

DATED 9th March

2023

(1) WEST SUFFOLK COUNCIL

(2) SUFFOLK COUNTY COUNCIL

(3) SANSOVINO DEVELOPMENTS LIMITED

(4) THE RIGHT HONOURABLE EDWARD RICHARD WILLIAM EARL OF DERBY DL

and

(5) PRESCOT BUSINESS PARK LIMITED

DEED OF VARIATION TO AN AGREEMENT MADE
UNDER SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990

relating to Land at Hatchfield Farm, Newmarket, Suffolk

SH[∞]SMITHS

The XYZ Building
2 Hardman Boulevard
Spinningfields
Manchester
M3 3AZ

Ref. EW/M-01010198

TABLE OF CONTENTS

1	INTERPRETATION	1
2	EFFECT OF THIS DEED	3
3	PLANNING OBLIGATIONS AND VARIATION OF ORIGINAL AGREEMENT	3
4	REGISTRATION	3
5	COSTS OF THIS DEED	3
6	EXECUTION	3
	SCHEDULE	6
	APPENDIX 1	7

THIS DEED OF AGREEMENT and DEED OF VARIATION is made on 9th March 2023

BETWEEN

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House, Western Way, Bury St Edmunds, Suffolk, IP33 3YU (the "**Council**");
- (2) **SUFFOLK COUNTY COUNCIL** of Constantine House, 5 Constantine Road, Ipswich, Suffolk, IP1 2DH (the "**County Council**"); and
- (3) **SANSOVINO DEVELOPMENTS LIMITED** (company registration number 11886795) whose registered office is at Carlyle House, 78 Chorley New Road, Bolton, BL1 4BY (the "**Owner**");
- (4) **THE RIGHT HONOURABLE EDWARD RICHARD WILLIAM EARL OF DERBY DL** of The Estate Office, Knowsley, Prescot, Merseyside L34 4AG ("**First Mortgagee**"); and
- (5) **PRESCOT BUSINESS PARK LIMITED** (company registration number 07345546) whose registered office is at Carlyle House, 78 Chorley New Road, Bolton, BL1 4BY ("**Second Mortgagee**")

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Land is located and the local planning authority entitled to enforce the obligations contained in this Deed and is the successor council to Forest Heath District Council.
- (B) The County Council is the local education authority for the area within which the Land is situated and is also the highway authority for the area.
- (C) The Owner is the freehold owner of the Land part of which is registered at HM Land Registry under Title Number SK394724 free from encumbrances that would prevent the Owner from entering into this Deed.
- (D) The Original Agreement was entered into in order to facilitate the grant of the Planning Permission.
- (E) The Original Agreement has been varied on three previous occasions.
- (F) It has become clear to the Parties that some of the obligations in the Original Agreement must now be varied in order for the Development to proceed.
- (G) The Parties hereto have further agreed to enter into this Deed to create planning obligations pursuant to section 106 of the 1990 Act and to amend further the Original Agreement on the terms set out herein.

Operative provisions:

1 INTERPRETATION

1.1 In this Deed, the following words and expressions have the following meanings:

"Original Agreement"

the planning obligation entered into pursuant to section 106 of the 1990 Act dated 30 April 2015 between (1) Forest Heath District Council, (2) Suffolk County Council, (3) The Right Honourable Edward Richard William Earl of Derby DL and (4) C. Hoare and Co as modified and varied by the May

2019 Agreement, the June 2019 Agreement and the August 2019 Agreement;

- "May 2019 Agreement"** means the option agreement and deed of variation made under the 1990 Act relating to development at Hatchfield Farm, Newmarket, Suffolk dated 13 May 2019 and entered into between (1) the Council, (2) the County Council, (3) The Right Honourable Edward Richard William Earl of Derby and (4) C. Hoare and Co;
- "June 2019 Agreement"** means the deed of variation made under the 1990 Act relating to development at Hatchfield Farm, Newmarket, Suffolk dated 3 June 2019 and entered into between (1) the Council, (2) the County Council, (3) The Right Honourable Edward Richard William Earl of Derby DL and (4) C. Hoare and Co;
- "August 2019 Agreement"** means the deed of variation made under the 1990 Act relating to development at Hatchfield Farm, Newmarket, Suffolk dated 2 August 2019 and entered into between (1) the Council, (2), the County Council, (3) the Owner, (4) the First Mortgagee and (5) the Second Mortgagee
- "Parties"** means collectively the Council, the County Council, the Owner, the First Mortgagee and the Second Mortgagee;

