

DATED 20 May 2016

PLANNING APPLICATION NUMBER 15/505190

PLANNING AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING
ACT 1990 RELATING TO LAND AT SITE OF FORMER SILVER SANDS GARDEN CENTRE,
STAPLE STREET, HERNHILL, NR FAVERSHAM, KENT, ME13 9HZ

between

WARRENS STORES (HOLDINGS) LIMITED

and

SWALE BOROUGH COUNCIL

THIS DEED is dated 20 May 2016

BETWEEN

- (1) **SWALE BOROUGH COUNCIL** of Swale House, East Street, Sittingbourne, Kent, ME10 3HT (**Council**).
- (2) **WARRENS STORES (HOLDINGS) LIMITED** incorporated and registered in England and Wales with company number 0901744 whose registered office is at 55 Elmcroft Road, Orpington, Kent, BR6 0HZ (**Owner**).

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 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 for erection of 14 No 'Passivhaus' houses comprising 6 x 3 bed semi-detached, 3 x 3 bed detached, 3 x 4 bed detached and 2 x 5 bed detached units and is proposing to carry out the Development
- (D) The Council having regard to the provisions of the Local Plan and to all other material considerations resolved at its meeting on 5 November 2015 that Planning Permission should be granted for the Development subject to the prior completion of this deed without which the Planning Permission would be refused
- (E) The Council is satisfied that the planning obligations contained in this Agreement are necessary to make the Development acceptable in planning terms fairly and reasonably relate in scale and kind to the Development in accordance with regulation 1222 of the Community Infrastructure Regulations 2010 as amended and that they may secure other planning benefits

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 of Development: the carrying out of any material operation in relation to the Development 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: demolition works; site clearance;

ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.

Commence and Commences shall be construed accordingly.

Default Interest Rate: 4% per annum above the Base Rate.

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

Local Plan: Swale Borough Local Plan 2008 and the draft Swale Borough Council Local Plan

Plan: the plan attached as Annex A.

Planning Application: the application for Planning Permission registered by the Council on 26 June 2015 under reference number 15/505190 for erection of 14 No 'Passivhaus' houses comprising 6 x 3 bed semi-detached, 3 x 3 bed detached, 3 x 4 bed detached and 2 x 5 bed detached units.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application in the draft form attached as Annex B.

Property: the land at the former Silver Sands Garden Centre, Staple Street, Hernhill, Nr Faversham, Kent ME13 9HZ shown edged red on the Plan and registered at HM Land Registry with absolute title under title number K179377

TCPA: Town and Country Planning Act 1990 as amended.

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 **Person** includes a natural person, company, corporation partnership, unincorporated members associations and alternative business structures
- 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 a party hereto includes reference to any successor in title to that party and to any person deriving title through or under that party and the successors to any functions of the Council.

- 1.7 Unless the context otherwise requires, a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision
- 1.8 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.
- 1.9 Any reference to a clause sub-clause paragraph sub-paragraph Schedule or Plan is to one attached to or forming part of this Deed
- 1.10 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 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.
- 1.12 Where more than one party is due to comply with any of the obligations hereof all their obligations may be enforced against all of them jointly and severally

2. STATUTORY PROVISIONS

- 2.1 This Deed is made pursuant to the provisions of Section 106 and 106A of the Town and Country Planning Act 1990 Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 Section 93 of the Local Government Act 2003 and all other enabling powers
- 2.2 The covenants herein are planning obligations to which section 106 of the TCPA apply binding the Property and which are enforceable by the Council

3. CONDITIONALITY

With the exception of clauses 2 and 3 (which take effect immediately), this deed is conditional on the grant and issue of the Planning Permission.