

AN UNDERTAKING DATED

29 November

2024

GIVEN BY:

(1) ANDREW DOUGLAS CHAPLIN and PAUL WILLIAM CHAPLIN

and

(2) HERIN PROPERTY INVESTMENTS LLP

TO:

(3) SUFFOLK COUNTY COUNCIL

UNILATERAL UNDERTAKING UNDER SECTION 106 OF THE
TOWN AND COUNTRY PLANNING ACT 1990
relating to the development of Willisham Hall, Willisham Hall Lane,
Willisham, Ipswich, Suffolk



Flint Buildings
1 Bedding Lane
Norwich
Norfolk
NR31RG

Date

21 November

2024

BY:

- (1) **ANDREW DOUGLAS CHAPLIN** and **PAUL WILLIAM CHAPLIN** of Bush Farm, Ipswich Road, Nedging Tye, Ipswich IP7 7BL ("**Owners**")
- (2) **HERIN PROPERTY INVESTMENTS LLP** (registered company number OC445877) of Parham House, 13 Grange Mill, Chevington, Bury St. Edmunds, Suffolk, IP29 5PQ ("**Developer**")

TO:

- (3) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ("**County Council**")

BACKGROUND

- (A) The County Council is the local highway authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The Owners are the freehold owners of the Site which is part of the land registered at the Land Registry under title number SK203234.
- (C) The Developer has the benefit of a contract dated 21 November 2023.
- (D) The Developer submitted the Application to the District Council for the Development and the District Council has refused to approve the Application. The Developer has therefore appealed the refusal to the Planning Inspectorate being the body responsible for appointing an Inspector to determine the Appeal.
- (E) The Owners and Developer are prepared to enter into this Deed to secure the planning obligations contained herein for the purpose of regulating the Development and use of the Site in the event the Appeal is allowed.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

“Act“	the Town and Country Planning Act 1990
“Appeal”	means an appeal made to the Secretary of State against the refusal of the Application and allocated appeal reference APP/W3520/W/24/3355611 by the Planning Inspectorate
”Application“	the application for the approval of reserved matters under the Permission which was submitted to the District Council for the Development allocated reference number DC/24/01057
“BCIS Index“	the All In Tender Price Index published by the Building Cost Information Service or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto
“BCIS Indexation”	the increase in any sum referred to in the Second Schedule by an equivalent to the increase in the BCIS Index to be calculated in accordance with clause 10 of this deed
“CIL Regulations”	the Community Infrastructure Levy Regulations 2010
“CIL Tests”	the tests set out in Regulation 122(2) of the CIL Regulations
“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site pursuant to the Permission and the Reserved Matters Approval other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance,

demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, construction of access to the Site and the temporary display of site notices or advertisements and “Commence” and “Commencement” and “Commence Development” shall be construed accordingly

“Development”	the erection of 11no dwellings, commercial B1 (office) space, A1/A3 farm shop/cafe, new vehicular access, new footpath, play area and associated parking, landscaping and attenuation basin
“District Council”	means Mid Suffolk District Council of Endeavour House, 8 Russell Road, Ipswich IP1 2BX
“Dwelling”	means any dwelling to be constructed in accordance with the Permission and the Reserved Matters Approval
“Inspector”	an inspector appointed by the Secretary of State to determine the Appeal
“Occupation”	means first occupation for the purposes permitted by the 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 and “Occupied” and “Occupy” shall be construed accordingly
“Permission”	means the outline planning permission granted by the District Council under reference DC/20/02426
“Reserved Matters Approval”	means the reserved matters approval that may be granted by the Secretary of State or an inspector appointed by the Planning Inspectorate

“Secretary of State”	the Secretary of State for Housing, Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the 1990 Act
“Site Plan”	the plan titled ‘Location Plan’ with drawing number 22 200 – 14 appended to this Deed at Schedule 1
“Site“	means that part of the land edged red on the Site Plan which is part of the land registered at the Land Registry under title number SK203234
“TRO Contribution”	the sum of £10,000 (ten thousand pounds) payable to the County Council subject to BCIS Indexation in accordance with Clause 10 towards the cost of extending the 40mph speed limit on Barking Road, Willisham to include legal expenses, officer time, cost of any necessary works not delivered by the Owner, and all other ancillary expenses
”Working Days”	any day from Monday to Friday which is not Christmas Day, Good Friday or a public holiday including statutory bank holidays

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of gender include any other genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Any reference to a statute shall include any modification, extension or re-enactment of that statute 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 statute or deriving validity from it.

