

DATED 25th January 2019

SECTION 106 AGREEMENT

TOWN & COUNTRY PLANNING ACT 1990

RELATING TO LAND AT WANDLEYS FARM, WANDLEYS LANE, WALBERTON, WEST SUSSEX

Planning Application WA/76/17/PL.

Parties:

MR & MRS LILLYWHITE

and

ARUN DISTRICT COUNCIL

THIS UNILATERAL UNDERTAKING is made the 25th January day of [] 2019 by Mr & Mrs Lillywhite (hereinafter called "the Owner") to Arun District Council of Arun Civic Centre, Maltravers Road, Littlehampton BN17 5LF called "the Council")

INTERPRETATION

IN this Deed the following words and expressions shall have the following meanings:-

"the 1990 Act"	The Town and Country Planning Act 1990;
"Affordable Housing"	Housing which comprises of Intermediate Housing Units provide to eligible households whose needs are not met by the market and which should meet the needs of eligible households with a Local Connection(subject to paragraph 3.1.4 of the Affordable Housing Schedule), including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices and shall include provision for the home to remain at an affordable price for future eligible households;
"Affordable Housing Mix"	Means 100% Intermediate Housing Units;
"Affordable Housing Provider"	Means either: (i) a Registered Provider as defined by the Housing and Regeneration Act 2008 and/or registered by the HCA and/or a non-profit making body which is registered with the HCA and/or any other body which is authorised by the HCA to own or manage Affordable Housing; or (ii) a housing association trust or other company or body specialising in the delivery of Intermediate Housing as agreed in writing by the Council (such approval not be unreasonably withheld or delayed);
"Affordable Housing Units"	Means the four 2 bedroom houses to be constructed on the Site as Affordable Housing in accordance with the Affordable Housing Mix;
"Commencement of Development"	The start of material operations as defined in Section 56(4) of the Act in respect of the Proposed Development but excluding (for the purposes of this Agreement and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof enabling works, site clearance works, earthworks, archaeological investigations and digs, exploratory boreholes, operations permitted by the Town and Country Planning (General Permitted Development) Order 2015 the erection of hoardings and fencing, temporary diversion of services and signage (including the

formation of temporary construction accesses) and "Commence Development" shall be constructed accordingly;

"Commencement of Development

Date"

The date on which the Commencement of the Development occurs;

"Commencement of Marketing"

The first date the Affordable Housing Provider advertises the availability of the Affordable Housing Units for sale of Intermediate Housing Units being a date no earlier than nine months prior to the forecast physical completion of the first Intermediate Housing Unit and the Owner or Affordable Housing Provider will serve a notice to the Council confirming this date;

"HCA"

Homes England or such successor organisation that shall be constituted to administer the delivery of grant funding for Affordable Housing.

"Help to Buy South East"

The organisation appointed by the Homes England to administer low cost home ownership products in the south east of England and for the purposes of this Agreement means BPHA whose Head Office is situated at Bedford Heights Manton Lane Bedford MK41 or any other agent from time to time appointed by the Homes England or nominated and approved by the Council;

"Homes England"

Homes England or such successor organisation that shall be constituted to administer the delivery of grant funding for Affordable Housing.

"Intermediate Housing Units"

Homes for sale below market levels subject to the criteria in the Affordable Housing definition above including Shared Ownership Units and Shared Equity Units where in respect of the Development the monthly costs to the purchaser will not exceed the cost of a mortgage for 75% of the open market value with not rent on the 25% balance;

"Market Housing"

General market housing on the Development for sale and which is not Affordable Housing and "Open Market Dwellings" shall be construed accordingly;

Local Connection

Means the relation to an individual such individual who at the Commencement of Marketing Date either:

(i) resides in the Parish of Walberton; or

(ii) has a parent child brother sister or adult child whose only or principal home or place of residence is in the Parish of Walberton; or

(iii) is permanently employed in the parish of Walberton either full or part-time;

PROVIDED THAT where no individual or insufficient individuals can be identified as having a connection with the parish of Walberton as outlined above then

(iv) Parishes sharing a common boundary with the Parish of Walberton shall be added and further where no individual or insufficient individuals can be identified within either the Parish of Walberton or the adjacent Parishes then;

(v) the remaining parishes within Arun District Council shall be added.

"Shared Equity Units"

means the Affordable Housing Units that may form part of the Intermediate Housing Units where an Affordable Housing Provider disposes of the freehold or long leasehold interest in the Unit at a price discounted to the open market value of the Unit and retains a legal charge to protect the discounted share;

"Shared Ownership Units"

means Affordable Housing Units in respect of which a lease is granted at a premium representing a percentage of the open market value of that Unit and subject to a rent (if any) payable in respect of the retained ownership percentage and whether or not the lessee has the right to pay a further premium in respect of a further percentage of purchase price and/or to acquire a leasehold or freehold reversion to the lease and complying with general HCA guidelines;

THE SCHEDULE

Hereinbefore referred to

The Owner hereby covenants and agrees with the Council:

1. BUILD

- 1.1 To provide the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing mix.
- 1.2 To provide a vehicular and pedestrian access and connections to adequate foul and surface water sewers and water gas electricity and telecommunications services systems to the Affordable Housing Units linking in each case to the estate roads sewers and service systems to be constructed and laid as part of the remainder of the Development where appropriate and connected ultimately to highways maintainable at the public expense.

2. DISPOSAL

- 2.1 To use reasonable endeavours to reach an agreement with an Affordable Housing Provider regarding the disposal of the Affordable Housing Units prior to the Commencement of the Development and to notify the Council of any such agreement entered into or the failure to reach agreement and the reasons for this.
- 2.2 If no agreement has been reached at the expiration of a period of six months from the date the Owner first approaches Affordable Housing Providers pursuant to paragraph 2.1 to serve notice upon the Council confirming that no agreement has been entered into and the reasons for this and the Council shall be entitled to nominate an Affordable Housing Provider (or providers) for the purpose within three months of the Owner's notification under this paragraph.
- 2.3 Upon reaching agreement with any Affordable Housing Provider or providers (pursuant to paragraph 2.1 or paragraph 2.2) above to use all reasonable endeavours to transfer the relevant Affordable Housing Units and/or any relevant Affordable Housing Land ready for occupation to the Affordable Housing Provider as soon as reasonably practicable and substantially in the form of the terms of the said agreement.

3. LOCAL CONNECTIONS

- 3.1 Unless otherwise agreed with the District Council:
 - 3.1.1 At the Commencement of Marketing the Affordable Housing Units will only be offered to those with a Local Connection falling within paragraphs (i) (ii) or (iii) of the definition of Local Connection.
 - 3.1.2 If any Affordable Housing Units remain unreserved within 2 months of the Commencement of Marketing then the Affordable Housing Units will be made available to those with a Local Connection that fall within paragraph (iv) of the proviso to the definition of Local Connection.
 - 3.1.3 If any Affordable Housing Unit remains unreserved within 4 months of the Commencement of Marketing then the Affordable Housing Units will be made available to those with a Local Connection that fall within paragraphs (v) of the proviso to the definition of Local Connection.

3.1.4 If after a further 2 months any Affordable Housing Units remain unreserved then the Local Connection criteria will cease to apply. Affordable Housing Units will be made available to persons outside the District of Arun however priority shall be given to locally connected households.

3.2 The sale and timing obligations within clause 3.1 will apply on any subsequent re-sale of an Affordable Housing Unit save that the individual periods will reduce from 2 months to 1 month in each instance.

4 MORTGAGEE IN POSSESSION

4.1 To take all reasonable and prudent steps to avert the repossession of any Affordable Housing Unit by any chargee or mortgagee or the exercise by any chargee or mortgagee of a power of sale and for these purposes in the event of default under the charge or security or likely default to co-operate fully with the Council to attempt to arrange a transfer of the Affordable Housing Unit to another Affordable Housing Provider or (at the Council's option) to the District Council and in particular shall inform the Council immediately in the event of the Owner receiving notification from such chargee or mortgagee of any breach or alleged breach by the Owner of any of its obligations under its security.

4.2 That in the event of a default under any security referred to in paragraph 4.1 or in other circumstances warranting the intervention of the HCA (whether or not under the Housing and Regeneration Act 2008) nothing in this schedule shall prevent the disposal of any Affordable Housing Unit to another Affordable Housing Provider.

4.3 Subject to and without prejudice to the powers and requirements of the HCA under the Housing and Regeneration Act 2008 that in the event of a default under any security referred to in paragraph 4.1 nothing in this Schedule shall prevent the disposal of any Affordable Housing Unit by the chargee or mortgagee in the exercise of its power of sale or by any receiver appointed by such charge or mortgagee provided that the chargee or mortgagee or its receiver shall have first followed the procedure set out in paragraph 4.4 of this part.

4.4 The procedure referred to in paragraph 4.3 shall be as follows

4.4.1 The chargee or mortgagee ("the Mortgagee") or its receiver/administrator shall give not less than 28 days prior written notice ("the Moratorium Period") to the Council of its intention to exercise its power of sale (or take such other action as is available to it) to enable the Council to attempt to secure the disposal of the Affordable Housing Unit/s to another Affordable Housing Provider or to the Council ("the Mortgagee Notice");

4.4.2 The Council shall then have four weeks from expiration of the Moratorium Period within which to respond to the Mortgagee Notice indicating that arrangements for the disposal of the Affordable Housing Unit can be made in such a way as to safeguard the Affordable Housing Units;

4.4.3 If within the four weeks referred to in paragraph 4.4.2 above the Council does not serve a response to the Mortgagee Notice or serves a response which does not indicate that arrangements can be made in accordance with paragraph 4.4 then the Mortgagee or its receiver/administrator shall be entitled to exercise its power of sale (or exercise such other remedy available to it which result in the disposal of the Affordable Housing Unit) free of the restrictions in this Agreement requiring the subject dwelling/dwellings to be disposed or occupied of as an Affordable Housing Units (and for the avoidance of doubt any successor in title to the unit/units sold under this paragraph shall take free from the same);

4.5 If the Council serves its response to the Mortgagee Notice indicating that arrangements can be made in accordance with paragraph 4.4 then the Mortgagee or its receiver/administrator shall co-operate with such arrangements and use all reasonable endeavours to secure such disposal and PROVIDED THAT having co-operated and used all reasonable endeavours the Mortgagee or its receiver/administrator shall be entitled to exercise its power of sale (or exercise such other remedy available to it which result in the Disposal of the Affordable Housing Unit/s) free of the restrictions in this Agreement requiring the subject dwelling/s to be disposed or occupied of as an Affordable Housing Unit/s if there has been no exchange of contracts with an Affordable Housing Provider or the Council as the case may be 3 months (or such other period as the Mortgagee or its receiver/administrator and the Council agree) after the Mortgagee Notice is received and any subsequent purchasers from the Mortgagee or its receiver/administrator exercising its rights under this paragraph shall also take free of the restrictions in this Agreement requiring the subject dwelling/s to be disposed or occupied of as an Affordable Housing Unit/s AND PROVIDED THAT the failure to exchange contracts is not due to unreasonable delay or behaviour on the part of the Mortgagee;

4.6 If the Mortgagee or its receiver/administrator does not wish to exercise its power of sale or any other remedy at any time after the giving of the Mortgagee Notice or the Council does not wish to continue with the exercise of its powers under paragraph 4.5 after the giving of its response under paragraph 4.4 that party shall give to the other not less than seven days' written notice of its intention to discontinue;

4.7 If the Council discontinuing its action under paragraph 4.5 the Mortgagee or its receiver/administrator and any purchaser from the Mortgagee or its receiver/administrator exercising its rights under paragraph 4.4 shall also take free of the restrictions in this Agreement requiring the subject dwelling/s to be disposed or occupied of as an Affordable Housing Unit/s PROVIDED THAT the 3 month period (or such other period as the Mortgagee or its receiver/administrator and the Council agree) after the Mortgagee Notice is received has passed OTHERWISE the District Council may identify another Affordable Housing Provider, or itself to take a transfer and notify the Mortgagee or its receiver/administrator within two weeks and the provision in paragraph 4.5 shall then apply BUT FOR THE AVOIDANCE OF DOUBT this clause shall not extend the three month period referred to in clause 4.5;

5 USE OF AFFORDABLE HOUSING UNITS

The Affordable Housing Units will not be used for any other purpose other than as Affordable Housing provided that such an obligation shall not apply to:

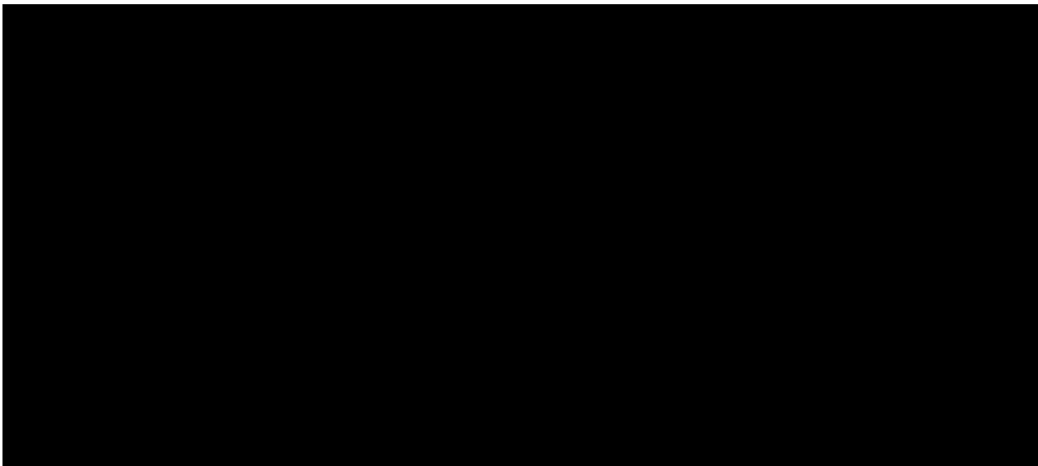
- 5.1 A mortgagee in possession or chargee (or to a receiver or administrative receiver appointed thereby) of an Affordable Housing Provider to which the Affordable Housing Units have been transferred or to the successors in title to such persons provided that the procedure in paragraph 4.4 above has been complied with;
- 5.2 An occupier of an Affordable Housing Unit exercising their right to acquire 100% share in such Dwelling; or
- 5.3 Any mortgagee of any occupiers referred to above or the successors in title of any such persons or mortgagees; or
- 5.4 Any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services.

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 (OWNER

FULL NAME

WYMAN WILLYWHITE
KEVIN WILLYWHITE



In the presence of :-

(WITNESS FULL NAME)

Mr Russell Evelyn

(WITNESS FULL ADDRESS)

(WITNESS OCCUPATION)



Executed as a Deed by affixing

THE COMMON SEAL OF

ARUN DISTRICT COUNCIL in the

Presence of

Authorised Signatory

Signature.....

Name.....

Job Title.....

Seal Book No.

[REDACTED]

From: Annette Bailey [REDACTED]
Sent: 08 May 2019 09:59
To: Jeremy Cook
Cc: Susan Leeson
Subject: RE: (CMS6903) Land at Wandleys Farm WA/76/17/PL

Follow Up Flag: Follow up
Flag Status: Flagged

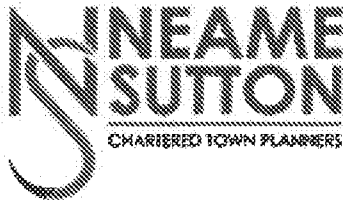
Good morning Jeremy

Further to your email, our clients give their consent to the document being amended by the Council, to include the planning application reference number.

Kind regards
Annette

ANNETTE BAILEY
OFFICE MANAGER

[REDACTED]



Company Registration No. 07164666. Registered Office is at 1 and 2 The Barn, West Stake Road, Chichester, West Sussex, PO18 9AA.

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From: Jeremy Cook <Jeremy.Cook@arun.gov.uk>
Sent: 07 May 2019 15:07
To: Annette Bailey [REDACTED]
Subject: (CMS6903) Land at Wandleys Farm WA/76/17/PL

Dear Annette

Further to my email of this morning the Council has looked again at the Unilateral Undertaking and it has become apparent that at no point in the document is there recorded the reference number of the planning application, therefore it is difficult to show which application it relates to.

Rather than asking for it to be amended and resigned could you obtain your clients consent to a manuscript amendment to be made by the Council to include, on the front page the words "Planning Ref: WA/76/17/PL".

Thank you for your assistance.

Regards

Jeremy Cook
Barrister

<https://www.arun.gov.uk>
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