1.2 Where the context so requires:

- 1.2.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and extend to include a corporation sole or aggregate;
- 1.2.2 references to any party or body in this Agreement shall include the successors in title and assigns of that party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.3 wherever there is more than one person named as a party and where more than one party undertakes a covenant all their covenants can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;
- 1.2.4 any covenant by a party not to do any act or thing shall be deemed to include a covenant not to cause, permit, procure or suffer the doing of that act or thing;
- 1.2.5 any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it;
- 1.2.6 references to Clauses, paragraphs, and Schedules are references to clauses, paragraphs, and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement;
- 1.2.7 the headings and contents list are for reference only and shall not affect construction.

2 EFFECT OF THIS DEED

- 2.1 This Deed is made pursuant to sections 106 and 106A of the 1990 Act, section 111 of LGA 1972, Section 1 of Localism Act 2011 and any other enabling powers and creates planning obligations for the purposes of section 106 of the 1990 Act enforceable by the Council and County Council as local planning authorities.
- 2.2 All words and phrases defined in the Original Agreement shall have the same meaning in this Deed save where varied by this Deed.
- 2.3 In all other respects the Original Agreement as varied by this Deed shall remain in full force and effect.

3 PLANNING OBLIGATIONS AND VARIATION OF ORIGINAL AGREEMENT

- 3.1 The parties agree to vary the Original Agreement as set out in the Schedule hereto.
- 3.2 From and including the date of this Deed, the Original Agreement shall be read and constructed as modified and varied by the provisions set out in the Schedule.
- 3.3 The Original Agreement shall remain in full force and effect as though the provisions contained in this Deed had originally been contained in the Original Agreement.
- 3.4 The Original Agreement as varied by this Deed shall continue to apply to and bind the Land and the Development to be carried out pursuant to the Planning Permission.

4 REGISTRATION

- 4.1 This Deed shall be registered as a Local Land Charge by the Council pursuant to Section 106(11) of the 1990 Act.
- 4.2 Upon receipt of a written request to the Council to confirm which obligations in the Original Agreement and this Deed have been discharged the Council will issue a letter of release and will place notes against the Local Land Charges Register entries relating to the Original Agreement and this Deed stating which obligations of the Original Agreement and this Deed no longer have effect.
- 4.3 A copy of this Deed shall also be placed on the Council's planning register.

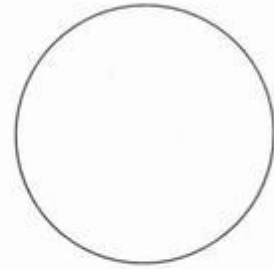
5 COSTS OF THIS DEED

- 5.1 Upon completion of this Deed the Owner shall pay:
 - 5.1.1 the Council's reasonable and proper legal costs of £1,000 in connection with the preparation, negotiation and completion of this Deed; and
 - 5.1.2 the County Council's reasonable and proper legal costs of in connection with the preparation, negotiation and completion of this Deed.

6 EXECUTION

The parties have executed this agreement as a Deed and it is delivered on the date set out above.

The common seal of **WEST SUFFOLK**)
COUNCIL was affixed to this deed in the)
presence of:)
)

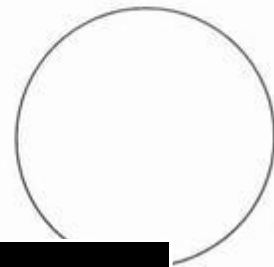


[Redacted signature]

[Redacted signature]

Authorised signatory

The common seal of **SUFFOLK**)
COUNTY COUNCIL was affixed to this)
deed in the presence of:)
)



[Redacted signature]

Authorised signatory

Executed as a deed by **SANSOVINO**)
DEVELOPMENTS LIMITED acting by a)
director in the presence of:)
)

Signature of witness

Name (in BLOCK CAPITALS)

Address

Occupation of witness

Director

[Redacted signature]

52

Executed as a deed by THE RIGHT
HONOURABLE EDWARD RICHARD
WILLIAM EARL OF DERBY DL the
presence of:

Signature of witness

Name (in BLOCK CAPITALS)

Address

Occupation of witness

Executed as a deed by PRESCOT
BUSINESS PARK LIMITED acting by a DEBBIE SUZANNE
director in the presence of:
UNDER A POWER OF ATTORNEY DATED 24TH MARCH 2022
IN THE PRESENCE OF:
Signature of witness

