

DATED 7th March

2023

EAST SUFFOLK COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

UNILATERAL UNDERTAKING

Relating to land at Former Deben High School Garrison Lane
Felixstowe Suffolk

THIS UNILATERAL UNDERTAKING is dated the 7th day of March 2023

GIVEN BY:

- (1) **EAST SUFFOLK COUNCIL** whose registered office is at East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge, Suffolk IP12 1RT (hereinafter referred to as "the Council")

TO:

- (2) **SUFFOLK COUNTY COUNCIL** whose registered office is at Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX (hereinafter referred to as "the County Council")

WHEREAS

- A The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- B The Council is the freehold owner in fee simple in possession of the Site free from encumbrances and is registered with absolute title at the Land Registry under title number SK405074.
- C A Transfer of the land dated 16 November 2020 was made between the County Council and the Council.
- C The Application was submitted to the Council for the construction of 45 apartments and maisonettes and 16 houses in buildings ranging in height from 2 to 3 storeys, conversion of retained assembly hall to provide 250m² community space, 16 residential car parking spaces, 1 car park space for community hall, 137 cycle parking spaces, highways and public realm works, hard and soft landscaping, access and associated works and Outline application (with all matters reserved except for access, use and scale) for redevelopment and extension of retained sports hall to provide indoor bowls facility and cricket pitch with pavillion, 32 car parking spaces, 24 cycle spaces, landscaping and associated works. All matters reserved except for access, use and building heights ("the Development").
- E Planning Permission has been granted in respect of the Application but the County Council wishes to ensure that the Pre-school New Build Contribution and the Primary School New Build Contribution pursuant to Condition 26 of the Planning Permission is paid prior to the occupation of the first Dwelling.
- F The Council and the County Council have agreed to enter this Undertaking which will make provisions to ensure that the Pre-school New Build Contribution and the Primary School New Build Contribution will be paid.

1. DEFINITIONS

"the Act"	the Town and Country Planning Act 1990 (as amended);
"the Application"	means the application submitted to the Council and allocated reference number DC/21/0541/FUL;
"Consumer Prices Index"	means the consumer prices index published by the Central Government or any subsequent indices replacing the same;
"Dwelling"	means any Dwelling (including a house, bungalow, flat or maisonette) to be constructed pursuant to the Planning Permission
"Index"	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;
"Index Linked"	means the increase in any sum referred to in Schedule 1 of this Deed by an amount equivalent to the increase in the Index from the date of this Undertaking until the date on which such sum is payable to be calculated in accordance with Clause 6 of this Deed;
"Interest"	interest at four percent above the base lending rate of the Bank of England from time to time;
"Early Years New Build Contribution"	means a contribution of £130,644 (ONE HUNDRED AND THIRTY THOUSAND, SIX HUNDRED AND FORTY FOUR POUNDS) Index Linked payable to the County Council in accordance with Schedule 1 of this Deed and which is to be used towards the provision of early years places serving the Development;
"Occupation" and "Occupied"	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;

"Planning Permission" means the planning permission granted on 3 June 2021 reference pursuant to the Application;

"Primary New Build Contribution" means a contribution of £195,966.00 (ONE HUNDRED AND NINETY FIVE THOUSAND, NINE HUNDRED AND SIXTY SIX POUNDS) Index Linked payable to the County Council in accordance with Schedule 1 of this Deed and which is to be used towards the provision of primary years places serving the Development;

"Site" means the land outlined in red on the Plan at Former Deben High School Garrison Lane Felixstowe Suffolk;

"Undertaking" means this Deed;

2 CONSTRUCTION OF THIS DEED

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

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 as 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 against each individually insofar as such obligation relates to land within such party's ownership unless there is an express provision otherwise.

- 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.
- 2.6 References to any party to this Undertaking shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.
- 2.8 Any covenant by the Council not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

3. LEGAL BASIS

- 3.1 This Undertaking 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 and all other enabling powers.
- 3.2 The covenants restrictions and requirements imposed upon the Council under this Undertaking create planning obligations pursuant to Section 106 of the Act and are enforceable by the County Council as appropriate as the local planning authority against the Council or its successor in title.

4. CONDITIONALITY

- 4.1 This Undertaking is conditional upon the grant of the Planning Permission.

5. THE COUNCIL'S COVENANTS

- 5.1 The Council covenants with the County Council as set out in the First Schedule.

6. INDEXATION

- 6.1 Any sum referred to in Schedule 1 (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the Index (unless the context reads otherwise) from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

- 6.1.1 A is the sum payable under this Deed;
- 6.1.2 B is the original sum calculated as the sum payable;
- 6.1.3 C is the Index for the month 2 months before the date on which the sum is payable;

6.1.4 D is the Index for the month 2 months before the date of this Deed; and

6.1.5 C/D is greater than 1

7. INTEREST

7.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

8. MISCELLANEOUS

8.1 The Council shall act in good faith and shall co-operate with the County Council to facilitate the discharge and performance of all obligations contained herein and the Council shall comply with any reasonable requests of the County Council to provide documentation within the Council's possession (at the Council's expense) for the purposes of monitoring compliance with the obligations contained herein.

8.2 The Council agrees declares and covenants with the County Council to observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Undertaking.

8.3 The Council covenants to pay to the County Council on completion of this Undertaking the proper and reasonable legal costs of the County Council incurred in the negotiation and preparation of this Undertaking.

8.4 The Council covenants to pay to the County Council the monitoring fee of £476 on completion of this Undertaking.

8.5 No provision of this Undertaking shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not named in this Undertaking.

8.6 Insofar as any clause or other provision of this Undertaking 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 Undertaking.

8.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Undertaking after it shall have parted with its entire interest in the Site or part of the Site to which the breach relates save for an interest arising only from the grant or reservation of an easement or similar right or the benefit of any restrictive covenant in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 8.8 Nothing in this Undertaking 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 Undertaking.
- 8.9 The Council covenants and warrants to the County Council that they have full power to enter into this Undertaking and there is no other person having a charge over or any other interest over that part of the Site registered with the Land Registry under title number SK405074.
- 8.10 This Undertaking cannot be amended or discharged without the Council and the County Council entering into a deed of variation pursuant to section 106A of the Act.
- 8.11 The Council recognises and agrees that the covenants contained within this Undertaking shall be treated and registered as a local land charge for the purposes of the Local Land Charges Act 1975.

9. **WAIVER**

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

10. **NOTICES**

- 10.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 8.2
- 10.2 The address for any notice or other written communication in the case of each party to this Deed shall be as follows:

The Council	The Head of Planning and Coastal Management, East Suffolk Council, Riduna Park, Station Road, Melton, Woodbridge, Suffolk IP12 1RT
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The County Council	Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX
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- 10.3 Any notice or other written communication to be given by the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the County Council by a duly authorised officer of the County Council.

11. **DELIVERY**

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

12. **COMMUNITY INFRASTRUCTURE LEVY**

- 12.1 For the purposes of the CIL Regulations the obligations set out in this Undertaking are (a) necessary to make the development permitted pursuant to the Application acceptable in planning terms (b) directly relate to the development permitted pursuant to the Application and (c) fairly and reasonably relate in scale and kind to the development permitted pursuant to the Application.

13. **JURISDICTION**

- 13.1 This Undertaking is governed by and interpreted in accordance with the law of England.

IN WITNESS whereof the Council hereto has executed this Undertaking on the day and year first before written

THE COMMON SEAL OF
EAST SUFFOLK COUNCIL
was affixed in the presence of:



Authorised Signat



SCHEDULE 1
OBLIGATIONS

1. EARLY YEARS AND PRIMARY CONTRIBUTION

- 1.1 The Council covenants to pay the County Council the Early Years New Build Contribution prior to Occupation of the first Dwelling.
- 1.2 The Council covenants to pay the County Council the Primary New Build Contribution prior to Occupation of the first Dwelling.