

Dated 18th December 2019

~~EAST-SUFFOLK-COUNCIL~~

~~(1)~~

~~AND~~

SUFFOLK COUNTY COUNCIL

(2) (1)

AND

SANCTUARY AFFORDABLE HOUSING LIMITED

(3) (2)

PLANNING OBLIGATION BY DEED

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

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BETWEEN

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

WHEREAS

- ~~(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.
- (A) ~~(B)~~ The County Council is the highway authority for the area in which the Site is situated *and a Local Planning Authority for the purpose of the Act and by whom the planning obligations contained in this Deed are enforceable.*
- (B) ~~(C)~~ The Owner is the owner of the freehold estate in the Site to which is registered under Land Registry Title Number SK63158.
- (C) ~~(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.
- (D) ~~(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 planning permission the Parties agree 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 construction of 30 retirement apartment with associated car parking on the Site validated on 26 June 2018 and given reference number DC/18/2641/FUL by the Council;

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;

Council East Suffolk Council of East Suffolk House, Riduna Park, Station Road, Melton Woodridge IP12 1RT

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;

Interest interest at 4 (four) per cent above the base lending rate of Barclays Bank Plc from time to time in force;

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;

Parties

~~the Council~~ the County Council and the Owner;

Plan

the plan annexed to this Deed entitled "Site Plan" and marked "Plan" set out in Annex 1;

Planning Permission

the written planning permission 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;

"Traffic Regulation Order" such traffic regulation order or orders or amendments to existing traffic regulation orders (including the provision of or alteration to traffic regulation signs and / or road markings) under the Road Traffic Regulation Act 1984 as the County Council may from time to time promote from the date this Deed comes into effect until no later than two years following practical completion of the development to manage parking on the immediate road network if the County Council determines and demonstrates that such traffic regulation order or orders are required due to the impact of the Development;

"Traffic Regulation Order Contribution" the sum of £10,000 (ten thousand pounds) to be paid by the Owner to the County Council and to be used by the County Council for the purposes of implementing the Traffic Regulation Order to deter inappropriate parking on the immediate road network.

- 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 ^{County} 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, otherwise the obligations referred to in the Second Schedule shall subsist unless or until the ^{County} Council by resolution decides that they shall 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 ^{registerable} ~~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 expressions ~~the "Council"~~ and the "County Council" shall include its successors in function.

2.9 The expressions the "Owner" shall include its successors in title and assigns.

2.10 Any consents or approvals required under the provisions of this Deed shall not be unreasonably withheld or delayed.

2.11 This Deed contains planning obligations 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 and~~ or the County Council acting under the powers contained in Section 106 aforesaid or otherwise against the Owner and all persons deriving title from the Owner.

2.12 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.

3 CONDITIONALITY

3.1 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 13 and 14 which shall come into effect immediately upon completion of this Deed.

3.2 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.

4 OWNER'S COVENANTS

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

5 COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owner in the manner set out in schedule 3.

6 WARRANTY AND CONSENT

The Owner warrants ~~to the Council and~~ to the County 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~~ with the County Council that on completion of this Deed to pay ~~the Council's reasonable legal costs and~~ the County Council's reasonable legal costs incurred in connection with the preparation and completion of this Deed.

8 WAIVER

No waiver by ~~the Council~~ the 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~~ the 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 INTEREST

If any payment due under this Deed is not paid on the Specified Date Interest will be payable from the Specified Date to the actual date of payment.

11 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.

12 DISPUTE RESOLUTION

- 12.1 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").
- 12.2 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.
- 12.3 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.

12.4 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.

12.5 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.

12.6 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.

12.7 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.

12.8 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 12.

12.9 The provisions of this clause 12 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.

13 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.

14 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.

15 MISCELLANEOUS

15.1 It is agreed between the Parties as follows:

- (a) the provisions of the Interpretation Act 1978 shall apply to the terms hereof as if this Deed was an Act of Parliament.
- (b) 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 shall remove the entry in the Local Land Charges Register relating to it, *can be removed*.
- (c) 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.
- (d) 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, *can be removed*.
- (e) 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 with the County Council as follows:

1 **TRAFFIC REGULATION ORDER CONTRIBUTION**

To pay to the County Council the Traffic Regulation Order Contribution within 28 days of receipt of a written demand from the County Council.

SCHEDULE 3

The County Council's Covenants

- 1 The County Council covenants with the Owner as follows:
 - 1.1 To use the Traffic Regulation Order Contribution paid to it under this Deed for the purposes of the Traffic Regulation Order as detailed within this Deed.
 - 1.2 To spend (or contractually commit to spend) the Traffic Regulation Order Contribution paid to it under this Deed within the period of ^{five}~~two~~ years from practical completion of the Development AND in the event that the County Council has not contractually committed to spend the Traffic Regulation Order by that date the County Council shall within 28 days of receiving a written request to do so certify the amount of the relevant contribution that has not been spent or contractually committed with relevant supporting documentation and repay that sum or the part of the relevant contribution that has not been certified to have been spent or contractually committed to the Owner along with interest accrued within 28 days of such certification.

~~THE COMMON SEAL of
EAST SUFFOLK COUNCIL
was affixed to this DEED
in the presence of-~~

~~Authorised Signatory-~~

THE COMMON SEAL of
SUFFOLK COUNTY COUNCIL
was affixed to this DEED
in the presence of

Authorised Signatory



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

Director

Witness:

Name:

Address:



SAH19/461

ANNEX 1

Plan



54419/461



26-277



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COMPILED BY OS. All current buildings and structures in the project location shown in accordance with the Designer's best and most recent available information. All other copyright rights reserved.

Designed with reference to the various Ordnance Survey maps. OS Map 253000000, "Ordnance Survey 1987/88". Title: Survey 253000000-01

File Name	Description
100022432	Planning base

Date	By	Rev	M/S
11/04/11	DR	001	DR
11/04/11	DR	002	DR
11/04/11	DR	003	DR

Shafesbury Court, Lomestoft
Site Plan - Existing

AA4004-20C0
REV -
PLANNING

PRP