

DATED 2nd July 2025

(1) ANDREW DAVID KERRY AND LINDSEY LOUISE KERRY

- and -

(2) NATIONAL WESTMINSTER BANK PLC

- and -

(3) EAST SUFFOLK COUNCIL

- and -

(4) SUFFOLK COUNTY COUNCIL

AGREEMENT

made under Section 106 of the Town and Country
Planning Act 1990 (as amended) relating to land at
3-23 Suffolk Road, Lowestoft

Head of Legal and Democratic Services,
East Suffolk Council,
East Suffolk House
Riduna Park, Station Road
Melton
IP12 1RT

THIS AGREEMENT is made the _____ day of _____ 2025

BETWEEN:

1. **ANDREW DAVID KERRY AND LINDSEY LOUISE KERRY** of Holly Grove, Honing Road, Lyngate, Worstead, North Walsham NR28 9RQ ("the Owner");

2. **NATIONAL WESTMINSTER BANK PLC** (Company registration number 929027) ~~of~~

Credit Documentation Department, 8th Floor, 1 Hardman Boulevard, Manchester M3 3AQ
whose registered office is at 250 Bishopsgate, London EC2M 4AA and whose address for service is credit documentation, Springfield 25 Square, Manchester M33 4P



EAST SUFFOLK COUNCIL of East Suffolk House, Riduna Park, Station Road, Melton IP12 1RT ("the Council"); and

4. **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the County Council")

INTRODUCTION

1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and is the authority by whom the planning obligations hereby created are enforceable.

2 The County Council is the county planning authority in respect of the area within which the Site is situated and is the authority by whom the county obligations hereby created are enforceable.

3 Both the Council and the County Council are therefore local planning authorities for the purposes of section 106 of the Act for the area in which the Site is situated.

4 The County Council is also the education authority for the purposes of the Education Act 1996 for the area in which the Site is situated.

5 The Owner is the freehold owner of the Site which is registered at HM Land Registry under title number SK132402.

6 The Mortgagee is the mortgagee of the Site subject to a legal charge dated 23 March 2016.

7 The Planning Application has been submitted to the Council for the Development.

8 The Council has not yet determined the Planning Application and the Owner enters into this Deed to secure the planning obligation which will take effect following a grant of the Planning Permission for the Development.

9 The Owner has agreed to enter into this Deed so as to create planning obligations in respect of the Site in favour of the Council and the County Council pursuant to Section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall where the context so admits have the following meanings:

- “Act” the Town and Country Planning Act 1990 as amended
- “Commencement of Development” the date on which any material operation (as defined in Section 56(4) of the Act) pursuant to the Planning Permission begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of archaeological investigations and soil surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, environmental investigations, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements or the erection of temporary fences
- “Commercial Units” any commercial unit to be constructed pursuant to the Planning Permission
- “Contributions” the Early Years Contribution and the Habitats Mitigation Contribution
- “Development” the conversion of 15-23 Suffolk Road to three individual commercial units (retail or office use) at ground floor level (fronting Suffolk

		Road) with ten proposed residential units comprising of three maisonettes to the rear of the Site and flats on the upper floors including partial demolition as described in the Planning Application and in accordance with the Planning Permission
"Dwelling"		any dwelling (including house flat or maisonette) to be constructed pursuant to the Planning Permission
"Early Years Contribution"	Years	the sum of £36,050.00 (thirty six thousand and fifty pounds) (Index Linked) to be paid by the Owner to the County Council and to be used towards the construction of new early years provision in the Harbour and Normanston ward
"Habitats Mitigation Contribution"		the sum of £3,845.10 (three thousand eight hundred and forty five pounds and ten pence) (Index Linked) calculated using the Habitats Mitigation Contribution Calculation to be paid by the Owner to the Council to be used in accordance with the Council's Local Plan Policies and the Appropriate Assessments of the Local Plans, and the Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document
"Habitats Mitigation Contribution Calculation"		the sum of £384.51 (three hundred and eighty four pounds and fifty one pence) multiplied by the total number of new Dwellings proposed pursuant to the Planning Permission to calculate the Habitats Mitigation Contribution
"Index"		means the All-in Tender Price Index published by the Building Costs Informative Service from time to time
"Index Linked"		the sums referred to in the Contributions shall be increased by an amount equivalent to the increase in the Index from the date of the grant of Planning Permission until the date on which the relevant Contribution is payable using the formula $A=B \times C/D$ where C/D is greater than 1. A—the sum payable under this Deed B—the original sum calculated

