

DATED

27<sup>th</sup> July

2023

EAST SUFFOLK COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

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**UNILATERAL UNDERTAKING**

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

THIS UNILATERAL UNDERTAKING is dated the 27<sup>th</sup> day of July 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")

**BACKGROUND**

- A The Council and the County Council entered into the Original Undertaking relating to the Site.
- 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.
- D The Council has submitted the Section 73 Permission to vary the Application and therefore a variation to the Original Undertaking is required so that the Section 73 Permission can be included within the Original Undertaking.

**OPERATIVE PROVISIONS**

1. Interpretation

The following definitions and rules of interpretation apply in this Deed

"Application" means the application submitted to the Council and allocated reference number DC/21/0541/FUL;

"Original Undertaking" means the Deed entered into under section 106 of the 1990 Act by the Council and the County Council dated 7<sup>th</sup> March 2023;

"Section 73 Permission" means the application for planning permission pursuant to Section 73 of the Act allocated reference number DC/23/0539/VOC;

"Site" means the land outlined in red on the Plan attached to the Original Undertaking;

- 1.1 Unless the context otherwise requires, all words and phrases defined in the Original Undertaking shall have the same meaning in this Deed
- 1.2 Clause heading shall not affect the interpretation of this Deed
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders
- 1.5 A reference to any party shall include the party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions
- 1.6 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
- 1.7 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision
- 1.8 Unless the context otherwise requires reference to clauses are to the clauses of this Deed
- 1.9 Where an obligation fails to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually

## **2. Statutory Provision**

This Deed is made pursuant to the provisions of section 106 and 106A of the Act, section 111 of the Local Government Act 1972 and any other enabling powers

## **3. Application of the Original Undertaking**

It is hereby agreed between the Parties hereto that the terms and obligations set out in the Original Undertaking shall continue in full force and effect (subject to the modifications in this Deed) and shall be deemed by virtue of this Deed to apply to and bind the Site

**4. Variation of the Original Undertaking**

The Parties hereto agree that the Original Undertaking is varied from the date hereof as set out in Schedule 2 of this Deed

**5. Covenants to the County Council**

The Council covenants to observe and perform the covenants, restrictions, and obligations on the part of the Council contained in the Original Undertaking as varied by this Deed

**6. Local Land Charge**

This Deed shall be registered as a local land charge

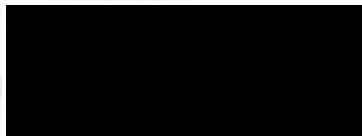
**7. Execution and Delivery**

This document is executed as a Deed and is delivered on the date stated at the beginning of this Deed

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



1087

**SCHEDULE 1**

**Details of the Site**

**ALL THAT** piece or parcel of land known as land at Former Deben High School Garrison Lane Felixstowe Suffolk edged with a red line on the Plan attached to the Original Undertaking.

## SCHEDULE 2

### Variation to the Original Undertaking

Insert a new definition of:

"Section 73 Permission" Means the application for planning permission pursuant to Section 73 of the Act allocated reference number DC/23/0539/VOC

The Original Undertaking shall be modified as follows:

A new clause 8.12 shall be inserted into the Original Undertaking as follows:

8.12 In the event that any new planning permissions are made in respect of the Site pursuant to section 73 of the Act with effect from the date that such new planning permission is granted pursuant to section 73 of the Act

a) the obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission relate to and bind the Site in respect of any planning permission granted pursuant to section 73 of the Act; and

b) the definitions of Application and Planning Permission shall be assumed to include reference to any applications under section 73 of the Act, the planning permission granted thereunder and the development permitted by such subsequent planning permission PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any applications under section 73 of the Act and the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification pursuant to section 106A of the Act