

# **Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990**

relating to Land at Chapel Road, Wrentham, Suffolk

Dated:

27th April

2022

**EAST SUFFOLK COUNCIL (1)**

**AND**

**SUFFOLK COUNTY COUNCIL (2)**

**AND**

**TAYLOR PATTERSON TRUSTEES LTD AND PAUL ANDREW LEACH AND EDWARD DANIEL CRIPPS BEING  
THE TRUSTEES OF THE CRIPPS DEVELOPMENT LTD GROUP SIPP AND CRIPPS DEVELOPMENTS LIMITED  
(3)**

**AND**

**CRIPPS DEVELOPMENTS LIMITED (4)**

**REF \_\_\_\_\_**

DATE

27<sup>th</sup> April

2022

## **PARTIES**

- (1) **EAST SUFFOLK COUNCIL** of Riverside, 4 Canning Road, Lowestoft, Suffolk, NR33 0EQ ("the Council")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP7 2BX ("the County Council")
- (3) **TAYLOR PATTERSON TRUSTEES LTD ("TPTL")** (company registration number **02035095**) of 1 New Walk Place, Leicester, LE1 6RU and **PAUL ANDREW LEACH** and **EDWARD DANIEL CRIPPS BEING THE TRUSTEES OF THE CRIPPS DEVELOPMENT LTD GROUP SIPP** and **CRIPPS DEVELOPMENTS LIMITED** (registered number **04081629**) whose registered office is at of Dencora House, Blyburgate, Beccles, Suffolk, NR34 9TY ("the Owner")
- (4) **CRIPPS DEVELOPMENTS LIMITED** (registered number **04081629**) whose registered office is at of Dencora House, Blyburgate, Beccles, Suffolk, NR34 9TY ("the Developer")

## **INTRODUCTION**

1. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations in this Deed are enforceable.
2. The County Council is a local planning authority for the purposes of the Act and the Highway Authority and Education Authority for the area in which the Site is located and by whom the obligations in this Deed are enforceable.
3. The Owner is the freehold owner of the Site which is pending registration at the Land Registry pursuant to the transfer of the Site to the Owner dated 3<sup>rd</sup> March 2021 being the transfer of part of title number SK244831.
4. The Developer has submitted the Application to the Council for the Development.
5. The Council's Planning Committee resolved to grant the Planning Permission subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed.
6. The Site lies within the area to which the Local Plan applies. The Council and the Owner and the Developer acknowledge that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to section 106 of the Act the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings and shall be read in conjunction with the definitions set out in the Third Schedule:

|                                      |  |
|--------------------------------------|--|
| <b>"Act"</b>                         | the Town and Country Planning Act 1990 as amended;   |
| <b>"Application"</b>                 | the application for full planning permission validated by the Council on 2 <sup>nd</sup> June 2021 for the Development and allocated reference number DC/21/2679/FUL;  |
| <b>"Commencement of Development"</b> | the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, site clearance, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly; |
| <b>"Consumer Prices Index"</b>       | the consumer prices index published by the Central Government or any subsequent indices replacing the same;  |
| <b>"Development"</b>                 | the development of the Site for construction of 65 new dwellings   |
| <b>"Dwelling"</b>                    | any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission;  |
| <b>"Index"</b>                       | All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or any subsequent indices of the same;  |
| <b>"Index Linked"</b>                | means the increase in any sum referred to in this Deed by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 11 of this Deed   |

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| <b>"Interest"</b>                                | interest at four per cent above the base lending rate of the Bank of England from time to time;  |
| <b>"Local Plan"</b>                              | Waveney Local Plan Adopted 20 March 2019;  |
| <b>"Occupation" and "Occupied"</b>               | occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;   |
| <b>"Plan"</b>                                    | the plan labelled "site plan" attached to this Deed;   |
| <b>"Planning Permission"</b>                     | the full planning permission subject to conditions to be granted by the Council pursuant to the Application substantially as set out in the draft annexed to the Second Schedule;  |
| <b>"Primary School Transport Contribution"</b>   | means the sum of £126,525 (one hundred and twenty five thousand five hundred and twenty five pounds) RPI Indexed payable to the County Council for use towards the provision of primary school transportation for children residing in the Development.  |
| <b>"RPI Index"</b>                               | the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Council, the County Council and the Developer |
| <b>"RPI Indexed"</b>                             | The increase in any sum referred to in this Deed as RPI Indexed by an amount equivalent to the increase in the RPI Index to be calculated in accordance with clause 11 of this Deed  |
| <b>"Secondary School Transport Contribution"</b> | means the sum of £66,275 (sixty six thousand two hundred and seventy five pounds) RPI Indexed payable to the County Council for use towards the provision of secondary school transportation for children residing in the Development.   |
| <b>"Section 73 Consent"</b>                      | means a planning permission granted pursuant to Section 73 of the TCPA 1990 which varies and./or removes any condition(s) subject to which the Planning Permission and/or any subsequent   |



planning permission pursuant to Section 73 of the TCPA 1990 was granted

**"Section 106 Officer"**

the officer so designated by the Council and any notice required to be served on the Section 106 Officer must be sent or delivered to the Council at the address aforesaid marked for the attention of the Section 106 Officer;

**"Site"**

the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Plan; and

**"Working Days"**

Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England.