	C – the Index for the month 2 months before the date on which the relevant Contribution is payable
	D – the Index for the month 2 months before the date of the grant of the Planning Permission
“Interest”	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
“Occupation”	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
“Plan”	the plan attached to this Deed
“Planning Application”	the application for full planning permission for the Development of the Site made by or on behalf of the Owner and registered by the Council on 24 September 2024 under reference DC/24/3443/FUL
“Planning Permission”	the planning permission subject to conditions to be granted by the Council pursuant to the Planning Application
“Section 106 Officer”	the officer so designated by the Council and any notice required to be served on the Section 106 Officer must be sent or delivered to the Council at the address aforesaid marked for the attention of the Section 106 Officer (unless otherwise agreed with the Council)
“Site”	the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Plan
“Working Days”	Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England and “Working Day” shall be construed accordingly

EXISTING SURVEY OF 3-23 SUFFOLK ROAD, LOWESTOFT, SUFFOLK, NR32 1DZ

BLOCK PLAN



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LOCATION PLAN



Location Plan - Metres @ 1:1250 @ A1

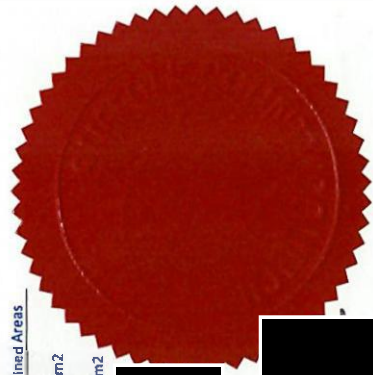


Area	Area (m ²)
Gross internal area (GIA) to Ground Floor - 720m ²	720
Gross internal area (GIA) to First Floor - 698m ²	698
Gross internal area (GIA) Second Floor - 105m ²	105
Red Lined site - 820m ²	820
Blue Lin Adjacent Site - 1116m ²	1116

69844

Gross internal area GIA = Existing Total of Red Lined Areas
 Gross internal area (GIA) to Ground Floor - 720m²
 Gross internal area (GIA) to First Floor - 698m²
 Gross internal area (GIA) Second Floor - 105m²

Red Lined site - 820m²
 Blue Lin Adjacent Site - 1116m²



KGARNHAM DESIGN
 2110012318, 11, Victoria Road
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 01473 612318
 2110012318@kgarnham.co.uk

Project: 3-23 Suffolk Road, Lowestoft, Suffolk
 Client: Andrew Kery
 Project Number: 182
 Drawing Number: 1
 Date: 20/02/2024

Revision Number	Revision Description	Revision Date
A	Initial	24/11/2023
B	Updated	24/11/2023
C	Submission	20/02/2024

FOR PLANNING

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed 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.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of any gender include any other genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed 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 severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that Act or Directive 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 Directive or deriving validity from it.
- 2.6 Any references to any party to this Deed 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 Council and the County 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 Owner not to do an act or thing shall be deemed to include an obligation to use all reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 2.9 Any notices required to be given under the terms of this Deed may (in addition to any other valid method of service) be given or served by sending the same by 'signed for' post addressed to the party to or upon whom it is to be given or served at the address for that party given in this Deed or such other address in the United Kingdom as that party may by notice to the other parties hereto or their agent stipulate as that party's

address for service of notice pursuant to this Deed or if not such address is given or stipulated at that party's last known address and any notice so given or served shall be deemed to be received and the date on which it is given or served shall be deemed to be 48 hours after posting and any notice to the County Council shall be addressed to the Executive Director of Growth Highways and Infrastructure (or a duly appointed successor).

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that it does not contain planning obligations 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 Owner under this Deed that are planning obligations pursuant to Section 106 of the Act are enforceable by the Council as the local planning authority against the Owner and their successors in title.

3.3 Any variation of this Deed is to be by way of a formal variation by deed between all the parties unless there is express provision in this Deed otherwise.

