

**UNILATERAL UNDERTAKING under Section 106 Town and Country Planning Act 1990**

**Site: FORMER CHAMBERS BUS DEPOT CHURCH SQUARE BURES ST MARY CO8 5AB**

**Planning Application reference: DC/22/00754**

**THIS UNDERTAKING** is given on *4<sup>th</sup> October* 2022

**BY**

**ROSPER DEVELOPMENTS LIMITED** (Co. Regn. No. 13396346) of Riverside House, Riverside Avenue East, Lawford, Manningtree CO11 1US ("the Landowner")

**IN FAVOUR OF**

**BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ('the Council') and **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ('the County Council')

**BACKGROUND**

- (A) For the purposes of the 1990 Act, the Council and the County Council are the local planning authorities for the area within which the Site is located and the authorities by whom the obligations in this Undertaking are enforceable.
- (B) The Landowner is the freehold owner of the part of the Site registered at HM Land Registry under title number SK242560 subject only to the Security but otherwise free from encumbrances which would prevent the Landowner from entering into this Undertaking.
- (C) The consent of the holders of the Security is not required as the obligations contained in this Undertaking will be complied with by the Landowner upon completion of this Undertaking
- (D) A planning application reference number DC/22/00754 has been made to the Council for the Development on the Site
- (E) This undertaking is given to the Council to secure the payment of a Highway Contribution

**We hereby certify this to be a true copy of the original**

Date *4 October 2022*  
*Holmes & Hills LLP*

**Holmes & Hills LLP**  
A12 Commercial Hub, 86 London Rd, Marks Tey, Essex, CO6 1ED

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

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

**"1980 Act"** means the Highways Act 1980

**"1990 Act"** means the Town and Country Planning Act 1990

**"Commencement of Development"** means the implementation of the Planning Permission by the carrying out of a material operation described in Section 56 of the 1990 Act and "Commence the Development" shall mutatis mutandis be construed accordingly

**"Commencement Date"** means the date of Commencement of Development

**"Development"** means the construction of local convenience store and 10 apartments/houses (a net increase of 9 dwellings) including associated drainage, parking, hardstanding, fences/walls and other infrastructure (following demolition of outbuildings and in-filling of former vehicle inspection pits, partial demolition of former bus depot and house) in accordance with the planning permission

**"Dwelling"** means a house or self-contained flat comprising part of the Development

**"Notice of Commencement"** means notice in writing to advise of the Commencement Date

**"Party"** means a party to this Undertaking and specifically includes the Council and the County Council in their capacity as the beneficiaries of this Undertaking.

**"Plan"** means the plan attached to this Undertaking

**"Occupation"** means occupation in accordance with the Planning Permission except for the construction of the Development and **"Occupy"** and **"Occupied"** shall be construed accordingly

**"Planning Application"** means the planning application submitted to the Council under reference DC/22/00754 and for the avoidance of doubt for the purposes of this Undertaking the term "Application" shall subject to the written confirmation of the Council to be given prior to the determination of any planning applications that may follow include any application(s) to vary or renew the Planning Permission or any application(s) for reserved matters approval, provided that such application(s) shall not

increase the number of Dwellings and relate substantially to the same development of the Site as is proposed under the aforementioned application reference number

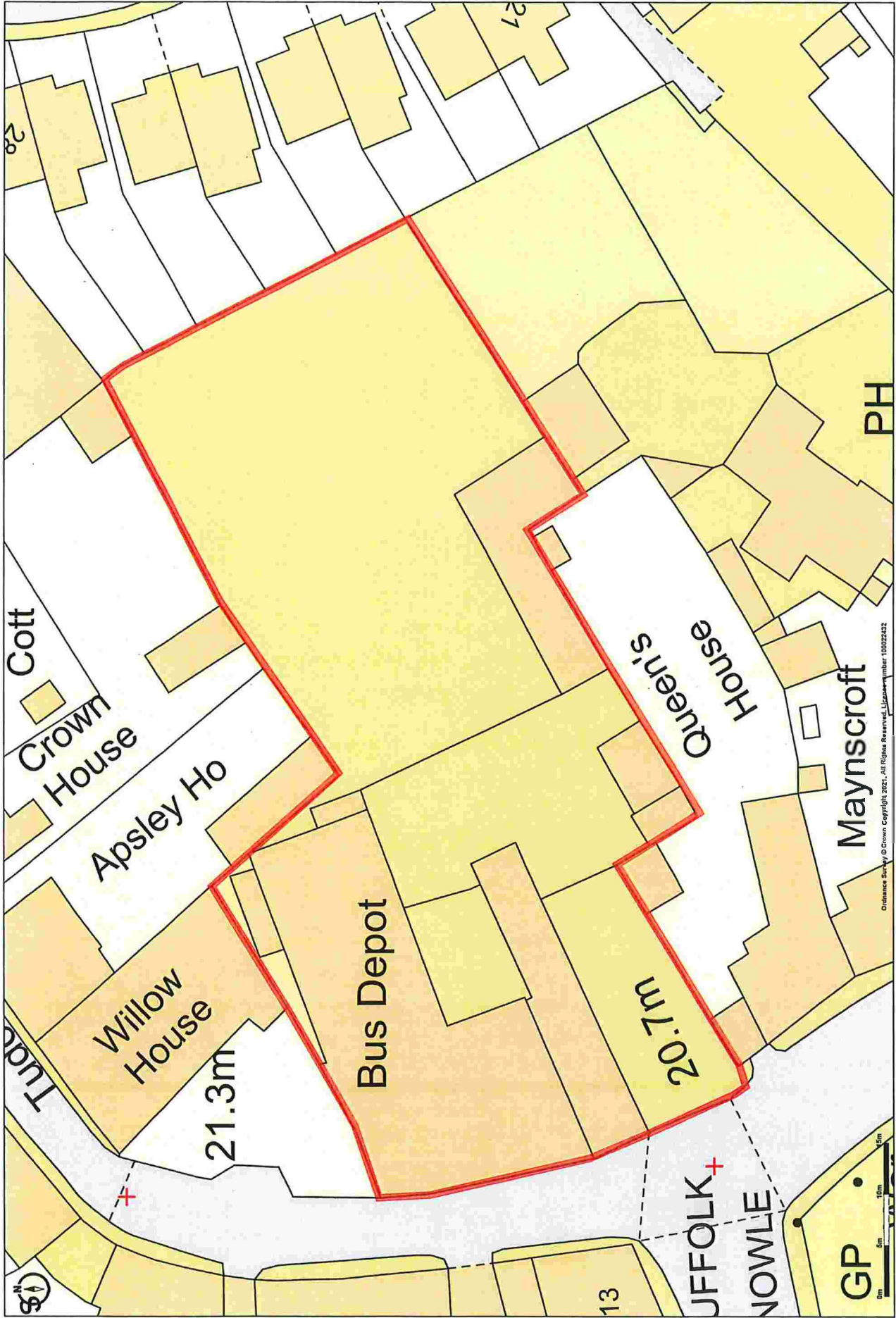
**“Planning Permission”** means planning permission (with conditions) granted pursuant to the Planning Application

**“Security”** means a registered charge attached to the land within HM Land Registry under title number SK242560 and dated 10 January 2022 in favour of CLOUDESLEY SEDDON LIMITED (Co. Regn. No. 13395478) of Middleborough House, 16 Middleborough, Colchester CO1 1QT and JSR MISTLEY LIMITED (Co. Regn. No. 13400646) of Riverside House, Riverside Avenue East, Lawford, Manningtree CO111US

**“Site”** means the freehold property known as former Chambers Bus Depot Bures St Mary shown for identification edged red on the Plan

1.2 In this Undertaking:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 where in this Undertaking reference is made to a clause, paragraph, schedule, plan, drawing or recital, such reference (unless the context requires otherwise) is to a clause, paragraph, schedule, plan, drawing or recital of or (in the case of a plan or drawing) attached to this Undertaking;
- 1.2.3 Any reference to a statute a provision thereof a statutory instrument or such Specification Code of Practice or General Direction as is issued under statutory authority or by a Secretary of State shall include any modification extension or re-enactment thereof 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 thereunder or deriving validity therefrom
- 1.2.4 references to the Site include any part of it;
- 1.2.5 references to any Party include the successors in title of that Party
- 1.2.6 “including” means “including, without limitation”;
- 1.2.7 any covenant by a Party not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 where two or more persons form a Party the obligations of that Party may be enforced against those persons jointly and severally and where the Landowner and the Developer are different persons obligations given by either shall be deemed to be given jointly and severally by both; and



Former Chambers Bus Depot, Church Square, Bures, CO8 5AB

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Plotted Scale - 1:1500. Paper Size - A4

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LANDMARK INFORMATION

- 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Undertaking shall be unaffected.
- 1.3 The Parties do not intend that any of the terms of this Undertaking will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party
- 2. EFFECT OF THIS UNDERTAKING**
- 2.1 This Undertaking is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of the said sections, the obligations in this Undertaking are planning obligations for the purposes of those sections and are enforceable by the Council and the County Council
- 2.2 This Undertaking shall be registered as a local land charge by the Council against the Site in accordance with Section 106 (11) of the 1990 Act.
- 2.3 This Undertaking is entered into in respect of the Site with the intent that it shall bind the Landowners freehold interest in the Site
- 2.4 This Undertaking shall be binding on all successors in title and assigns of the Landowner and any person claiming under or through them
- 2.5 The obligations in this Undertaking on the part of the Landowner shall not be enforceable against a statutory undertaker in respect of any of the Site for the time being vested in it.
- 2.6 Nothing in this Undertaking amounts to or shall be construed as a planning permission or approval
- 2.7 If the Planning Permission shall expire before the Commencement Date or shall at any time be revoked this Undertaking shall forthwith determine and cease to have effect but without prejudice to any of the covenants that arise to be performed prior to any such expiration or revocation
- 3. COMMENCEMENT DATE**
- 3.1 This Undertaking has immediate effect but the covenants contained in this Undertaking shall not take effect until the Planning Permission has been granted.

**4. OBLIGATIONS OF THE PARTIES**

- 4.1 The Landowner covenants with the Council and the County Council to observe and perform the obligations in the Schedule to this Undertaking
- 4.2 The Landowner covenants to serve on the Council and the County Council a Notice of Commencement not less than fourteen (14) days prior to the Commencement of the Development
- 4.3 The Landowner covenants to pay to the County Council on completion of this agreement a monitoring fee of £412 in respect of the County Council contribution
- 4.4 No person shall be liable for any breach of the terms of this Undertaking occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs except to the extent that they have caused or contributed to that breach, but they will remain liable for any breaches of this Undertaking occurring before that date. Neither the reservation of any rights nor the inclusion of any covenants or restrictions over the Site in any transfer of the Site shall constitute an interest for the purposes of this clause.

**5. NOTICES**

- 5.1 Any notice, demand or any other communication served under this Undertaking will be effective only if given in writing and delivered by hand, post, or e-mail.
- 5.2 Notices to the Council shall be marked for the attention of the Legal Agreements Manager and notices to the County Council shall be marked for the attention of The Executive Director of Growth, Highways and Infrastructure (or a duly appointed successor) or such other recipient and address as notified in writing.

**6. DETERMINATION OF DISPUTES**

- 6.1 Wherever there is any dispute under the terms of this Agreement which shall not be resolved within one month of any party having notified the others that such dispute exists any party shall have the right to refer the same to the decision of an independent expert (to act as an expert and not as an arbitrator in the absence of contrary agreement by the parties in dispute) with relevant professional expertise and agreed between the parties in dispute or (in absence of such agreement) to be appointed by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) Such expert shall be required to give each party the opportunity to make representations to him and to comment on the representations of one another and shall be required to deliver his decisions in writing and supported by

reasons within 8 weeks of his appointment His decision shall be binding on the parties save in the case of manifest error and the parties shall bear his fees in equal shares unless he awards otherwise

7. **JURISDICTION**

The applicable law for this Undertaking shall be English law.

8. **EXECUTION**

This Undertaking has been executed as a deed and it is delivered on the date set out above.

**SCHEDULE**

1. **Defined terms**

In this Schedule, in addition to the words and expressions in Clause 1 of this Undertaking the following words and expressions have the following meanings:

**“Highway Contribution”** means the sum of Eleven Thousand Five Hundred Pounds (£11,500.00)

**“Highway Contribution Purposes”** means the use of the Highway Contribution towards legal procedures involved in the amendment to a traffic regulation order in respect of the B1508 High Street.

2. **Payment of the Contribution**

2. The Landowner covenants and undertakes with the Council and the County Council:

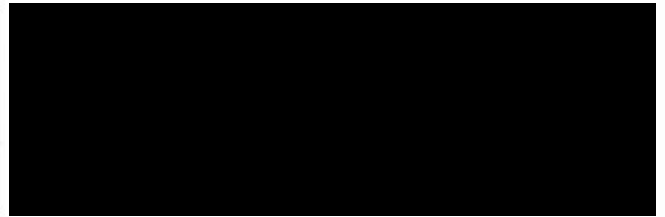
2.1 To pay to the County Council the Highway Contribution upon the date hereof and not to Commence the Development unless and until the said Highway Contribution has been paid to the County Council PROVIDED THAT the Highway Contribution is given strictly on the condition that:

2.1.1 the County Council shall use the Highway Contribution for the Highway Contribution Purposes

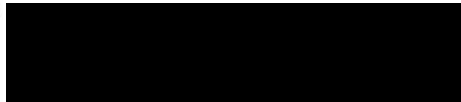
2.1.2 the Landowner shall be entitled to request in writing that the County Council returns to the Landowner any unused part of the Highway Contribution (plus interest that has accrued on that unused part) on the tenth (10<sup>th</sup>) anniversary of the date that the County Council received the said Highway Contribution PROVIDED THAT if such request has not been served on the County Council within 6 months of the said 10<sup>th</sup> anniversary then the County Council may retain and use such unused part of the said contribution for Highway Contribution Purposes

EXECUTED as a DEED by  
ROSPER DEVELOPMENTS LIMITED  
acting by a director in the presence of

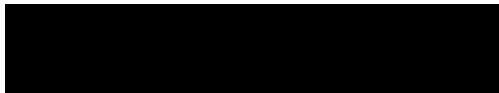
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Witness Signature



Witness Name



Witness Address



Witness Occupation