- 2.5 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Site or any part thereof and in the case of the County Council the successors to its statutory functions.
- 2.6 The headings and contents list are for reference only and shall not affect construction.
- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document.
- 2.8 Any covenant by the Owners 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 and each of the covenants given by the Owners herein is made pursuant to section 106 of the Act and to the extent that any obligations in this Deed are not planning obligations, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and section 278 Highways Act 1980 and all enabling powers with the intent that the covenants and obligations shall hereafter run with the land and bind the Site pursuant to section 106 of the Act.
- 3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the County Council as local planning authority against the Owners.

4 CONDITIONALITY

The obligations set out in the Second Schedule are conditional upon:

- (i) the grant of the Reserved Matters Approval; and
- (ii) the Commencement of Development

and the rest of the provisions set out in this Deed shall take effect immediately upon completion of this Deed.

5 THE OWNERS' COVENANTS

The Owners covenant as follows:

- 5.1.1 to observe and perform the covenants and obligations at Schedule 2;

5.1.2 within 21 Working Days of the date of any disposition of any legal interest in the Site or any part thereof to give the County Council written notice thereof including details of the name and address of the person or persons to whom such interest was transferred PROVIDED ALWAYS that this shall not apply to interest by way of mortgage or legal charge nor to any such disposals to purchasers of an individual Dwelling.

5.1.3 within 10 Working Days of the grant of the Reserved Matters Approval to pay the County Council a monitoring fee of £476 (four hundred and seventy-six pounds)

6 MISCELLANEOUS

6.1 The Owners covenant and warrant to the County Council that they are the freehold owners of the Site and have full power and capacity to enter into this Deed and that there is no other person other than the Developer having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.3 This Deed may be registered as a local land charge by the District Council or County Council.

6.4 Any notice or written communication to be served or given under the terms of this Deed shall be deemed to have been properly served or given if delivered by hand or sent by first class post or registered or recorded delivery to the following addresses:

6.4.1 Owners: at the address at the beginning of this Deed;

6.4.2 Developer: at the address at the beginning of this Deed;

6.4.3 County Council: at the address at the beginning of this Deed; or

6.4.4 such other address as may be notified in writing from time to time.

6.5 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.

6.6 If the Permission or Reserved Matters Approval is quashed revoked or otherwise withdrawn without the consent of the Owners this Deed shall thereupon (insofar as it has not already been complied with) cease to have effect

- 6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with their interest in the Site or the part of the Site in respect of which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT neither the reservation of rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or part of the Site) shall constitute an interest for the purposes of this Clause.
- 6.8 The obligations in this Deed shall not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owners to that statutory undertaker.
- 6.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.10 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 6.11 The Owners covenant from the date that this Deed takes effect to allow the County Council, and its duly authorised officers or agents at all reasonable times on reasonable notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed and in doing so the County Council shall have regard to all health and safety requirements when visiting the Site.
- 6.12 The Owners hereby agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.
- 6.13 This Deed or any of the obligations within this Deed shall not apply and not have any force nor effect if the Inspector appointed to determine the Appeal finds in his/her decision letter in respect of the Appeal that this Deed or a particular obligation or part thereof is not a material consideration in the granting of the Reserved Matters Approval pursuant to the Appeal or considered necessary to enable the grant of the Reserved Matters Approval or is not in accordance with the CIL Tests.
- 6.14 In the event the Inspector find in his/her decision letter that a particular contribution as defined in this Deed or other obligation or provision should be deleted or amended so as to ensure compliance with the CIL Tests or to enable the grant of the Reserved

Matters Approval then such contribution provision and/or obligation in this Deed shall be treated as so amended in accordance with the Inspector's decision and this Deed shall be read interpreted and applied accordingly.

7 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 Deed shall constitute a continuing waiver and no such waiver shall prevent the County Council or Owners from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 JURISDICTION

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

9 FUTURE PERMISSIONS

In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that such new planning permission is granted pursuant to section 73 of the Act:

9.1.1 the obligations in this Deed shall in addition to binding the Site in respect of the Reserved Matters Approval relate to and bind the Site in respect of any planning permission granted pursuant to Section 73 of the Act; and

9.1.2 the definitions of Development Application Reserved Matters Approval and Permission shall be assumed to include references to any applications under section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of the District Council or the County 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.

10 INDEXATION

Any sum referred to in the Second Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS 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:

10.1.1 A is the sum payable under this deed

10.1.2 B is the original sum calculated as the sum payable

10.1.3 C is the BCIS Index for the month two (2) months before the date on which the sum is payable

10.1.4 D is the BCIS Index for the month two (2) before the date of this Deed and

10.1.5 C/D is greater than one (1)

11 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England.

13 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.

IN WITNESS whereof the Owners and Developer have caused this Deed to be executed the day and year first before mentioned

SCHEDULE 1

Site Plan

SCHEDULE 2

Owners' obligations

The Owners covenant with the County Council as follows (unless otherwise agreed in writing by the County Council):

- 1 To pay the TRO Contribution prior to the Commencement of Development
- 2 Not Commence or allow the Commencement of Development unless and until the TRO Contribution has been paid.

SIGNED as a DEED by ANDREW)
DOUGLAS CHAPLIN in the presence of:)

Witness Signature: [REDACTED]

Witness Name: *SAMUEL JAMES READ*

Witness Address: **-BARKER GOTELEE-**
SOLICITORS
41 Barrack Square
Martlesham Heath
IPSWICH IP5 3RF
01473 611211

Witness Occupation: *SOLICITOR*

SIGNED as a DEED by PAUL WILLIAM)
CHAPLIN S in the presence of:)

Witness Signature: [REDACTED]

Witness Name: *SAMUEL JAMES READ*

Witness Address: **-BARKER GOTELEE-**
SOLICITORS
41 Barrack Square
Martlesham Heath
IPSWICH IP5 3RF
01473 611211

Witness Occupation: *SOLICITOR*

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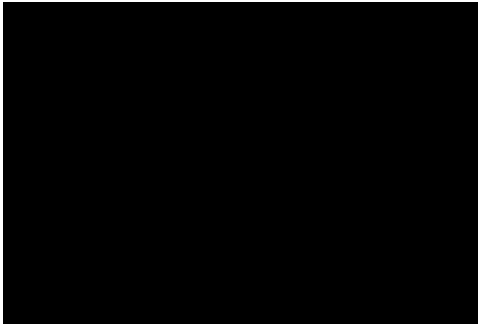
SIGNED as a DEED by **HERIN
PROPERTY INVESTMENTS LLP** acting
by THOMAS HOBBS
duly authorised b [REDACTED]
to sign on its behalf as member of Herin
Property Investments LLP in the
presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:





No. Date Revisions
Revisions

HOLLINS

Architects, Surveyors &
Planning Consultants

The Guildhall
Market Hill
Framlingham
Suffolk
IP13 9BD

Telephone 01728 723959
E mail all@hollins.co.uk
Website www.hollins.co.uk

Client

Herin Property Investments LLP

Site

Willisham Hall
Willisham Hall Road
Willisham
IP8 4SL

Project

Willisham Hall Barns

Details

Location Plan

Scale

1:1250@A3

Date

Feb 2024

Drawn by

JT

Drawing number

22 200- 14

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