APITALS)

GILLIAN ANNE LOWE
Address

Occupation of witness

LEGAL SECRETARY

SCHEDULE

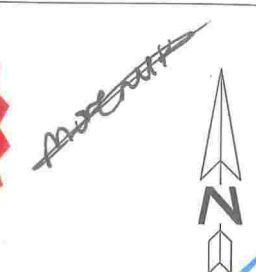
MODIFICATIONS AND VARIATIONS TO THE ORIGINAL AGREEMENT

1. In the section entitled "Definitions" in the Original Agreement the definition of "Rayes Lane Crossing Contribution" is deleted.
2. In the Third Schedule paragraph 2.4 of the Original Agreement shall be deleted in its entirety and the next paragraph shall be paragraph 2.5.
3. That the plan at Annex 1 of the May 2019 Agreement showing the Additional School Site and the Principal School Site (as such terms are defined in the May 2019 Agreement) be deleted and replaced with the plan appended to this Deed at Appendix 1
4. In the Second Schedule of the Original Agreement a new paragraph 1.8 shall be added as follows: "1.8 to consult with the County Council in respect of the vehicular, cycling and pedestrian access points into the School Site (for the construction phase and for the permanent access points to be used when the school is operational) and agree such points with the Council acting reasonably."
5. Clause 7.1(c) of the May 2019 Agreement shall be deleted and replaced with the following:

"(c) The County Council may exercise the Additional Option at any time during the Option Period by serving an Additional Option Notice on the Owner."
6. Paragraph 1.1 of Part 1 of the First Schedule of the Original Agreement will be deleted and replaced with the following wording:

"1.1 Not to Commence Development of any Dwellings prior to the"

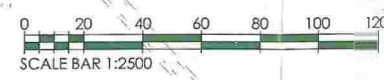
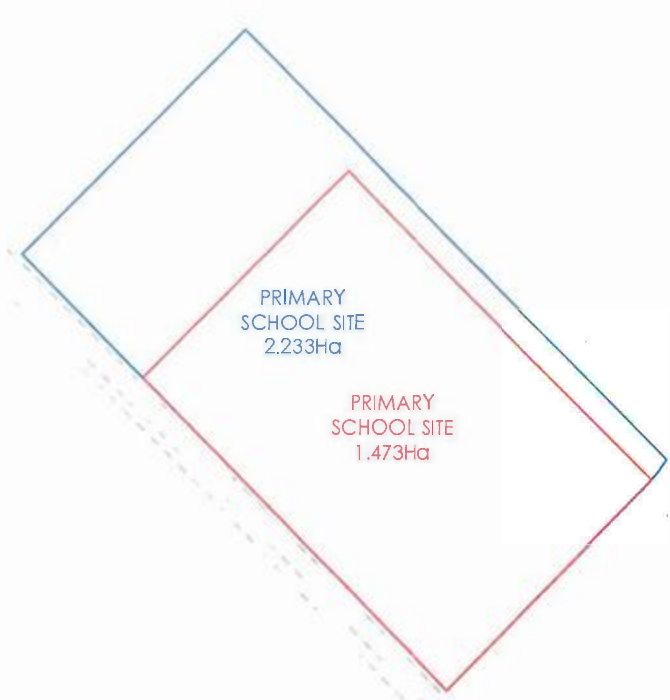
APPENDIX 1



Assailed. Am
July



65702



Rev	Description	Date	Drawn	Checked	Apvd.
Project Proposed Development at Hatchfield Farm, Newmarket Section 278 Highway Works					
Drawing Description Proposed School Option Land - Plan 3					
Project Number ST-3031		Drawing Number 110			
Scale 1:2500@A1		Date 12.05.22	Drawn T.J.W	Checked XXX	Approved XXX
Client		Architect			

Do not scale off the drawing.
Only written dimensions should be taken.
Any discrepancies or errors should be brought to the attention of the engineer immediately.
This document is copyright and may not be reproduced without permission of the owner.

Ordinance: Surveyplan/land use plan is for use on this project only. It is not to be used for any other purpose.
In this project, it is not to be used for the purpose of said project, may do so on display or the following:

stomor
CIVIL ENGINEERING CONSULTANTS

Suite 2, First Floor, Portmill House,
Portmill Lane, Hitchin, Herts. SG5 1DJ
www.stomor.com | 01462 615433 | info@stomor.com

© Crown Copyright. All rights reserved 2015
Licence A to 1.000. 0054