

DATE: _____ 2016

Mr Paul Anthony Mansfield
and
Clifford Property Development Ltd
and
National Westminster Bank PLC

CANTERBURY CITY COUNCIL

PLANNING OBLIGATION BY UNILATERAL UNDERTAKING
Under Section 106 of the Town and Country
Planning Act 1990 (as amended)

Land adjoining Goose Farm, Shalloak Road, Broad Oak, Canterbury, CT2
0QE in the County of Kent

THIS DEED is made the

day of

2016

AND GIVEN BY:

1. Mr Paul Anthony Mansfield of Nickle Farm, Chartham, Canterbury, Kent, CT4 (“the Owner”)
2. Clifford Property Development Limited (Company Registration number 04763091) whose registered office is at Elmtree Cottage, Dargate, Faversham, Kent, ME13 9HG (“the Developer”)
3. National Westminster Bank PLC (Company Registration Number 929027) whose registered office is at Manchester Securities Centre, P.O. Box 339, Floors 13 & 15 Lowry House, 17 Marble Street, Manchester, M6-0 2AH (“the Mortgagee”)

TO:

- (1) CANTERBURY CITY COUNCIL (“the Council”) whose address is Military Road, Canterbury, Kent, CT1 1YW

RECITALS

- 1 The Owner is the freehold owner of the Land and is registered as registered proprietor with title absolute of the Land at HM Land Registry under the Title
- 2 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Land is situated.
- 3 The Developer is the Applicant of Planning Application CA/16/01502/FUL
- 4 The Land is charged to the Mortgagee by a legal charge dated 19 November 1997 made between the Owner and the Mortgagee registered under the Title
- 5 The contributions are required in order to mitigate the impact of the Development, to meet the increased demand for facilities which will be caused by the Development. The contributions need to be indexed in order to retain their value.
- 6 The Planning Application has been submitted by the Developer to the Council seeking permission to undertake the Development and the Owner and the Developer enter into this Deed in order to secure the planning obligations contained in this Deed the need for which would not be generated but for the Development.

NOW THIS DEED WITNESSETH as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following words and phrases shall have the following meanings:

“the Act”	means the Town and Country Planning Act 1990 as amended
“Applicable dwelling”	means: all units excluding 1 bed units of less than 56sqm gross internal area and sheltered accommodation
“the Council’s Costs”	means the sum of £300 being the agreed contribution to the

	Council's proper and reasonable costs in the preparation and registration of this Deed
"Commencement of the Development"	means commencement of the Development on the Land by the carrying out of a material operation pursuant to the Planning Application within the meaning of section 56(4) of the Act save that for the purposes of this Deed and for no other purpose operations consisting of (a) site clearance (b) demolition work (c) archaeological investigations (d) investigations for the purpose of assessing ground conditions (e) remedial work in respect of any contamination or other adverse ground conditions (f) diversion and laying of services (g) erection of temporary means of enclosure (h) the temporary display of site notices or advertisements shall not amount to commencement and all references to commencement shall be construed accordingly
"the Contributions"	means any or all of the sums set out in the first Schedule
"the Development"	The development of the Land by the provision of ten detached and semi-detached family homes with associated access, parking (including car barns) and landscaping in accordance with and for the use in the manner as set out in the Planning Application
"Indexation"	means the increase of any sum in accordance with the formula set

	out in clause 7
“the Inflation Index”	means the “all Items” index figure of the Index of Retail Prices published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published or its name or methodology be materially altered
“Interest”	Interest at 2 points above the base rate of the Bank of England from time to time
“the Land”	means the land known as Land adjoining Goose Farm, Shalloak Road, Broad Oak, Canterbury, CT2 0QE against which this Deed may be enforced as shown more particularly delineated edged red on the attached Plan
“Occupation”	means occupation for any purpose permitted by the Planning Permission but does not include occupation by personnel engaged in the construction fitting-out or decoration or occupation for marketing or display or occupation in relation to security operations of any part of the Development and for the avoidance of doubt in the case of a sale of a freehold or long leasehold interest to a third party Occupation commences the date of legal completion of the sale rather than exchange of contracts
“the Plan”	means the plan annexed to this Deed
“the Planning Application”	means the application for planning permission to carry out the Development on the Land and given the Council’s reference number CA/16/01502/FUL
“the Planning Permission”	means the planning permission which may be granted by the Council pursuant to the Planning

“the Title”

the Land is registered at the HM
Land Registry under title number
K715935

2. CONSTRUCTION OF THIS DEED

- 2.1 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 the successors to their respective statutory responsibility for the relevant function.
- 2.2 In the absence of any contrary provision any reference to a statute shall include any statutory extension modification or re-enactment for the time being in force and shall include all statutory instruments directions orders regulations plans permissions or byelaws for the time being made issued or given under the statute or deriving validity from it.
- 2.3 Words importing the masculine gender shall include the feminine and neuter gender and vice versa.
- 2.4 Words importing persons include companies corporations and firms and vice versa.
- 2.5 Unless the context otherwise requires words importing the singular shall include the plural and vice versa.
- 2.6 Headings are for ease of reference only and shall not be construed as part of this Deed.
- 2.7 Reference to any recital clause schedule or paragraph (or any part of them) shall (unless the context otherwise requires) be reference to a recital clause schedule or paragraph (or any part of them) in this Deed.
- 2.8 Wherever there is more than one person named as a party or where more than one party undertakes an obligation all their obligations shall be enforceable against all of them jointly and/or against each individually unless there is an express provision otherwise.
- 2.9 Any covenant by a party to this Deed not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by any other person.

3 STATUTORY PROVISIONS

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 All the covenants restrictions and requirements contained herein create planning obligations pursuant to Section 106 of the Act and are entered into by the Owner and the Developer to the intent that it shall bind the Owner and the Developer and their successors in title to each and every part of the Land and their assigns and shall be enforceable by the Council against the Owner and the Developer.

