

Dated 14th June 2023

BROADS AUTHORITY
-and-
SUFFOLK COUNTY COUNCIL
-and-
EAST SUFFOLK COUNCIL
-and-
BADGER BUILDING (E.ANGLIA) LIMITED

**DEED OF VARIATION OF PLANNING OBLIGATION UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

relating to land at former Pegasus Boatyard, Caldecott Road, Oulton Broad,
Lowestoft, Suffolk

THIS DEED is dated

14th June

2023

PARTIES:

- (1) BROADS AUTHORITY of Yare House, 62-64 Thorpe Road, Norwich, Norfolk NR1 1RY (referred to as "the Broads Authority")
- (2) SUFFOLK COUNTY COUNCIL of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX (referred to as "the County Council")
- (3) EAST SUFFOLK COUNCIL of East Suffolk House, Station Road, Melton, Suffolk IP12 1RP (referred to as "East Suffolk")
- (4) BADGER BUILDING (E.ANGLIA) LIMITED (company no: 02407008) whose registered office is The Sett Lodge Lane, Blundeston, Lowestoft, Suffolk, United Kingdom, NR32 5ED (referred to as "the Owner")

together referred to as 'the Parties'

INTRODUCTION

- (A) The Broads Authority, the County Council and East Suffolk are local planning authorities for the area within which the Site is situated and East Suffolk Council is the successor council to Waveney District Council and is the authority by whom the obligations to Waveney District Council contained in the Original Deed and the First Variation are enforceable
- (B) On the 19 February 2014 the Broads Authority, the County Council, Waveney District Council and the Owner entered in to an agreement pursuant to s.106 of the Act relating to land at the former Pegasus Boatyard, Caldecott Road, Oulton Broad, Lowestoft, Suffolk ("the Original Agreement")
- (C) On the 12th January 2017 the Broads Authority, the County Council, Waveney District Council and the Owner entered in to an agreement pursuant to s.106 of the Act relating to land at the former Pegasus Boatyard, Caldecott Road, Oulton Broad, Lowestoft, Suffolk to vary the Original Agreement ("the First Variation").
- (D) The Owner has applied for the 2nd New Permission and the ^{Broads Authority} Council has resolved to grant the 2nd New Permission subject to the Parties entering into

this Deed

(E) The Owner owns the freehold of the Site

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

Brands Authority

2nd New Permission The planning permission to be granted by the Council to amend planning condition 2 of planning permission BA/2016/0151/COND (original permission BA/2012/0271/FUL) and allocated reference number BA/2021/0311/COND being the variation of Conditions 14 (Materials), 18c(Hard landscaping), 19 (Reed bed planting) & 22 (Pontoon details) of permission BA/2016/0151/COND to allow submission of details prior to development progressing above slab level on any building rather than within 6 months of Commencement of Development.

2. CONSTRUCTION OF THIS DEED OF VARIATION

- 2.1 Where in this Deed of Variation reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed of Variation.
- 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 any other genders and words denoting actual persons include companies, corporations and firms and all such words shall be constructed as being interchangeable in that manner.
- 2.4 Where in this Deed of Variation there is more than one person names 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 Where in this Deed of Variation there is any reference to an Act of Parliament such reference 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, permission and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 Reference to any party to this Deed of Variation 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 Broads Authority, Waveney or the County Council its successors to its statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction/interpretation.
- 2.8 Any covenant by the Owner 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 Deed is supplemental to the Original Agreement and First Variation and is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Broads Authority, the County Council and East Suffolk
- 3.2 The terms and conditions of the Original Agreement as varied by the First Variation shall remain in full force and effect except as varied by this Deed

4. VARIATION

- 4.1 With effect from the date of this Deed the Parties agree to vary the Original Agreement as varied by the First Variation as set out in the Schedule to this Deed.
- 4.2 In all other respects the contents of the Original Agreement are confirmed and agreed and shall continue to bind the Site as varied by this Deed

5. OTHER PROVISIONS

- 5.1 On completion the Owner will pay the Broads Authority, the County Council and East Suffolk's reasonable legal costs in connection with this Deed
- 5.2 the Owner warrants that they have full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Site

6. MISCELLANEOUS

- 6.1 No provision of this Deed of Variation shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 6.2 This Deed of Variation shall be registerable as a local land charge by the Broads Authority and Waveney.
- 6.3 Insofar as any clause or clauses of this Deed of Variation are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality to unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed of Variation
- 6.4 Nothing contained implied in this Deed of Variation shall prejudice or affect the rights discretions powers duties and obligations of the ~~District Council~~ ^{Broads Authority, East Suffolk} and the County Council under all statues by-laws statutory instruments orders and regulations in the exercise of their functions as local authority.