4 CONDITIONALITY

The provisions set out in this Deed are conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

SAVE FOR clauses 2, 3, 5.3, 6, 8, 9, 10, 12 which shall be in effect from the date of this Deed.

5 COVENANTS

5.1 The Owner hereby covenants with the Council as set out in the Second Schedule so as to bind the Site and each and every part thereof.

5.2 The Owner hereby covenants with the County Council as set out in the Third Schedule so as to bind the Site and each and every part thereof.

5.3 The Owner warrants that they are the freehold owner of the Site and have full power and capacity to enter into this Deed and that there is no other party or person having

a charge or any other interest in or over the Site (other than the Mortgagee) whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

5.4 The Council covenants with the Owner to comply with the covenants contained in the Fourth Schedule.

5.5 The County Council covenants with the Owner to comply with the covenants contained in Fifth Schedule.

6 MISCELLANEOUS

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

6.2 This Deed shall be registrable as a local land charge by the Council.

6.3 It is acknowledged that following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.

6.4 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.

6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure other than a non-material amendment under Section 96A of the Act or expires prior to the Commencement of Development.

6.6 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 its entire interest in the Site (or that part of the Site in respect of which such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest AND FOR THE AVOIDANCE OF DOUBT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or any part or parts of the Site) shall constitute an interest for the purposes of this Clause.

6.7 Subject to clause 6.7.1 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 Planning Permission) granted (whether or not on appeal) after the date of this Deed

6.7.1 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 the new planning permission is granted pursuant to section 73 of the Act

6.7.1.1 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

6.7.1.2 the definitions of Development, Planning Application and Planning 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 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

6.8 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

6.9 The Owner covenants from the date that this Deed takes effect to allow the Council, and its respectively duly authorised officers or agents at all reasonable times following at least three days' prior notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed.

- 6.10 This Deed shall not be enforceable against any owner, occupier or tenant of any individual Dwelling or Commercial Unit or any person deriving title from them, or their mortgagee or charge or any person deriving title from them.
- 6.11 No person shall be liable for breach of the covenants contained in this Deed if he or it shall be an occupier or tenant or purchaser of a site or sites required for statutory undertaker infrastructure purposes in relation to the Development.
- 6.12 The parties agree with one another to act reasonably and in good faith in fulfilment of the objectives of this Deed and in particular where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Deed such agreement, approval, consent or expression of satisfaction must be in writing and shall not be unreasonably withheld or delayed.
- 6.13 The Owner covenants to pay the Council's reasonable legal costs incurred in the preparation and negotiation of this Deed upon completion of this Deed.
- 6.14 The Owner covenants to pay the Council's monitoring costs of £460.00 (four hundred and sixty pounds) upon completion of this Deed.
- 6.15 The Owner covenants to pay the County Council's reasonable legal costs incurred in the preparation and negotiation of this Deed upon completion of this Deed.
- 6.16 The Owner covenants to pay the County Council's monitoring costs in the sum of £519.00 (five hundred and nineteen pounds) upon completion of this Deed.

7 WAIVER

No waiver (whether expressed or implied) by the Council, the County Council or the Owner 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 Council, the County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 CHANGE IN OWNERSHIP

The Owner agrees with the Council and the County Council to give the Council and the County Council written notice within 10 Working Days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice quoting the Planning Application reference number and

to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan and the title number or numbers thereof PROVIDED THAT this obligation shall not apply to any individual disposals of Dwellings or Commercial Units nor disposals to any of the statutory utilities for their operational purposes nor to any mortgagee or chargee of the Site.

9 JURISDICTION

This Deed 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

10 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until the Planning Permission is granted

11 DISPUTE RESOLUTION

11.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed which cannot be resolved by prior agreement between the parties such dispute or difference shall be referred to an independent and suitable person (the "Expert") holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with experience of resolving such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

11.2 In the absence of an agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 11.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the

dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

11.3 Any Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 (twenty-eight) Working Days after the conclusion of any hearing that takes place or 28 (twenty-eight) Working Days after he has received any file or written representation.

11.4 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 (ten) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter submission within a further 10 (ten) Working Days.

