

DATED

21st June

2022

BABERGH DISTRICT COUNCIL (1)

and

SUFFOLK COUNTY COUNCIL (2)

and

SHOTLEY MARINA LIMITED (3)

and

TOWCREST LIMITED (4)

**DEED OF VARIATION PURSUANT TO SECTION
106 AND SECTION 106A OF THE TOWN AND
COUNTRY PLANNING ACT 1990 (as amended)**

relating to land at Shotley Marina, King Edward Drive,
Shotley Gate, Ipswich, Suffolk IP9 1QJ

(application reference: DC/20/04309)

21st June

BETWEEN

- (1) **BABERGH DISTRICT COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX ("the Council").
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX ("the County Council").
- (3) **SHOTLEY MARINA LIMITED** (Company Registration Number 02883922) whose registered office is at 1 Oak Court, 67-72 Bethel Road, Sevenoaks, Kent TN13 3UE ("the Owner").
- (4) **TOWCREST LIMITED** (Company Registration Number 2885034) whose registered office is at 1 Oak Court, 67-72 Bethel Road, Sevenoaks, Kent TN13 3UE ("Towcrest").

together "the Parties"

RECITALS

- A. The Council is the Local Planning Authority for the purposes of this Deed for the area within which the Marina is situated and may enforce the planning obligations contained in this Deed.
- B. The County Council is the local highway authority (except trunk roads) and is also a Local Planning Authority for the purposes of the 1990 Act for the area in which the Marina is situated and may enforce the planning obligations contained in this Deed.
- C. The Owner is the freehold owner of the Marina which includes the Site and is registered at the Land Registry under title number SK138192 subject to the leases set out in Schedule 2.
- D. The Site is part of the Marina.
- E. On 4th March 2016 the Parties entered into the 2016 Agreement and the 2016 Planning Permission was granted by the Council for the development of the Marina.
- F. On 2nd October 2020, the Owner submitted the Section 73 Application to the Council.
- G. On 20th October 2021 the Council's planning committee resolved to grant the Section 73 Permission subject to the Parties entering into this Deed to vary the 2016 Agreement in the manner appearing herein.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Deed the following words and phrases have the following meanings unless the contrary intention appears:

- 1.1 "the 1990 Act" means the Town and Country Planning Act 1990 (as amended);

- 1.2 "this Deed" means this Deed of Variation;
- 1.3 "the 2016 Agreement " means the planning obligation made by Deed pursuant to section 106 of the Act dated 4th March 2016 and made between the Parties and Barclays Bank Plc;
- 1.4 "the 2016 Permission" means the full planning permission granted by the Council on 4th March 2016 pursuant to application reference B/13/01384/FUL for the development of the Marina;
- 1.5 "the Section 73 Application" means the application made by the Owner pursuant to section 73 of the 1990 Act to vary Condition 2 (Approved Plans and Documents) of the 2016 Permission to amend the layout but retain the quantum of development on the Marina (19 residential units as per the revised drawings submitted by the Council on 2 October 2020 and given reference number DC/20/04309;
- 1.6 "the Section 73 Permission" means the planning permission to be issued/ issued by the Council pursuant to the Section 73 Application.

2. CONSTRUCTION OF THIS DEED

In this Deed, unless the contrary intention appears:

- 2.1 Words and expressions defined in the 2016 Agreement shall have the same meanings in this Deed save as otherwise provided for in this Deed;
- 2.2 References to any statute include references to:
- 2.2.1. that statute as amended or re-enacted or as other statutes modify its application from time to time; and
- 2.2.2. any subordinate legislation made or to be made under that statute;
- 2.3 References to clauses or Schedules are references to clauses in or Schedules to this Deed;
- 2.4 References to the singular include the plural and vice versa;
- 2.5 References to the Parties in this Deed shall include their successors in title or successors in function as appropriate;
- 2.6 Where a party includes more than one person any obligations of that party shall be joint and several;
- 2.7 The headings shall not affect the interpretation of this Deed;
- 2.8 If any provision in this Deed is held to be illegal, void, invalid or unenforceable for any reason the legality, enforceability of the remainder of this Deed shall not be affected;
- 2.9 The provisions of the 2016 Agreement apply to this Deed except to the extent that they are expressly varied by this Deed;

- 2.10 A breach of this Deed is to be regarded as a breach of the 2016 Agreement;
- 2.11 In this Deed the clause headings are for reference only and do not affect its construction;
- 2.12 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of its statutory powers functions or discretions in relation to the Site or otherwise;
- 2.13 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 constructed in accordance with the English Courts as regards any claim or matter arising under this Deed.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106A of the 1990 Act but to the extent that any obligations contained in this Deed are not planning obligations within the meaning 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 others enabling powers;
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council and the County Council against the Owner;
- 3.3 This Deed is a deed and may be modified or discharged in part or in total at any time after the date of this Deed by deed between the parties in the form of a deed.

4. VARIATIONS TO THE 2016 AGREEMENT

- 4.1 From and including the date of this Deed the 2016 Agreement shall be read and construed as varied by the provisions set out in Schedule 1.

5. THE COUNCIL'S' LEGAL COSTS

- 5.1 The Owner shall pay the Council's and the County Council's reasonable legal costs properly incurred in connection with the negotiation preparation and execution of this Deed.

6. TOWCREST CONSENT

- 6.1 Towcrest consent to the Owner entering into this Deed.

7. MISCELLANEOUS

- 7.1 The 2016 Agreement shall remain in full force and effect save as varied by this Deed;
- 7.2 This Deed is a Local Land Charge and the Council shall register it in its Register of Local Land Charges as soon as practicable in accordance with the provisions of the Local Land Charges Act 1975 and Section 106(11) of the 1990 Act as amended;

- 7.3 This Deed is governed by and interpreted in accordance with the laws of England;
- 7.4 The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Deed;
- 7.5 This Deed does not release any party to it from any breaches of the 2016 Agreement existing at the date of this Deed save where variations contained in this Deed remove the obligation of which the party is in breach.

8. **COMMENCEMENT**

- 8.1 This obligations contained within this Deed shall come into effect from the date of completion of this Deed.

9. **JURISDICTION**

- 9.1 This Deed is governed by and interpreted in accordance with the law of England and the Parties submit to the non-exclusive jurisdiction of the courts of England.

10. **DELIVERY**

- 10.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof this Deed has been duly executed as a Deed on the date and year first written

The Common Seal of)
BABERGH DISTRICT)
COUNCIL

was hereunto affixed in the
presence of:



Authorised Signatory



The Common Seal of
SUFFOLK COUNTY
COUNCIL

was hereunto affixed in the
presence of:



[Redacted]

[Redacted]

tory

Executed and delivered as a
Deed on behalf of **SHOTLEY**
MARINA LIMITED acting by
one director

Signature:

[Redacted]

Director

[Redacted]

In the presence of :

[Redacted]

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

[Redacted]

Executed and delivered as a
Deed on behalf of **TOWCREST**
LIMITED acting by one director

Signature

[Redacted]

Director

[Redacted]

In the presence of :

[Redacted]

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

[Redacted]

SCHEDULE 1

Modifications to the 2016 Agreement

1. The definition of "New Development" in the 2016 Agreement shall be deleted and replaced by the following definition:

| | |
|-------------------|---|
| "New Development" | means the development of the Site pursuant to the Planning Permission or the Section 73 Permission. |
|-------------------|---|

2. The words "**and/or the Section 73 Permission**" shall be inserted immediately after the words "Planning Permission" in the definitions of "Dwelling" and "Occupy" in the 2016 Agreement.

3. A new definition of "Section 73 Application" shall be inserted into the 2016 Agreement as follows:

| | |
|--------------------------|--|
| "Section 73 Application" | means the application (application reference ; DC/20/04309) made pursuant to section 73 of the 1990 Act to modify Condition 2 of the Planning Permission to amend the layout but retain the quantum of development on the Marina (19 residential units) as per the revised drawings submitted to the Council on 2 October 2021. |
|--------------------------|--|

4. A new definition of "Section 73 Permission" shall be inserted into the Extant Agreement as follows:

| | |
|-------------------------|--|
| "Section 73 Permission" | means the full planning permission granted/to be granted pursuant to the Section 73 Application. |
|-------------------------|--|

5. The words "**and/or the Section 73 Permission**" shall be inserted after the words "Planning Permission" in clauses 7.1, 9.4, 9.6, 9.7 and 9.9 of the 2016 Agreement.

SCHEDULE 2

Leases registered at Land Registry

That part of the Marina registered with the Land Registry under title number SK138192 is subject to the following leases registered with the Land Registry:

1. The rights of existing berth holders at the Marina

| | | |
|---------------|-----------------------|---|
| 25 June 1991 | Lease Substation A | Shotley Point Marina Limited (1) Eastern Electricity Plc (2) |
| 25 June 1991 | Lease Substation B | Shotley Point Marina Limited(1) Eastern Electricity Pie (2) |
| 6 August 1992 | Lease Berth G29 | Shotley Point Marina Limited (1) Ian Staden Gray (2) |