

DATE 5th July 2022

- (1) WEST SUFFOLK COUNCIL
- (2) SUFFOLK COUNTY COUNCIL
- (3) PIGEON (BURLINGHAM MILL) LTD
- (4) C.HOARE & CO.

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

relating to

Land at Burlingham Mill Station Hill Bury St Edmunds Suffolk

West Suffolk Council
West Suffolk House
Western Way
Bury St. Edmunds
Suffolk

THIS DEED OF VARIATION is made the 5th day of July 2022

PARTIES:

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **PIGEON (BURLINGHAM MILL) LTD** (company registration number 08630972) whose registered address is Salisbury House Station Road Cambridge CB1 2LA (hereinafter called the "**Owner**")
- (4) **C.HOARE & Co.** (company registration number 240822) whose registered office is 37 Fleet Street London EC4P 4DQ (hereinafter called the "**Mortgagee**")

RECITALS

- A The Council (formally known as St Edmundsbury Borough Council) is a local planning authority for the purposes of the Act for the area in which the Property is situated and by whom the obligations contained in this Deed are enforceable
- B The County Council is the local highway authority (except for trunk roads) the local education authority the local library authority and is also a local planning authority for the purposes of the Act for the area in which the Property is situated and by whom the obligations contained in this Deed are enforceable
- C The Owner is the freehold owner of the Property which is registered at HM Land Registry under the title numbers SK189447 and SK252363
- D The Mortgagee has an interest in the Property by way of a legal charge dated 30 August 2013
- E On 13 September 2017 a deed pursuant to Section 106 of the Town and Country Planning Act was secured by planning permission and given the reference DC/15/1520/FUL (hereinafter called the "**Principal Deed**")
- F On 5 September 2019 a deed pursuant to Section 106 of the Town and Country Planning Act was secured to vary the Principal Deed which replaced the Property Plan as defined in the Principal Deed for the Property (hereinafter called the "**2019 Deed of Variation**")

G On 4 February 2022 the Owner submitted a planning application which varies condition two of the planning permission DC/15/1520/FUL and the council is resolved to grant planning permission under the reference DC/22/0207/VAR (hereinafter called the **"2022 Variation Application"**)

H Without prejudice to the terms of the other covenants contained in the Principal Deed and the 2019 Deed of Variation the Parties hereto agree to vary the Principal Deed on such terms as set out herein

1. DEFINITIONS

For the purposes of this Deed the words and expressions defined in the Recitals shall have the meanings given to them respectively by the Recitals

2. INTERPRETATION

2.1 Words and expressions defined in the Principal Deed shall have the same meanings in this Deed except to the extent that they are expressly varied by this Deed

2.2 Any reference to the "Parties" is a reference to the parties to this Deed

2.3 The Parties do not intend that any of this Deed's terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it

3. VARIATIONS TO THE PRINCIPAL DEED

3.1 The Parties agree that the Principal Deed (as varied by the 2019 Deed of Variation) shall be varied as set out in this clause but otherwise the Principal Deed shall remain in full force and effect

3.2 Within the Operative Provisions 1. of the Principal Deed the definition of "2022 Variation Application" shall be inserted as follows

"2022 Variation Application"	the application made pursuant to section 73 of the Act for variation of condition two of planning permission DC/15/1520/FUL which was received on 4 February 2022 and given the reference DC/22/0207/VAR by the Council
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3.3 Within the Operative Provisions 1. of the Principal Deed the definition of "Planning Permission" shall be deleted and replaced with the following definition

"Planning Permission"	the planning permission granted pursuant to the Application and the planning permission granted pursuant to the 2022 Variation Application and subsequent planning permissions for the Development granted pursuant to Section 73 of the Act
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4. EFFECTIVE DATE

The amendments to the Principal Deed made by this Deed shall come into effect on the date of the grant of the planning permission pursuant to the 2022 Variation Application

5. CONTINUATION OF THE PRINCIPAL DEED

This Deed does not release any party to it from any breaches of the Principal Deed existing at the date of this Deed save where variations contained in this Deed remove the obligation of which the Party is in breach

6. AGREEMENTS AND DECLARATIONS

- 6.1 This Deed is made pursuant to sections 106 and 106A of the Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers
- 6.2 The covenants restrictions and requirements imposed by this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as the local planning authority against the Owner and their successors in title
- 6.3 This Deed will be registered as a local land charge by the Council
- 6.4 No person or body will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Property or the part of the Property in respect of which such breach occurs but they will remain liable for any breaches of this Deed occurring before that date

7. MISCELLANEOUS

- 7.1 Insofar as any clause or clauses of this Deed are 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
- 7.2 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council

and County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities

8. LEGAL FEES

The Owner shall pay the reasonable legal costs of the Council and the reasonable legal costs of the County Council on completion of this Deed incurred in the negotiation preparation and execution of this Deed

9. JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England

10. DELIVERY

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

11. EXECUTION

The Parties have executed this Deed as a deed and it is delivered on the date set out in this Deed

**THE COMMON SEAL OF
WEST SUFFOLK COUNCIL**

was affixed in the presence of:

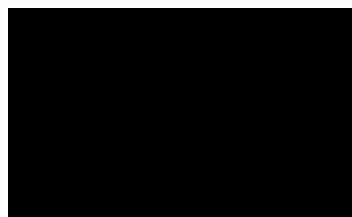


Authorised Officer



**THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:



Authorised Officer

SIGNED AS A DEED BY

PIGEON (BURLINGHAM MILL) LIMITED

acting by a director in the presence of:

Signature of witness

Name of witness

Address

OCCUPATION: SURVEYOR

SIGNED AS A DEED BY

C.HOARE & CO.

Signature –

Signature –

Senior Manager

Senior Manager

Date

20/6/2022

Date

22/6/22

