

DATED 22 October 2019

- (1) EAST SUFFOLK COUNCIL
- (2) SUFFOLK COUNTY COUNCIL
- (3) BADGER BUILDING (E.ANGLIA) LIMITED

DEED OF VARIATION OF S.106 AGREEMENT

Relating to Land off Monckton Avenue Lowestoft
Suffolk

THIS DEED OF VARIATION is made this 22nd day of October 2019

BETWEEN:

EAST SUFFOLK COUNCIL of Riverside, 4 Canning Road, Lowestoft, Suffolk,
NR33 0EQ ("the District Council")

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

BADGER BUILDING (E.ANGLIA) LIMITED Co. regn no. 02407008 of Stanley
House, Stanley Street, Lowestoft, NR32 2DZ ("the Owner")

DEFINITIONS

The meanings ascribed to definitions and terms in the Principal Deed are to be applicable to those definitions and terms where used in this Deed

the Planning Permission means the full planning permission bearing reference no. DC/19/2406/VOC which will replace the original planning permission reference DC/17/0633/FUL referred to in the Principal Deed

the Principal Deed means the Agreement entered into pursuant to Section 106 of the 1990 Act dated 4th December 2017 by the District Council (then known as Waveney District Council)(1) Suffolk County Council(2) and the Owner(3) in respect of the Site

the Site means land off Monckton Avenue Lowestoft Suffolk as described in Schedule 1 of the Principal Deed

BACKGROUND

The Owner is the freehold owner of the Site registered at HM Land Registry under title number SK369354

The District Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated and is the authority by whom the obligations contained in this Deed are enforceable.

The Planning Permission will be granted under the Council's Scheme of Delegation subject to the prior completion of this deed

The Principal Deed was completed on 4th December 2017 for development of the Site.

The parties have agreed to modify the provisions of the Principal Deed relating to the size of two (2) of the ten (10) Affordable Dwellings for Rent contained within the Principal Deed and to make allowance for the transfer of part of the Affordable Dwellings to the District Council.

STATUTORY PROVISIONS

1. This Deed:-
 - 1.1 is made pursuant to the provisions of Section 106A of the 1990 Act;
 - 1.2 is made with the intent to bind the Owner's freehold interest in the Site;
 - 1.3 is enforceable by the District Council as the local planning authority; and
 - 1.4 is executed as a deed.

APPLICATION OF THE PRINCIPAL DEED

2. It is hereby agreed between the parties hereto that the terms and obligations set out in the Principal Deed 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 and the Development to be carried out pursuant to the Planning Permission.

VARIATION OF THE PRINCIPAL DEED

3. The parties hereto agree that the Principal Deed is varied from the date hereof as follows:-
 - 3.1 In the definition of "Affordable Dwellings" at paragraph 1 of the third schedule to the Principal Deed the words "TWO (2) 1 Bed Houses (plots 38 & 41) and TWO (2) 2 Bed Houses (plots 39 & 40)" shall be deleted and the following words shall be substituted "FOUR (4) 2 Bed Houses (plots 38-41)"
 - 3.2 In the definition of "Nomination Agreement" at paragraph 1 of the third schedule to the Principal Deed the words "except where the Affordable Dwellings are transferred to the District Council when such requirement shall not apply" shall be added at the end of the definition
 - 3.3 In the definition of "Protected Tenant" at paragraph 1 of the third schedule to the Principal Deed in sub paragraph (b) there shall be inserted after "has

exercised any statutory right to buy" the words "pursuant to the Housing Act 1985 or any other statutory provision for the time being in force"

- 3.4 At the end of paragraph 2.4 of Part 1 of the third schedule to the Principal Deed the following words shall be added "except where the Affordable Dwellings are transferred to the District Council when such requirement will not apply"
- 3.5 At paragraph 2.7 of Part 1 of the third schedule to the Principal Deed there shall be inserted after "or secure tenancy" the words "or introductory tenancy or flexible tenancy or demoted tenancy"
- 3.6 The plan attached to this Deed shall be substituted for the plan attached to the Principal Deed
- 3.7 All references to the Principal Deed to planning permission reference DC/17/0633/FUL shall be read and construed as references to the Planning Permission

LOCAL LAND CHARGE

4. This Deed shall be registerable as a local land charge by the District Council.

JURISDICTION

5. This Deed shall be governed by and interpreted in accordance with the law of England and any dispute connected with this Deed is subject to the exclusive jurisdiction of the English Courts

THIRD PARTY RIGHTS

6. A person who is not party to this Deed (save for successors in title or successors to the functions of the District Council) as provided for in the Principal Deed) shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms other than the parties to it under that Act.

COSTS

7. The Owner agrees to pay to the District Council on the completion of this Deed their reasonable legal costs in the preparation and completion of this Deed up to a maximum of five hundred pounds (£500.00) inclusive of VAT and disbursements.

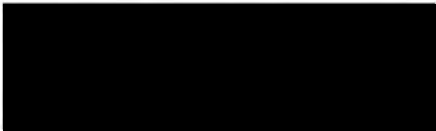
EXECUTION AND DELIVERY

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

The COMMON SEAL of
EAST SUFFOLK COUNCIL
was affixed to this Deed
in the presence of:



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...Authorised Signatory

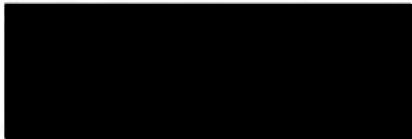


Authorised Signatory


The COMMON SEAL of
SUFFOLK COUNTY COUNCIL
was affixed to this Deed
in the presence of:



24191



Authorised Signatory

..... Authorised Signatory — 

EXECUTED AS A DEED by

BADGER BUILDING (E.ANGLIA) LIMITED

acting by a Director and its Secretary



.....Director

.....Secretary