**2. CONSTRUCTION OF THIS DEED**

2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause or paragraph of or schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that Act or Directive 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 Directive or deriving validity from it.

2.6 Any references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective statutory function.

2.7 The headings are for reference only and shall not affect construction.

2.8 Any notices required to be given under the terms of this Deed may (in addition to any other valid method of service) be given or served by sending the same by recorded delivery post addressed to the party as set out below:

- (i) Council: as given in this Deed; and
- (ii) County Council: as given in this Deed; and
- (iii) Owner: as given in this Deed; and
- (iv) Developer: as given in this Deed.



### **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Developer under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council and the County Council as local planning authority against the Developer and its successors in title.
- 3.3 Insofar as any of the covenants contained in this Deed are not planning obligations within section 106 of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.4 The covenants, restrictions and requirements contained in this Deed shall only be capable of being varied by a supplemental deed between the parties hereto or their respective successors in title or assigns made under section 106A of the Act.

### **4. CONDITIONALITY**

- 4.1 The obligations set out within this Deed are conditional upon:
- (i) the grant of the Planning Permission; and
  - (ii) the Commencement of Development of the Planning Permission.
- 4.2 The provisions set out in clauses 1, 2, 3, 4, 8, 9, 10, 14, Error! Reference source not found., 15 and 16 of this Deed shall take effect immediately upon completion of this Deed.

### **5. THE OWNERS AND DEVELOPERS COVENANTS**

- 5.1 The Developer hereby covenants with the Council as set out in the Third Schedule so as to bind the Site and each and every part thereof.
- 5.2 The Developer hereby covenants with the County Council as set out in the Fourth Schedule so as to bind the Site and each and every part thereof.
- 5.3 The Owner covenants and warrants to the Council and the County Council it is the freehold owner of the Site and has the capacity to enter into this Deed.

### **6. THE COUNCIL'S COVENANTS**

The Council hereby covenants with the Developer as set out in the Fifth Schedule.

### **7. THE COUNTY COUNCIL COVENANTS**

- 7.1 The County Council hereby covenants with the Developer as set out in the Fifth Schedule

### **8. MISCELLANEOUS**

- 8.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.2 This Deed shall be registrable as a local land charge by the Council.
- 8.3 Where the agreement, approval, consent or expression of satisfaction is required by the Developer from the Council or the County Council under the terms of this Deed, such agreement,

approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Services (or the officer of the Council fulfilling such functions) or officer acting under his hand and given on behalf of the County Council by the Executive Director of Growth, Highways and Infrastructure and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

- 8.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith on the written request of the Developer mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.5 Insofar as any clause or paragraph of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 8.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.8 This Deed shall not be enforceable against an individual purchaser or owner-occupier or tenant of a Dwelling constructed pursuant to the Planning Permission or any mortgagee or chargee of any individual purchaser, owner-occupier or tenant of a Dwelling or any person deriving title from any such person.
- 8.9 Nothing in this Deed shall be enforceable against any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site
- 8.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 8.11 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council and the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its function as a local authority.
- 8.12 The Developer covenants from the date that this Deed takes effect to allow the Council or the County Council and its respectively duly authorised officers or agents at all reasonable times to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed.
- 8.13 The Developer hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.
- 8.14 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary



or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Developer and at no cost to the Council or the County Council.

- 8.15 The Developer covenants to pay the Council's and the County Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed.
- 8.16 The Council confirms that there are three obligations within this Deed that it require a monitoring fee for and the Developer covenants to pay the Council three monitoring fees each of £408 (Four Hundred and Eight Pounds) on completion of this Deed.
- 8.17 The Developer covenants to pay to the County Council on or before completion a contribution of £824 (Eight hundred and twenty-four pounds) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Developer is required to observe and perform pursuant to the terms of this Deed.
- 8.18 Unless otherwise agreed between the Parties if a Section 73 Consent is granted by the Council (or the Secretary of State) in relation to the Development, then with effect from the date that each such Section 73 Consent is granted
- (a) the obligation in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent Section 73 Consents and the Site itself without any further act by the Parties;
  - (b) the definitions of Development, Application and Planning Permission in this Deed shall be constructed to include reference to any applications under Section 73 of the Act, the Section 73 Consent granted pursuant to any such application and the development permitted by such Section 73 Consents

**PROVIDED THAT**

- (i) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act; and
- (ii) to the extent that any of the obligations in this Deed have already been discharged at the date that any Section 73 is granted they shall remain discharged for the purposes of the Section 73 Consent
- (iii) if the Council considers that the obligations contained in this Deed shall be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations

**9. WAIVER**

No waiver (whether expressed or implied) by the Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**10. CHANGE IN OWNERSHIP**

The Owner agrees with the Council and the County Council to give each of them independently written notice within fourteen days (14) of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice