 23 October 2000 and 3 December 2008 as referred to in entries 7 and 10 of the charges register of title number WSX140967.

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 P/54/17/PL.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

Property: the freehold land at Church Farm Holiday Village, Church Lane, Pagham, Bognor Regis (PO21 4NR) shown edged red on the Plan and registered at HM Land Registry with absolute title under title number WSX140967.

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 fails 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 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 Commencement Date.
- 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 COVENANTS WITH THE COUNCIL

The Owner covenants with the Council to pay the Access Management Contribution to the Council on or before the Commencement Date.

4 THE COUNCIL'S COVENANTS WITH THE OWNER

- 4.1 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.
- 4.2 In the event that the Access Management Contribution has not been spent or committed for expenditure by the Council within 10 years following the date of receipt of the Access Management Contribution, the Council shall refund to the Owner any part of the Access Management Contribution which has not been spent or committed for expenditure together with any accrued interest.
- 4.3 Not to use any part of the Access Management Contribution other than for the purposes for which it was paid (whether by the Council or another party).

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

- 6.1 This deed shall be determined and have no further effect if the Planning Permission:
- 6.1.1 is withdrawn;
 - 6.1.2 is refused by the local planning authority;
 - 6.1.3 is varied or revoked other than at the request of the Owner; or
 - 6.1.4 is quashed following a successful legal challenge.

7 LOCAL LAND CHARGE

- 7.1 This deed is a local land charge and shall be registered as such by the Council.
- 7.2 On the written request of the Owner at any time after each of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge.
- 7.3 Following the performance and full satisfaction of all the terms of this deed or if this deed is determined pursuant to clause 6 the Council will on the written request of the Owner cancel all entries made in the Local Land Charges Register in respect of this deed.

8 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.

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 limited to £200.

10 OWNERSHIP

- 10.1 The Owner warrants that no person other than the Owner and the Mortgagee 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:

- 10.2.1 the name and address of the person to whom the disposition was made; and
- 10.2.2 the nature and extent of the interest disposed of.

11 NO FETTER OF DISCRETION

Nothing (contained or implied) in this deed shall fetter or restrict the statutory rights, powers, discretions and responsibilities of the Council.

12 FUTURE PERMISSIONS

Nothing in this deed shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

13 NOTICES

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

- 13.1.1 delivered by hand; or
- 13.1.2 sent by pre-paid first class post or other next working day delivery service.

- 13.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

13.2.1 to The Planning Department of Arun District Council, quoting the Planning Application number at the following address: The Civic Centre Maltravers Road Littlehampton BN17 5LF;

13.2.2 to the Owner, for the attention of David Waterfield at 1 Park Lane, Hemel Hempstead, HP2 4YL;

- 13.3 Any notice or other communication given in accordance with clause 13.1 and clause 13.2 will be deemed to have been received:

13.3.1 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;

13.3.2 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.

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

- 13.5 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.

14 THIRD PARTY RIGHTS

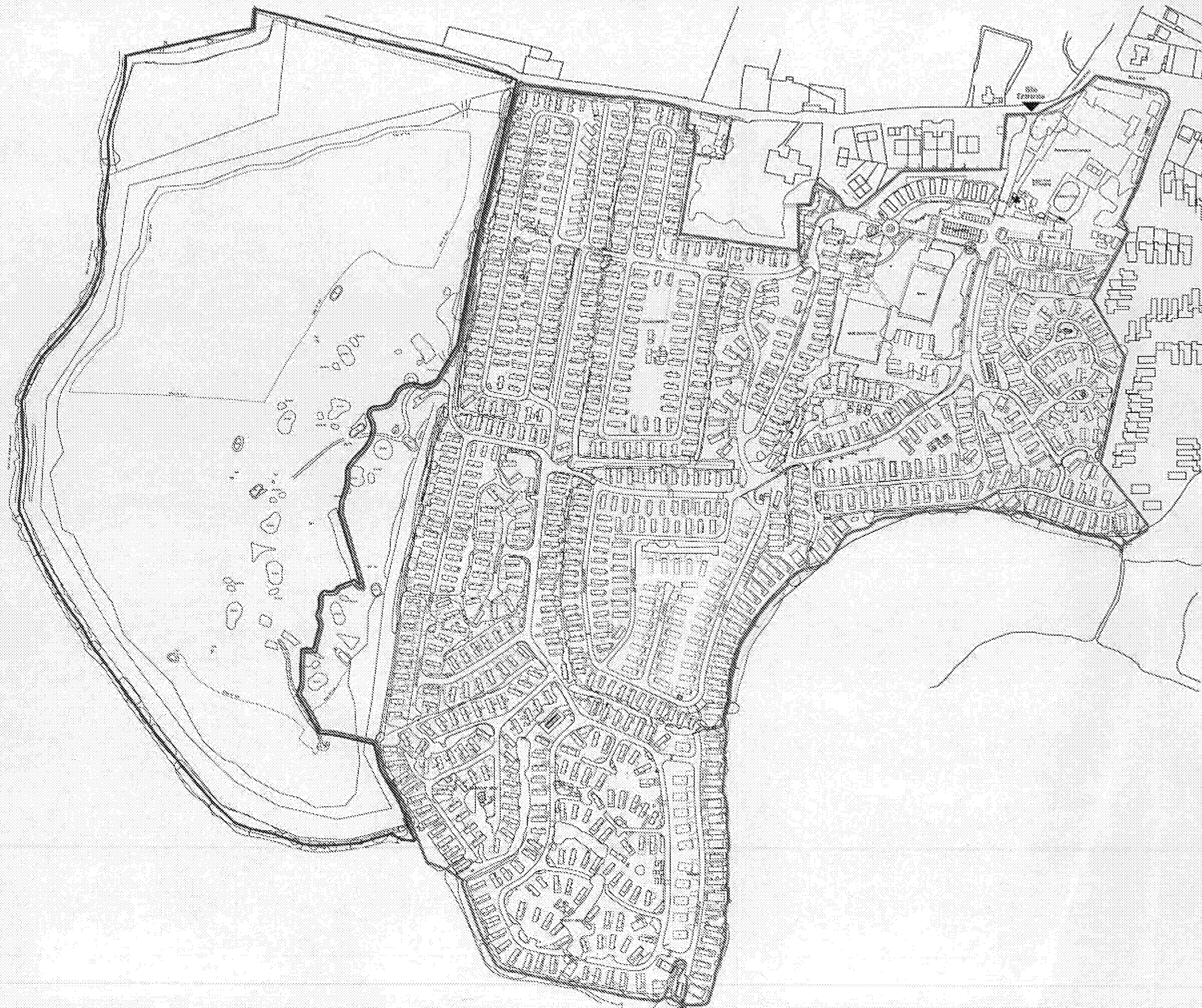
A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

15 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.

APPENDIX 1 PLAN

OCCUPANCY PERIOD - SITE LOCATION PLAN



A diagram of a four-pointed star (anemometer) with a central circle and four points labeled N, S, E, and W. The points are arranged in a cross shape, with N at the top, S at the bottom, E on the left, and W on the right. The points are connected by curved lines forming a circle around the center.

XXXXXXXXXXXXXXXXXXXX

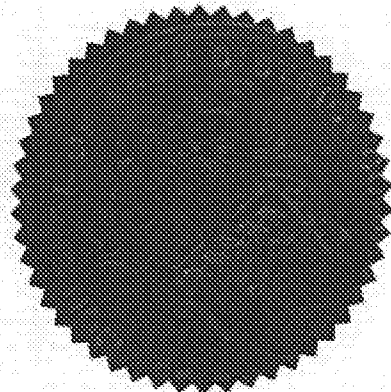


2410 104

3440-104

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

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



Authorised Signatory

Signature

Name *HELEN JANE ATKINSON*

Job Title *SOLICITOR*

Seal Book No. *380/2019*

Executed as a Deed by)
HAVEN LEISURE LIMITED)
acting by a director in the)
presence of.)

.....
Director

Signature of witness

Name (in BLOCK CAPITALS)

Address

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