

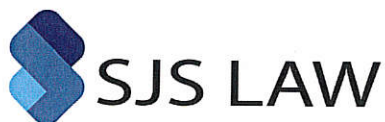
Dated

5 March

2020

TONBRIDGE AND MALLING BOROUGH COUNCIL
and
BERKELEY HOMES (EASTERN) LIMITED

**Planning Obligation Under Section 106 Of The Town And Country
Planning Act 1990 Relating To Land At Cemetery Road, Snodland**



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8 Kew Bridge Road
London
TW8 0FJ

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THIS DEED IS MADE ON THE
BETWEEN

14 DAY OF MARCH 2020

- 1) **TONBRIDGE AND MALLING BOROUGH COUNCIL** of Gibson Building, Gibson Drive, Kings Hill, West Malling, ME19 4LZ (the "**Council**");
- 2) **BERKELEY HOMES (EASTERN) LIMITED** of Berkeley House, 19 Portsmouth Road, Cobham, Surrey, KT11 1JG (the "**Owner**")

RECITALS

- 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 is the freehold owner of the Property free from encumbrances.
- C. The Owner has made the Planning Application and is proposing to carry out the Development.
- D. The Council having regard to all material considerations has resolved that Planning Permission should be granted for the Development subject to the prior completion of this Deed.

IT IS HEREBY AGREED

1. Interpretation

The following definitions and rules of interpretation apply in this Deed:

1.1. Definitions:

Base Rate: the base rate from time to time of Barclays Bank plc.

Commencement: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this Deed and for no other purpose, the following operations: works of demolition; site set-up, works of site clearance; ground investigations; site survey works; laying of services and service media; construction of temporary accesses; archaeological investigation; landscaping works off the public highway; noise attenuation works; decontamination; and the erection of fences and hoardings and **Commence** and **Commences** shall be construed accordingly.

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

Development: the development of the Property authorised by the Planning Permission.

Index Linked: increased in accordance with the following formula:

Amount payable = the payment specified in this Deed x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date the payment is due.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this Deed.

Occupation: the beneficial occupation for any use for which the Development was designed other than occupation for the purposes of construction, fitting out or marketing.

Open Space Contribution: means a sum of £26,648 (twenty six thousand six hundred and forty eight pounds) Index Linked payable in accordance with Schedule 1 of this Deed.

Plan: the plan attached in Appendix A

Planning Application: the application for full planning permission registered by the Council on 21 November 2019 under reference number 19/02743/FL.

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

Property: the land at Cemetery Road, Snodland shown edged red on the Plan being part of the land registered at HM Land Registry with absolute title under title number K825854.

Specified Purpose: means improving or enhancing the following areas of open space within the vicinity of the Property and the Open Space Contribution is to be distributed in the identified amounts:

- (a) Leybourne Lakes Country Park (£7,318) (seven thousand three hundred and eighteen pounds)
- (b) Augers Field (£1,334) (one thousand three hundred and thirty four pounds)
- (c) Snodland Cricket Meadow (£13,425) (thirteen thousand four hundred and twenty five pounds)
- (d) Potyns play area (£1,763) (one thousand seven hundred and sixty three pounds)
- (e) Natural green spaces adjoining Holborough road (£2,808) (two thousand eight hundred and eight pounds)

TCPA 1990: the Town and Country Planning Act 1990 (as amended).

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

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. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 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 and permitted assigns and in the case of the Council 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.
- 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 and Schedules are to the clauses and Schedules of this Deed.
- 1.13. An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14. 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.
- 1.15. Where an obligation falls 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, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2. The covenants, restrictions and obligations contained in 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. The covenants, restrictions and obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. Conditionality

With the exception of clause 2, clause 3, clause 7, clause 9, clause 10, clause 11, clause 14, clause 14, clause 16, clause 17, clause 18 clause 19 and clause 24 (which take effect immediately), this Deed is conditional on the grant and issue of the Planning Permission.

4. Covenants by the Owner

The Owner covenants with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 1.

5. Covenants by the Council

The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2, subject to the Owner's performance of its covenants.

6. Indexation

- 6.1. All financial contributions payable to the Council shall be Index Linked.
- 6.2. Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

7. Release

- 7.1. No person shall be liable for any breach of a covenant, restriction or obligation 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.
- 7.2. The obligations contained in this Deed shall not be binding upon or enforceable against any statutory undertaker or other person who acquires any part of the Property or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport

8. Determination of deed

- 8.1. The obligations in this Deed shall cease to have effect if before the Commencement of Development, the Planning Permission:
 - 8.1.1. expires;
 - 8.1.2. is varied or revoked other than at the request of the Owner; or
 - 8.1.3. is quashed following a successful legal challenge.

9. Local land charge

This Deed is a local land charge and shall be registered as such by the Council.

