

DATE 31 MAY 2019

ARUN DISTRICT COUNCIL (1)

WEST SUSSEX COUNTY COUNCIL (2)

LINDEN WATES (WALBERTON) LLP (3)

WATES (WALBERTON) LIMITED (4)

AGREEMENT UNDER SECTION 106A OF
THE TOWN AND COUNTRY PLANNING
ACT 1990 TO VARY A SECTION 106
AGREEMENT DATED 1ST NOVEMBER
2017 IN RELATION TO LAND EAST OF
TYE LANE, WALBERTON

PLANNING APPLICATION WA/44/17/OUT

ARUN DISTRICT COUNCIL
ARUN CIVIC CENTRE
MALTRAVERS ROAD
LITTLEHAMPTON
WEST SUSSEX
BN17 5LF
Ref: CMS 7172

DATED THIS 31 DAY OF MAY 2019

PARTIES

- (1) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex. BN17 5LF ("**ADC**")
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex PO19 1RQ ("**WSCC**")
- (3) **LINDEN WATES (WALBERTON) LLP** (LLP Regn. No. OC421410) of Cowley Business Park, High Street, Cowley, Uxbridge UB8 2AL ("the Owner")
- (4) **WATES (WALBERTON) LIMITED** (Co. Regn. No.11149972) of Wates House, Station Approach, Leatherhead, United Kingdom, KT22 7SW ("**the Chargee**") A.H. L.G.

BACKGROUND

- (A) ADC is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area in which the Land is situated.
- (B) WSCC is the strategic planning authority, the local highway authority, the local education authority and the authority responsible for providing library and fire and rescue services.
- (C) The Owner is the freehold owner of the Land.
- (D) The Chargee has a legal charge over the Land.
- (E) On 1st November 2017 the Council entered by deed into a Section 106 Agreement with (1) David Henry Tupper, Hilary Jennifer Tupper, Andrew William Brooke and David Mark Spofforth (2) Wates Developments Limited and (3) West Sussex County Council
- (F) The parties have agreed to amend the Original Agreement
- (G) This agreement is made under section 106A of the Act and is supplemental to and varies the Original Agreement.

AGREED TERMS

1 INTERPRETATION

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

1.1 Definitions

Original Agreement: means the Section 106 Agreement dated 1st November 2017 between (1) David Henry Tupper, Hilary Jennifer Tupper, Andrew William Brooke and David Mark Spofforth (2) Wates Developments Limited (Arun District Council) and (4) West Sussex County Council

- 1.2** Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this deed
- 1.3** Clause headings shall not affect the interpretation of this deed.
- 1.4** A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6** Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7** A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of ADC and WSCC the successors to their 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

2 STATUTORY PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3 VARIATIONS TO THE ORIGINAL AGREEMENT

3.1 All words and expressions defined in the Original Agreement shall bear the same meaning in this deed except where otherwise provided or where the context otherwise requires.

3.2 The definitions, clauses, obligations and provisions of the Original Agreement shall remain in full force and effect except as varied or added to by this deed and shall continue to be applicable to the Land in respect of the Development and remain to be performed to the extent that they have not already been performed.

3.3 The parties agree that from the date of completion of this deed the Original Agreement shall be varied as set out in the First Schedule hereto.

4 COVENANTS BY THE OWNER

4.1 The Owner covenants with ADC and WSCC to comply with their obligations in the Original Agreement as varied by this deed.

5 LOCAL LAND CHARGE

5.1 This Deed shall be registered as a Local Land Charge

6 COUNCIL COSTS

6.1 The Owner shall pay to ADC on or before the date of completion of this deed, ADC's reasonable and proper legal costs of £500.00 together with all disbursements incurred in connection with the preparation, completion and registration of this deed

6.2 The Owner shall pay to WSCC on or before the date of completion of this deed, WSCC's reasonable and proper legal costs of £500.00 together with all disbursements incurred in connection with the preparation, completion and registration of this deed

7 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.

8 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.

9 CHARGEES CONSENT

The Chargee consents to the Owner entering into this deed and in the event that the Chargee takes possession of the Land or any part of it and/or exercising its power of sale under the provisions of their respective charge then the Chargee and their respective successors in title will observe and perform and be bound by the terms and conditions of this deed and of the Original Agreement in so far as the same remain to be observed and performed.

FIRST SCHEDULE

VARIATIONS

- 1** That paragraph 2.9 be amended by the deletion of the definition of "MUGA" and any and all other reference to "MUGA" within the Original Agreement including (but not restricted to) any reference in any other definition, clause or paragraph shall also be deleted in its entirety.
- 2** That paragraph 2.9 be amended by the insertion of the following:
"Tennis Courts" means two tennis courts to be provided in accordance with Clause 7 of this Agreement (unless otherwise agreed in writing with ADC)
- 3** That the existing Clause 7 shall be deleted and replaced with the following:

7. ON SITE PROVISION OF TENNIS COURTS

The Owner covenants with ADC

- 7.1** to provide the Tennis Courts in accordance with a scheme to be approved by ADC as part of the reserved matters application with planning reference WA/95/18/RES (unless otherwise agreed in writing with ADC) .
- 7.2** to ensure that the Tennis Courts are accessible to the public at all times.
- 7.3** to complete the works for the provision of two playable, fenced and gated hard surfaced tennis courts which shall be laid out in accordance with Clause 7.1 and to make the Tennis Courts available for use by the public prior to the first

Occupation of the eighty eighth(88No) Dwelling forming part of the Development to be Occupied

- 7.4 not to cause allow or permit the Occupation of the eighty eighth (88No) Dwelling forming part of the Development to be Occupied unless and until the Tennis Courts have been provided in accordance with this clause
- 7.5 within three months of the completion of the works referred to in Clause 7.3 to transfer the Tennis Courts to the Walberton Parish Council for the purpose of managing and maintaining the Tennis Courts such transfer to include covenants on Walberton Parish Council not to make an application to ADC to amend the Permission relating to the Tennis Courts without first obtaining the written approval of the Owner and to manage and maintain the Tennis Courts in perpetuity

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

The common seal of ARUN DISTRICT COUNCIL

was affixed to this document in the presence of:

Authorised signatory



Seal Book No. 188/2019

Name: LOUISE GREENE

Job Title: Solicitor
Legal Services Manager

The common seal of
WEST SUSSEX COUNTY COUNCIL



was affixed to this document in the presence of:

Authorised signatory

Seal Book No.

Name:

Job Title



**EXECUTED as a DEED by LINDEN WATES
(WALBERTON) LLP**

presence of:

~~Member:~~

Director

~~Member:~~

Director / Secretary

**EXECUTED as a DEED by WATES
(WALBERTON) LIMITED acting by:**

Director:

Director/Secretary:

