

CCC'S Part

DATED 26 NOVEMBER **2019**

- (1) Ipswich Borough Council**
- and**
- (2) Suffolk County Council**

Deed of Variation

under section 106 of the Town and Country Planning Act 1990
relating to the development of land at 79 Cauldwell Hall Road, Ipswich

THIS DEED OF VARIATION is made the

26

day of November 2019

BY

- (1) **IPSWICH BOROUGH COUNCIL** of Grafton House, 15-17 Russell Road, Ipswich, Suffolk, IP1 2DE ("the Landowner")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 4 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council")

WHEREAS:-

- (A) The Landowner and the County Council are the local planning authorities for the purposes of the Town and Country Planning Act 1990 (the "Act") for the area in which the Application Site is situated and by whom the obligations contained in this Deed are enforceable
- (B) The County Council is also the education authority for the area within which the Application Site is situated.
- (C) The Landowner is also the freehold owner of the Site registered at the Land Registry with title number SK49289 ("the Site")
- (D) The parties hereto together with the Trustees of the Bacton Gospel Hall Trust entered into a Section 106 Agreement dated 16 January 2007 (the "Principal Deed") pursuant to Section 106 of the Act and other enabling powers
- (E) The parties hereto together with the Trustees of the Bacton Gospel Hall Trust entered into a Deed of Variation to vary the Principal Deed dated 7th March 2012 ("the First Variation") pursuant to Section 106 of the Act and other enabling powers.
- (F) The Landowner has acquired the freehold interest of the Property and by an application to Ipswich Borough Council as local planning authority (the Council) and registered by the Council on 19 February 2019 with reference number 19/00171/VC ("the Second Planning Application") has applied to the Council for permission to develop the Application Site in the manner and for the use set out in the Second Planning Application
- (G) The Council in accordance with powers delegated to officers has resolved to grant the Second Planning Permission subject to completion of this Deed.

NOW THIS DEED WITNESSETH as follows:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 All words and phrases defined in the Principal Deed shall have the same meaning in this Deed save where the context otherwise requires and for the avoidance of any doubt the Principal Deed shall remain in full force and effect save as varied by this Deed
- 1.2 All references in this Deed to clauses in the Principal Deed are to clauses within the Principal Deed as varied
- 1.3 Where in this Deed reference is made to a clause schedule or recital such reference (unless the context otherwise requires) is a reference to a clause schedule or recital of this Deed
- 1.4 Headings are for ease of reference only and are not intended to be construed as part of this Deed and shall not affect the construction of this Deed
- 1.5 Unless the context otherwise requires references to the singular shall include the plural and vice versa
- 1.6 The provisions of the Principal Deed apply to this Deed except to the extent that they are expressly supplemented and varied by this Deed

2. ENABLING PROVISIONS

- 2.1 This Deed is made pursuant to Section 106A of the Act and all of the statutory and enabling powers

3. CONDITIONALITY

- 3.1 With the exception of Clauses 6, 7 and 9.1 of this Deed (which shall come into effect on the completion of this Deed) none of the terms of this Deed shall come into effect until:-
 - (a) the Council has granted the Second Planning Permission; and

- (b) the Landowner has Commenced Development pursuant to the Second Planning Permission

4. **VARIATIONS**

The Landowner hereby undertakes to supplement the Principal Deed and the First Variation which shall be read and construed and shall take effect as follows:

- 4.1 Under Clause 1, Definitions, of the Principal Deed the following definitions shall be inserted:

"Original Planning Permission"	means the planning permission subject to conditions as was granted pursuant to the Planning Application
"Second Planning Application"	means the application submitted by the Landowner to the Council pursuant to section 73 of the Act to vary condition 1 contained in the Original Planning Permission
"Second Planning Permission"	means the planning permission subject to conditions that may be granted by the Council following the determination of the Second Planning Application and substantially in the form of the draft annexed at the Seventh Schedule to this Deed

- 4.3 Under Clause 1, Definitions, of the Principal Deed the definition of "Planning Permission" shall be deleted and the following definition shall be added:

"Planning Permission"	<p>Means (as the context requires)</p> <p>a) The Original Planning Permission;</p> <p>b) the Second Planning Permission.</p>
-----------------------	--

4.4 Under the Third Schedule the Restrictions paragraph 1 shall be deleted and replaced by the following:

In this Schedule the "Education Contribution" means the sum of £157,336 (One Hundred and Fifty Seven Thousand Three Hundred and Thirty Six Pounds)

4.5 The draft Second Planning Permission annexed hereto shall be inserted as the Seventh Schedule within the Principal Deed

4.6 The following definitions, clauses, schedules and paragraphs contained therein of the Principal Deed shall be deleted:

Provision	Extent of deletion
Clause 1.5 "the Facilities"	Whole definition to be deleted
Clause 1.8 "the LAP Contribution"	Whole definition to be deleted
Clause 1.15 "the Standards"	Whole definition to be deleted
Schedule 4	Paragraphs 4. 2 – 4.6 to be deleted.
Schedule 5	Whole schedule to be deleted.
Schedule 7	The wording "Draft Transfer (attached)" to be deleted

5. GENERAL

5.1 No expressed or implied term of this Deed is enforceable pursuant to the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to it

6. REGISTRATION AS LOCAL LAND CHARGE

6.1 The covenants in the Principal Deed as varied are planning obligations for the purposes of Section 106 and Section 106A of the Act and as such this Deed shall be registered in the Council's register of Local Land Charges

7. CONTINUATION OF THE AGREEMENT

7.1 The terms of the Principal Deed shall continue in full force and effect as amended by this Deed and are binding subject to the provisions of this Deed and such terms as so

supplemented and varied shall for all purposes (including but without limitation for the purposes of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989) be deemed to be incorporated into the Principal Deed

8. INVALIDITY OF CERTAIN PROVISIONS

8.1 If any term of this Deed or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable the same shall be severable and the remainder of this Deed as to the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Deed shall be valid and enforced to the fullest extent permitted by law

9. LEGAL FEES

9.1 The Landowner covenants to pay to the County Council prior to completion of this Deed its reasonable legal costs incurred in the negotiation, preparation and execution of this Deed

IN WITNESS whereof this Deed was duly executed and delivered the day and year first before written

SCHEDULE
DRAFT SECOND PLANNING PERMISSION

DRAFT

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING
(DEVELOPMENT MANAGEMENT PROCEDURE)
(ENGLAND) ORDER 2015**



IPSWICH
BOROUGH COUNCIL

To: Mr Ben Reay
Last And Tricker Partnership
3 Lower Brook Mews
Lower Brook Street
Ipswich
IP4 1RA

Agent for:
Ipswich Borough Council

Application Reference: IP/19/00171/VC

VARIATION OF CONDITIONS ATTACHED TO PLANNING PERMISSION

Ipswich Borough Council, as local planning authority, hereby **GRANT** approval for:

Variation of Condition 1 of planning permission IP/12/00114/VC to refer to revised drawings including additional and altered solar panels, change to sun pipe positions, front door design and colour of cladding, windows, bargeboards gutters, soffits and downpipes.

at: Former Gospel Hall 79 Cauldwell Hall Road Ipswich Suffolk IP4 4QG

in accordance with your application reference: IP/19/00171/VC received 18.02.2019.

By virtue of Section 91 of the Town and Country Planning Act, 1990 this permission is granted subject to the condition that the development to which it relates must be begun not later than the expiration of three years beginning with the date of this notice.

This permission is also subject to the following condition(s): -

1. The development shall be carried out in accordance with the approved plan:- Drawing no's 15 Rev C, 16 Rev D, 17 Rev D, 18 Rev D, 19 Rev C, 20 Rev M and 21 Rev A.
2. Notwithstanding the provisions of Classes D and F, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any order subsequently revoking and re-enacting that Order with or without modifications there shall be no vehicular hardstandings or porches installed or erected on the frontages of the hereby-approved dwellings.
3. The lengths of the existing boundary hedge indicated on Drawing no. 21 Rev A shall be retained.
4. Before the hereby-approved dwellings are first occupied the surface water drainage, cycle storage and biodiversity features approved pursuant to condition 4 of planning permission

IP/17/01115/VC refers (condition application IP/19/00776/CON refers) shall be provided and retained as such thereafter.

5. The development shall not be first occupied unless and until the energy and water efficiency scheme approved pursuant to condition 6 of planning permission IP/17/01115/VC refers (condition application IP/19/00776/CON refers) has been implemented in full and thereafter the provisions of the scheme shall be maintained for the lifetime of the development in accordance with the details of the approved scheme.
6. The boundary treatments approved pursuant to condition 7 of planning permission IP/17/01115/VC refers (condition application IP/19/00776/CON refers) shall be provided on first occupation.
7. All planting, seeding or turfing comprised in the details of landscaping approved pursuant to condition 7 of planning permission IP/17/01115/VC refers (condition application IP/19/00776/CON refers) shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the substantial completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
8. The new vehicular access shall be laid out and completed in all respects in accordance with Drawing no. 20 Rev M and made available for use prior to first occupation. Thereafter the access shall be retained in the specified form.
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification) any means of boundary treatment or enclosure within plots 1 to 5 positioned within 2.4m of the adjacent carriageway shall be restricted to 0.6m in height.
10. The areas within the site shown on Drawing no. 20 Rev B for the purposes of loading, unloading manoeuvring and parking of vehicles shall be provided on first occupation of the hereby-approved dwellings and thereafter those areas shall be retained and used for no other purposes.

The reasons for the above condition(s) are as follows: -

1. For the avoidance of doubt and in the interests of proper planning.
2. To protect visual amenity of the street scene.
3. To assist in preserving the visual amenities and privacy of adjoining residential property.
4. To protect amenity, provide for biodiversity and to encourage sustainable modes of travel.
5. In the interests of sustainable development.
6. To ensure a high standard of development.
7. To ensure a high standard of development.
8. To ensure that the access is designed and constructed to an appropriate specification and made available for use at an appropriate time in the interests of highway safety.

9. In the interests of highway safety, to avoid obstruction of the access visibility splays.
10. To ensure that sufficient space for the on site parking of vehicles is provided and maintained where on-street parking and manoeuvring would be detrimental to highway safety to users of the highway.

INFORMATIVES

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
2. You are reminded that the carrying out of building works requires approval under the Building Regulations in many cases as well as a grant of planning permission. If you are in doubt as to whether or not the work, the subject of this planning permission, requires such approval, then you are invited to contact the Building Control section at Ipswich Borough Council on email: building.control@ipswich.gov.uk or on telephone number: 01473 432951.
3. In the interests of protecting the residential amenity of the surrounding area it is recommended that the hours of construction for the hereby approved development should be limited to the following times:- 07.45-18.00 Monday to Friday, 08.00-13.00 Saturdays and no working on Sundays or Bank Holidays.
4. Many species of plant and animal in England, and their habitats, are protected by law. You are breaking the law if you capture, kill, disturb or injure a European protected species (on purpose or by not taking enough care); damage or destroy a breeding or resting place (even accidentally); obstruct access to their resting or sheltering places (on purpose or by not taking enough care); possess, sell, control or transport live or dead individuals, or parts of them. For further information and guidance you are advised to speak to Natural England at www.gov.uk or by telephone on 0300 060 6000.
5. There is now a planning fee payable for applications in writing to discharge planning permission conditions.
6. The Council recommends the installation of an appropriate sprinkler system within the development.
7. It is an OFFENCE to carry out any works within the public highway, which includes a Public Right of Way, without the permission of the Highway Authority. Any conditions which involve work within the limits of the public highway do not give the applicant permission to carry them out. Unless otherwise agreed in writing all works within the public highway shall be carried out by Suffolk County Council at the applicant's expense. For further information go to: <https://www.suffolk.gov.uk/roads-and-transport/parking/apply-for-a-dropped-kerb/>. A fee is payable to the Highway Authority for the assessment and inspection of both new vehicular crossing access works and improvements deemed necessary to existing vehicular crossings due to proposed development.
8. The works within the public highway will be required to be designed and constructed in accordance with the County Council's specification. The applicant may also be required to enter into a legal agreement under the provisions of Section 278 of the Highways Act 1980 relating to the construction and subsequent adoption of the highway improvements. Amongst other things the Agreement will cover the specification of the highway works, safety audit procedures, construction and supervision and inspection of the works, bonding arrangements, indemnity of the County Council regarding noise insulation and land

compensation claims, commuted sums, and changes to the existing street lighting and signing.

9. Hedges should be planted far enough away from the highway so that they can mature without growing over the highway. Section 154 Highways Act 1980 empowers the Highway Authority to cut or fell trees, hedges etc that cause danger, obstruction or interference with use of the highway.
10. Section 141 of the Highways Act 1980 restricts planting of trees etc., in or near the carriageway. The Highway Authority recommends new trees have an approved root direction system.
11. Public Utility apparatus may be affected by this proposal. The appropriate utility service should be contacted to reach agreement on any necessary alterations which have to be carried out at the expense of the developer.
12. Section 153 of the Highways Act 1980 makes it an OFFENCE to put up doors, windows or gates that open out over the highway.

Summary of Development Plan policies and proposals relevant to this decision: -

1. Core Strategy and Policies DPD (2017) - Policy DM5 (Design and Character).

Dated:

Signed:

Martyn Fulcher BSc (Hons) PGDip MRTPI
Head of Development
Grafton House
15 -17 Russell Road
Ipswich IP1 2DE

SEE NOTES BELOW/OVERLEAF

N.B. This is not an approval under the Building Regulations; Approval under those regulations may also be required.

NOTES

1. If you are aggrieved by the decision of your Local Planning Authority to refuse permission or approval for the proposed development, or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.
2. If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an Enforcement Notice, if you want to appeal against your Local Planning Authority's decision on your application, then you must do so within 28 days of the date of this notice.
3. If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your Local Planning Authority's decision on your application, then you must do so within; 28 days of the date of service of the enforcement notice, or within 6 months (12 weeks in the case of a householder appeal) of the date of this notice, whichever period expires earlier.
4. If this is a decision to refuse planning permission for a householder application, if you want to appeal against your Local Planning Authority's decision then you must do so within 12 weeks of the date of this notice.

5. If you want to appeal against your Local Planning Authority's decision then you must do so within 6 months of the date of this notice.
6. Appeals must be made using a form which you can get from Secretary of State, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at www.planningportal.gov.uk/pcs
7. The Secretary of State can allow a longer period for the giving of a notice of appeal, but he will not normally be prepared to exercise this power unless there are special circumstances, which excuse the delay in giving notice of appeal.
8. The Secretary of State need not consider an appeal if it seems to the Secretary of State that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
9. In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based their decision on a direction given by the Secretary of State.
10. If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that the owner can neither put the land to a reasonable beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
11. In these circumstances, the owner may serve a purchase notice on the Council (that is, where the land is situated in a National Park, the National Park Authority for that Park, or in any other case the District Council (or County Council which is exercising the function of a District Council in relation to an area for which there is no District Council), London Borough Council or Common Council of the City of London in whose area the land is situated). This notice will require the Council to purchase the owner's interest in the land in accordance with the provisions of Chapter I of Part VI of the Town and Country Planning Act 1990.

In making this decision the Council has positively addressed the National Planning Policy Framework 2019.

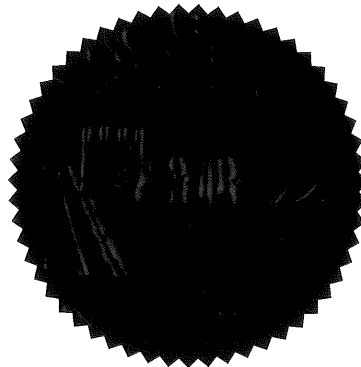
THE COMMON SEAL of IPSWICH
BOROUGH COUNCIL was affixed
in the presence of:-



KATE MEEBAW
Authorised Officer



Authorised Officer



18639

THE COMMON SEAL of SUFFOLK
COUNTY COUNCIL was affixed
in the presence of:-



Authorised Officer
JONATHAN LOCKINGTON



24261



