

Dated 6th DECEMBER 2019

SANCTUARY AFFORDABLE HOUSING LIMITED (1)

TO

EAST SUFFOLK COUNCIL (2)

AND

SUFFOLK COUNTY COUNCIL (3)

UNILATERAL UNDERTAKING

**pursuant to Section 106 of the Town and
Country Planning Act 1990 relating to land at
Shaftesbury Court, Rectory Road, Lowestoft,
NR33 0DQ**

Appeal Reference: APP/T3535/W/19/3220502

THIS DEED is made on the

6th DECEMBER

2019

BY

- (1) **SANCTUARY AFFORDABLE HOUSING LIMITED** a charitable Registered Society registered with the FCA pursuant to the Co-operative and Community Benefit Societies Act 2014 with number 3144R whose registered address is Chamber Court, Castle Street, Worcester WR1 3ZQ (the "Owner")

TO

- (2) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton, Woodridge, IP12 1RT (the "Council"); and
- (3) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich IP1 2BX (the "County Council")

BACKGROUND

- (A) The Council is the Local Planning Authority for the purpose of the Act for the area in which the Site is situated and by whom the planning obligations contained in this Deed are enforceable.
- (B) The County Council is the highway authority for the area in which the Site is situated.
- (C) The Owner is the registered proprietor of the freehold estate in the Site registered at the Land Registry under Title Number SK63158.
- (D) The Owner submitted the Application to the Council on 22 June 2018. The Council refused the Application on 24 October 2018. The Owner submitted the Appeal to the Secretary of State against the Council's refusal.
- (E) The Appeal will be considered by an Inspector appointed by the Secretary of State and in the event that the Inspector proposes to uphold the Appeal and grant the Planning Permission the Owner agrees to comply with the obligations set out herein.

NOW THIS DEED WITNESSETH as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby ascribed to them:

Act the Town and Country Planning Act 1990 as amended

Appeal the appeal lodged with the Secretary of State pursuant to s78 of the Act under reference APP/T3535/W/19/3220502 against the Council's refusal of the Application

Application	the full application for the demolition of a former care home and the construction of 30 retirement apartments with associated car parking on the Site validated on the 26 June 2018 and given reference number DC/18/2641/FUL by the Council
Car Club	a club operated by a company that is accredited operated within the Development which residents of the Development may join and which makes cars available to hire to members either on a commercial or part-subsidised basis;
Commencement of the Development	the commencement of the Development by the carrying out on the Site in accordance with the Planning Permission of a Material Operation and the phrase " Commence the Development " shall be construed accordingly
Development	development of the Site pursuant to the Planning Permission
Dwelling	means the 30 retirement homes/apartments on the Site pursuant to the Planning Permission and " Dwellings " shall be construed accordingly
Inspector	the planning inspectorate appointed by the Secretary of State to determine the Appeal
Material Operation	shall have the meaning ascribed to it by Section 56 of the Act PROVIDED THAT for the avoidance of doubt the following shall be deemed not to constitute a Material Operation: the carrying out of any survey, sampling, inspection, ecology works, archaeological works, demolition works, including the demolition of existing buildings, remediation works; site investigations (including the digging of trial pits and bore holes), safety security, or the clearance of or removal of contamination from the site, temporary access works or the erection of hoardings or fences as a preliminary to the commencement of works pursuant to the Development
Occupy	occupation for the purposes permitted by the Planning Permission but not including occupation for construction, fitting out, marketing (including show homes) or security and " Occupied ", " Occupier(s) " and " Occupation " shall be construed accordingly
Plan	the plan annexed to this Deed entitled " Site Plan " and marked " Plan " set out in Annex 1
Planning Permission	the written planning permission of the Application if granted pursuant to the Appeal
Site	the land in respect of which the Application has been made and which is described in schedule 1 and shown edged red

on the Plan and excluding the land edged in blue

Specified Date the date upon which an obligation arising under this Deed is due to be performed

- 1.2 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.
- 1.3 The clause paragraph and schedule headings do not form part of this Deed and shall not be taken into account in its construction or interpretation.
- 1.4 Words importing the singular meaning where the context so admits includes the plural meaning and vice versa.
- 1.5 Words importing the masculine gender only shall include all other genders and vice versa.
- 1.6 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 against each individually unless there is an express provision otherwise.
- 1.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act 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 deriving validity from it.
- 1.8 Reference 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 its respective statutory functions.
- 1.9 An obligation to do something includes an obligation to procure it to be done and an obligation not to do something includes an obligation not to allow it to be done.

2 CONSTRUCTION OF THIS DEED

- 2.1 No person shall be liable for breach of a covenant contained in this Deed after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenants prior to parting with such interest.
- 2.2 If the Planning Permission is granted and the Planning Permission shall expire before the Development is begun or if the Planning Permission shall at any time be revoked or quashed this Deed shall forthwith determine and cease to have effect.
- 2.3 The obligations in this Deed shall not be enforceable against any statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker.
- 2.4 With the exception of the obligations in paragraph 1 of the Second Schedule to this Deed the obligations in this Deed shall not be enforceable against the buyer owner occupiers mortgagees chargees or successors in title of any individual Dwellings provided pursuant to the Planning Permission.

- 2.5 This Deed is a local land charge and shall be registered as such by the Council.
- 2.6 Notwithstanding The Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of its terms on any person who is not a party other than a successor in title to a party to it.
- 2.7 Any provision in this Deed which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Deed.
- 2.8 The expression the "Council" and "County Council" shall include its successors in function.
- 2.9 The expressions the "Owner" shall include its successors in title and assigns.

3 LEGAL EFFECT

- 3.1 This Deed is entered into by unilateral undertaking and is a planning obligation for the purposes of Section 106 of the Act and is made pursuant to the said Section 106 with the intent that the covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in Section 106 aforesaid or otherwise against the Owner and all persons deriving title from the Owner until fully complied with by the Owner or discharged by the Council.
- 3.2 Insofar as any of the covenants contained in the Deed are not planning obligations within the meaning of Section 106 of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and all other enabling powers.

4 CONDITIONALITY

- 4.1 This Deed is conditional upon:
- (a) the grant of the Planning Permission and
 - (b) the Commencement of Development

save for the provisions of clauses 7 12 and 13 which shall come into effect immediately upon completion of this Deed.

- 4.2 If the Inspector concludes and expressly reports in the decision letter determining the Appeal and granting the Planning Permission that any of the obligations set out in this Deed are incompatible with any one of the tests set out in Regulation 122 of the Community Infrastructure Regulation 2010 (as amended) and accordingly attaches no weight to that obligation or obligations in determining the Appeal then the relevant obligation or obligations shall, from the date of the Inspector's decision cease to have effect.

5 OWNER'S COVENANTS

The Owner covenants with the County Council and Council to fulfil the obligations on its behalf specified in Schedule 2.

6 WARRANTY AND CONSENT

The Owner warrants to the Council that it has full power to enter into this Deed and that there is no person 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.

7 COSTS

The Owner covenants with the Council and County Council to pay their reasonable legal costs incurred in connection with the preparation and completion of this Deed.

8 WAIVER

No waiver by the Council or County Council or 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 County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owner agrees with the Council and County Council to give immediate written notice of any transfer in ownership of its freehold interests in the Site or any part or parts of it occurring before all the obligations under this Deed have been discharged such notice to be served within twenty one (21) days of such transfer 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 or unit of occupation purchased by reference to a plan PROVIDED ALWAYS that no such notice shall be required in respect of any Dwelling or any part of the Site transferred to a statutory undertaker.

10 VAT

Any consideration or monetary payment given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable. If any value added tax is properly payable it shall only be payable upon production of a proper value added tax invoice.

11 DISPUTE RESOLUTION

11.1 Any dispute or difference of any kind whatsoever arising between the parties out of or in connection with this Deed (including without limitation any question regarding its existence, validity or termination) shall be referred for determination to a single Expert (the "Expert").

11.2 The parties shall jointly appoint the Expert not later than twenty eight (28) days after service of a request in writing by any party to do so.

11.3 If the parties are unable to agree within twenty eight (28) days as to the appointment of such Expert then the Expert shall be appointed on the application of any of the parties as follows:

- (a) if the difference or question relates to the rights and liabilities of any party or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society or his deputy; or

- (b) if the difference or question relates to highway works, engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers; or
 - (c) if the difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the parties but in default of agreement appointed at the request of either party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or
 - (d) if the difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute.
- 11.4 In the event of a reference to an Expert for determination the parties agree to:
- (a) prosecute any such reference expeditiously; and
 - (b) do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable.
- 11.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award.
- 11.6 The award shall be in writing, signed by the Expert and shall give reasons for the award and shall be finalised within fourteen (14) days of the hearing.
- 11.7 The award shall be final and binding both on the parties and on any persons claiming through or under them unless manifestly incorrect and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be.
- 11.8 The parties shall in every case continue to comply with its obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this clause 11.
- 11.9 The provisions of this clause 11 shall not affect the ability of the Council or the County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, and any other means of enforcing this Deed and consequential and interim orders and relief.

12 JURISDICTION

This Deed is governed by and interpreted in accordance with English law and (save for any reference to or proceedings in the European Court of Justice) shall be determined in the Courts of England and Wales.

13 DELIVERY

The provisions of this Deed (other than this clause and clause 7 which shall be of immediate effect) shall be of no effect until this Deed has been dated.

14 MISCELLANEOUS

- 14.1 The provisions of the Interpretation Act 1978 shall apply to the terms hereof as if this Deed was an Act of Parliament.
- 14.2 This Deed shall cease to have effect if the Planning Permission is quashed; revoked; withdrawn; expires prior to the Commencement of Development or otherwise becomes incapable of implementation in its entirety and in such event the Council may remove the entry in the Local Land Charges Register relating to it.
- 14.3 Any notice required to be served on any party to this Deed shall be deemed to have been properly served if delivered or sent by the recorded delivery service to the address of the party given in this Deed or to such other address as shall have been notified by that party in writing to all other parties.
- 14.4 Following the performance and satisfaction of all obligations contained in this Deed the Council shall effect the cancellation of the entry in the Local Land Charges Register relating to it.
- 14.5 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.

IN WITNESS whereof the parties to this Deed have executed this Deed as a DEED on the day and year first before written.

SCHEDULE 1

Description of the Land

The freehold land at Shaftesbury Court, Rectory Road, Lowestoft, NR33 0DQ and the land registered at the Land Registry under Title Number SK63158 being the land edged red on the Plan.

SCHEDULE 2

The Owner's Covenants

The Owner covenants to the County Council as follows:

1. To dedicate and retain one car parking space within the Development for use as and for the Car Club and for no other purpose for a minimum of three years from the date of first Occupation of a Dwelling, unless during the three year period a Car Club operator no longer operates the Car Club and an alternative operator cannot be found.
2. To ensure that all necessary technological equipment can be installed in the Development to enable the Car Club vehicle to utilise them.
3. Subject to paragraph 8 below, to ensure that the Car Club vehicle utilises the aforementioned space from the date of first Occupation of the Development for a minimum of three years and remains in operation for this period.
4. To provide marketing literature on an annual basis for three years, from the date when the Car Club space is being provided by the Car Club operator, to Occupiers of the Dwellings which publicises the Car Club vehicle within the Development and in the case of first Occupiers this marketing literature to include the incentive as detailed in paragraph 6 below.
5. To provide marketing literature to all residents of the Development which publicises the Car Club car within the Development.
6. To pay for the cost of membership for one year or a trial period of hours (to be agreed between the Owner and Car Club operator) of one the Car Club vehicle within the Development to all first residential Occupiers living in the Development.
7. Following provision of the Car Club vehicles to monitor at six monthly intervals for three years their usage by residents of the Development and provide this information to the County Council.

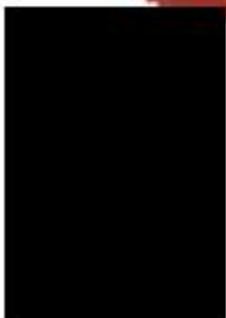
8. In the event that the Car Club operator no longer wishes to utilise the Car Club space within the Development within the three year period, the Owner shall notify the County Council in writing and shall use reasonable endeavours to secure another Car Club operator. If at the end of 6 months from that notification to the County Council another Car Club operator is not secured the Owner shall use reasonable endeavours to agree alternative measures with the County Council at the cost of the Owner.

ANNEX 1

PLAN



5/11/17/43



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CON REGULATIONS 2015. All current drawings and specifications for the project must be read in conjunction with the Designer's Handbook and Environmental Assessment Report. Model/Author/Company rights reserved.

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Rev. Date Description
1/05/17 Planning/Rev

Des. Cld
Drawn MRS
Checked JMR
Date April 17
Scale @ A2 1:100

Shottesbury Court, Lowestoft
Site Plan - Existing

AA4884-2000
REV -
PLANNING

PRP

EXECUTED as a DEED by SANCTUARY
AFFORDABLE HOUSING LIMITED
the presence of:

Director

Witness:

Name:

Address:



SAH19/463