4 **CONDITIONALITY**

This Deed is conditional on:

- (i) the grant of the Planning Permission; and
 - (ii) the Commencement of Development
- save for the provisions of clauses 5, 6, 8 and 11 and the First Schedule which shall come into effect immediately upon the completion of this Deed and any other applicable clauses.

5 **THE OWNER'S AND THE DEVELOPER'S COVENANTS**

- 5.1 The Owner and the Developer covenants with the Council to observe the restrictions and perform the obligations set out in the First Schedule.
- 5.2 The Owner covenants with the Council
 - 5.2.1 to give notice to the Council of the date of the Commencement of the Development not less than 14 days before such date occurs ("the Commencement Notice").
 - 5.2.2 to give notice to the Council of the date of the first Occupation of any part of the Development not less than 14 (fourteen) days before such date occurs ("the Occupation Notice").
 - 5.2.3 To retain such records and information and within 14 days of a written request by the Council to provide the Council with such records and information as the Council request to enable the Council to satisfy itself that the Developer and the Owner is complying with all its obligations under this Deed and the conditions to be attached to the Planning Permission.
 - 5.2.4 To pay the Council's Costs on the completion of this Deed.

6 **DECLARATIONS**

6.1 Liability for Breach

No person shall be liable for a breach of any of the planning obligations or other provisions of this Deed after they have irrevocably parted with all their interest in the Land or in the part of the Land in respect of which such breach occurs pursuant to a disposal at open market value to an unconnected third party but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.2 Revocation Modification or Expiry of the Permission

This Deed shall determine and cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed revoked or modified by the Council pursuant to the Act without the written consent of the Developer and the Owner or if the Planning Permission expires or is otherwise withdrawn prior to the Commencement of Development.

6.3 Notices

Any notice consent or approval to be given under this Deed shall be in writing and shall be deemed to be served if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the relevant party as described in this Deed or such other address as shall have been notified in writing to the party giving the notice

consent or approval and in the case of a notice to be served on the Council it should be addressed to the Head of Planning quoting reference CA/16/01502/FUL

6.4 Severance

If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected or impaired.

6.5 Registration as a Local Land Charge

This Deed is a Local Land Charge and to be registered as such by the Council. After all of the obligations contained in this Deed have in the reasonable opinion of the Council been fulfilled the Owner will be entitled to send a written request to the Council to issue written confirmation thereof and cancel the relevant entries in the Register of Local Land Charges.

6.6 Variation

No variation or modification of this Deed shall be valid unless made by Deed and executed by all the parties or their respective successors.

6.7 Contracts (Rights of Third Parties) Act 1999

This Deed does not nor is intended to confer any rights or benefit on a third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

6.8 Statutory Undertakers

The obligations contained in this deed shall not be binding upon any person whose interest in any part of the Land is solely for the purpose of drainage, sewerage or the supply of electricity, gas, water or telecommunications

7 INDEXATION

Any sum which become payable under this Deed other than the Council's Costs shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

8 OVERDUE PAYMENT

In the event of any delay in making payment required under this Deed Interest shall be payable on the amount payable from the date that the relevant payment falls due to the date of actual payment.

9 CHANGE IN OWNERSHIP

The Owner undertakes to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice 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 Land or unit of occupation purchased by reference to a scale plan.

10 MORTGAGEE CONSENT

The Mortgagee hereby consents to the execution of this Deed and acknowledges that subject as herein provided its land shall be bound by the restrictions and obligations contained in this Deed and that the security of the mortgage over the Land 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 Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner and that such liability will cease once it has parted with its interest in the Land.

11 JURISDICTION

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

FIRST SCHEDULE

The Owner and the Developer for themselves and their successors in title covenants with the Council as follows:

1. To pay the SAMM Contribution of £7,412.00 [Seven Thousand Four Hundred and Twelve Pence] to the Council, made up of the elements set out in the following table, in respect of the Canterbury section of the Thanet Coast and Sandwich Bay Special Protection Area prior to the Commencement of Development.

SAMM contribution in respect of Canterbury Section of the Thanet Coast and Sandwich Bay SPA			
Development Make-Up	Number of units	Tariff per unit	Subtotal
1 Bedroom Flat	0	£355.00	£0.00
2 Bedroom House or Flat	0	£498.00	£0.00
3 Bedroom house	6	£670.00	£4,020.00
4+ Bedroom	4	£848.00	£3,392.00
Tariff due			£7,412.00

2. To pay the Kent County Council contribution of 24,089.76 [twenty-four thousand and eighty-nine pounds and seventy-six pence] to the Council, made up of the elements set out in the following table, in respect of primary education and libraries prior to the commencement of the development.

	Per 'Applicable' House (x10)	Total	Project
Primary Education	£2360.96	£23,609.60	Towards enhancement works at St Stephens Junior School

	Per Dwelling	Total	Project
Libraries	£48.02	£480.16	Towards additional book stock for the mobile library service serving Broad Oak.

3. Not to cause or allow the Commencement of Development until the Contributions have been paid to and received by the Council.

IN WITNESS whereof this Unilateral Undertaking has been duly executed as a Deed by the Owner and the Developer and the Mortgagee the day and year first before written

THE OWNER AND THE DEVELOPER AND THE MORTGAGEE ATTESTATION

Signed as a Deed by)
MR PAUL ANTHONY MANSFIELD)

As witnessed by: _____

Name: _____

Address: _____

Executed as a deed by)
CLIFFORD PROPERTY CONSTRUCTION LIMITED)

Director

Director/Secretary

Executed as a deed by)
NATIONAL WESTMINSTER BANK PLC)

Director

Director/Secretary