12 MORTGAGEE'S CONSENT

12.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site or any part of it shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site or any part of it in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

13 NOTICES

The Owner covenants to inform the Council and the County Council by way of written notice within seven (7) Working Days following:

13.1 Commencement of Development

13.2 First Occupation of the first (1st) Dwelling

13.3 First Occupation of the final Dwelling

FIRST SCHEDULE

Details of the Owner's Title, and description of the Site

Freehold land at 3-23 Suffolk Road, Lowestoft within registered title number SK132402 shown edged red for identification only on the Plan.

SECOND SCHEDULE

Habitats Mitigation Contribution

The Owner hereby covenants with the Council as follows:

- 1 Prior to Commencement of Development the Owner shall pay to the Council the Habitats Mitigation Contribution
- 2 Not to cause or permit Commencement of Development until the Habitats Mitigation Contribution has first been paid to the Council
- 3 In the event that the Habitats Mitigation Contribution remains unpaid after 28 days of Commencement of Development, Interest will be payable from the date that the sum fell due until the date of actual payment
- 4 Any notice or other written communication relating this Deed for the Council shall be addressed to The Section 106 Officer, East Suffolk Council, East Suffolk House, Riduna Park, Station Road, Melton, IP12 1RT

THIRD SCHEDULE

Early Years Contribution

The Owner hereby covenants with the County Council as follows:

- 1 Prior to first Occupation of the first Dwelling the Owner shall pay to the County Council the Early Years Contribution
- 2 Not to cause or permit first Occupation of the first Dwelling until the Early Years Contribution has been paid to the County Council
- 3 In the event that the Early Years Contribution remains unpaid after 14 days of first Occupation of the first Dwelling, interest will be payable from the date that the sum fell due until the date of actual payment

FOURTH SCHEDULE

Council's Covenants

The Council covenants with the Owner as follows:

1. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. The Council shall use the Habitat Mitigation Contribution for the purposes set out in the Deed within ten (10) years from receipt PROVIDED THAT nothing shall prevent the Council from paying any part of the Habitat Mitigation Contribution to a person, body or company that may be responsible for the carrying out of the work as set out in this Deed.
3. The Council shall if requested to do so in writing after the expiry of TEN (10) years of the date that the Habitat Mitigation Contribution was paid within ONE (1) year pay to any such person such amount of the Habitat Mitigation Contribution paid by that person in accordance with the provisions of this Deed which have not been committed or expended by the Council, such payment to be made within TWENTY EIGHT (28) Working Days of such a request

FIFTH SCHEDULE

County Council's Covenants

The County Council covenants with the Owner as follows:

- 1 To use all sums received under the terms of this Deed for the purposes specified in this Deed for which they are to be paid and not to expend the sums for any other purposes and the County Council shall (on the reasonable request of the payer or the payer's nominee) provide evidence that the monies have been so applied
- 2 To pay to the Owner (or the payer if not the Owner) such part of any payment made to the County Council under this Deed which has not been expended or allocated in accordance with the provisions of this Deed within ten (10) years of the date of first Occupation of the final Dwelling PROVIDED that a payment or part thereof shall be deemed to be "*expended*" for the purposes of this paragraph where the County Council has entered into an arrangement with any person which commits the Council to expending the said sum

IN WITNESS whereof this Deed has been duly executed as a Deed on the date and year first written

EXECUTED AS A DEED

by ANDREW DAVID KERRY

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupati

EXECUTED AS A DEED

by LINDSEY LOUISE KERRY

in the presence of:

Witness Signatur

WitnessName: A ABOVE

Witness Address: AS ABOVE

Witness Occupation: AS ABOVE

EXECUTED AS A DEED

by NATIONAL WESTMINSTER BANK

acting by two Directors or

a Director and Secretary

in the presence of:

Executed and Delivered as a deed
by and on behalf of
NATIONAL WESTMINSTER BANK PLC

Director

Director/Secretary

Witness' Signature - Bank employee

EXECUTED AS A DEED by affixing the
Common Seal of EAST SUFFOLK COUNCIL
in the presence of:

Authorised Signatory



MARIN
CLARK
LICENSING MANAGER
AND POLICE CHIEF
LEWIS



EXECUTED AS A DEED by affixing the
Common Seal of SUFFOLK COUNTY COUNCIL
in the presence of:

Authorised Signatory