10. Interest on late payment

If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

11. Ownership

- 11.1. The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.
- 11.2. Until the covenants, restrictions and obligations in Schedule 1 have been complied with, the Owner will give to the Council within 20 (twenty) 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:
 - 11.2.1. the name and address of the person to whom the disposition was made; and
 - 11.2.2. the nature and extent of the interest disposed of.

12. Reasonableness

Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed.

13. Cancellation of entries

- 13.1. On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge.
- 13.2. Following the performance and full satisfaction of all the terms of this Deed (or if this Deed is determined pursuant to clause 8) 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.

14. No fetter of discretion

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

15. Waiver

No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. Future Permissions

Nothing in this agreement 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.

17. Agreements and Declarations

17.1. The parties agree that:

- 17.1.1. nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
- 17.1.2. nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

18. Notices

18.1. Any notice to be given under this Deed must be in writing and must be:

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

18.2. Any notice to be given under this Deed must be sent to the relevant party as follows:

- 18.2.1. to the Council at Gibson Building, Gibson Drive, Kings Hill, West Malling, ME19 4LZ for the attention of the Head of Planning quoting the planning application reference
- 18.2.2. to the Owner at Berkeley House, 19 Portsmouth Road, Cobham, Surrey, KT11 1JG

or as otherwise specified by the relevant party by notice in writing to each other party.

18.3. Any notice given in accordance with clause 18.1 and clause 18.2 will be deemed to have been received:

- 18.3.1. if delivered by hand, on signature of a delivery receipt 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; or
- 18.3.2. 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.

18.4. A notice given under this Deed shall not be validly given if sent by e-mail.

- 18.5. 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.

19. 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.

20. Council's costs

The Owner shall pay to the Council on or before the date of this Deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed.

21. Disputes

- 21.1. No party may elect to refer a dispute to the dispute resolution contained in clauses 21.2 to 21.7 unless they shall first have used reasonable endeavours for a period of not less than one month to mediate the dispute with the other party (or parties) to the dispute through appropriate senior representatives from within the respective organisations.
- 21.2. In the event of any dispute or difference arising between the parties arising out of this Deed such dispute or difference may be referred to an expert, being an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications.
- 21.3. In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the expert to be appointed pursuant to clause 21.2 or as to the appropriate professional body, within ten working days after any party has given to the other parties to the dispute a written request to concur in the professional qualifications of the expert to be appointed pursuant to clause 21.2 then the question of the appropriate qualifications or professional body shall be referred to a solicitor appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute. Such solicitor shall act as an expert and his decision as to the professional qualifications of such person, or as to the appropriate professional body, shall be final and binding upon the parties and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal measure.
- 21.4. The expert shall act as an expert and not as an arbitrator.
- 21.5. The expert shall be appointed subject to an express requirement that he reaches his determination and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 46 (forty-six) Working Days from the date of his appointment to act.
- 21.6. The expert shall be required to give notice to each of the said parties inviting each of them to submit to him within 10 (ten) Working Days of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter-submissions within a further 15 (fifteen) Working Days. The expert's decision shall be given in writing within 20 (twenty) Working Days from any counter-submission or in the event there are no counter-submissions within 21 (twenty-one) Working Days of receipt of the written submissions, with reasons, and in

the absence of manifest material error the expert's decision shall be final and binding upon the said parties.

- 21.7. The expert may award the costs of the dispute resolution in such proportions as he sees fit but in absence of an express award to this effect the costs of the dispute resolution shall be borne by the parties to the dispute in equal shares

22. Severance

- 22.1. If any court or competent authority finds that any provision of this Deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Deed shall not be affected.
- 22.2. If any invalid, unenforceable or illegal provision of this Deed would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

23. Value added tax

- 23.1. Each amount stated to be payable under or pursuant to this Deed is exclusive of VAT (if any).
- 23.2. If any VAT is at any time chargeable on any supply, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

24. 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.

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 **TONBRIDGE AND MALLING BOROUGH COUNCIL** in the presence of:



Authorised signatory

Seal N^o 2153

Signed as a deed by **BERKELEY HOMES (EASTERN) LIMITED** acting by two Directors

A signature in blue ink, appearing to be 'N. Kelly', written over a dotted line.

(Director)

A signature in black ink, appearing to be 'P. S. A.', written over a dotted line.

(Director)

SCHEDULE 1
Owner's Covenants

1. OPEN SPACE CONTRIBUTION

On or before first Occupation of the Development to pay the Council the Open Space Contribution which shall be used for the Specified Purpose.

SCHEDULE 2
Covenants by the Council

1. OPEN SPACE CONTRIBUTION

- 1.1 The Council covenants not to use any part of the Open Space Contribution other than for the purposes for which it was paid.
- 1.2 In the event that the Open Space Contribution has not been spent or committed for expenditure within five years following the date of receipt of the Open Space Contribution the Council shall refund to the payee any part of the Open Space Contribution which has not been spent or committed for expenditure, together with any accrued interest.

APPENDIX A

Plan