6.5 The owner covenants and warrants to the Broads Authority, Waveney and the County Council that they have full power to enter into this Deed of Variation and there is no other person having a charge over or any other interest in the Site.

7. WAIVER

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

8. JURISDICTION

8.1 This Deed of Variation 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.

SCHEDULE 1

1. The Parties agree to vary the Original Agreement as follows:
 - 1.2 A new definition of "2nd New Application" shall be inserted into section 1 (Definitions) of the Original Agreement as varied by the First Variation after the definition of "New Application" to read:

"2nd New Application" the application under section 73 of the Act dated 6.8.21 submitted to the Broads Authority to amend condition 2 of planning permission BA/2016/0151/COND (which varied BA/2012/0271/FUL) and given reference number BA/2021/0311/COND
 - 1.3 A new definition of "2nd New Permission" shall be inserted into section 1 (definitions) of the Original Agreement as varied by the First Variation after the definition of "New Permission" to read:

"2nd New Permission" the planning permission subject to conditions to be granted by the Broads Authority pursuant to the 2nd New Application
 - 1.4 The definition of "Development" in section 1 (definitions) of the Original Agreement as varied by the First Variation shall be amended to include the words "and/or the 2nd New Application" after the words "set out in the Application and/or the New Application" so it reads:

"Development" the Development of the Site with the provision of 76 Dwellings, new Boatyard, office, Moorings, Public Viewing Area and new access road as set out in the Application and/or the New Application and/or the 2nd New Application
 - 1.5 The definition of "Dwelling" in section 1 (definitions) of the Original Agreement as varied by the First Variation shall be amended to include the words "and/or the 2nd New Permission so it reads:

"Dwelling" a dwelling (including a house bungalow flat apartment or maisonette) to be constructed pursuant to the Planning Permission and/or the New Permission and/or the 2nd New Permission and "Dwellings" shall be construed accordingly
 - 1.6 The definition of "Occupation" and "Occupied" and "Occupy" in section 1 (definitions) of the Original Agreement as varied by the First Variation shall

be amended to include the words "and/or the 2nd New Permission" so it reads:

"Occupation" and "Occupied"

and "Occupy" occupation for the purposes permitted by the Planning Permission and/or the New Permission and/or the 2nd New Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marking or display or occupation in relation to security operations

- 1.7 The definition of "Landscaping" in section1 (definitions) of the Original Agreement as varied by the First Variation shall be amended to include the words "and/or the New Permission and/or the 2nd New Permission" so it reads:

"Landscaping" landscaping required pursuant to conditions 18 and 19 of the Planning Permission and/or the New Permission and/or the 2nd New Permission

- 1.8 Clause 8.8 of the Original Agreement as varied by the First Variation shall be amended to include the words "and the 2nd New Permission" after the words "if the Planning Permission and the New Permission"

- 1.9 Clause 8.11 of the Original Agreement as varied by the First Variation shall be amended to include the words "and the 2nd New Permission" after the words "other than the Planning Permission and the New Permission"

- 1.10 Clause 8 of the Original Agreement as varied by the First Variation shall be amended to by the addition of a new clause 8.12 which shall read as follows:

"This Deed shall not be enforceable against an individual purchaser or owner-occupier or tenant of a Dwelling constructed pursuant to the Planning Permission and/or the New Permission and/or 2nd New 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"

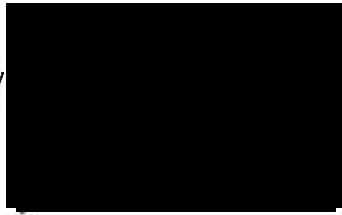
1.11 Clause 8 of the Original Agreement as varied by the First Variation shall be amended to by the addition of a new clause 8.13 which shall read as follows:

“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“

IN WITNESS whereof the parties hereto have executed this document as a Deed on the day and year first before written.

THE COMMON SEAL OF
THE BROADS AUTHORITY
was affixed in the presence of:

Authorised Signatory



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

Authorised Officer



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

Authorised Officer



EXECUTED AS A DEED by
BADGER BUILDING (E.ANGLIA) LIMITED
Acting by a Director in the presence of:



Witness signature

Witness name

Witness address

Witness occupation

