

AN UNDERTAKING DATED

15 JUNE

2020

GIVEN BY:

(1) DONALD G. HAYDEN (CHEMISTS) LIMITED

TO:

(2) SUFFOLK COUNTY COUNCIL

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Made pursuant to Section 106 Town and Country Planning Act 1990  
relating to the development of land at Uplands Road South, Childrens Nursery, Carlton  
Colville NR33 8AF

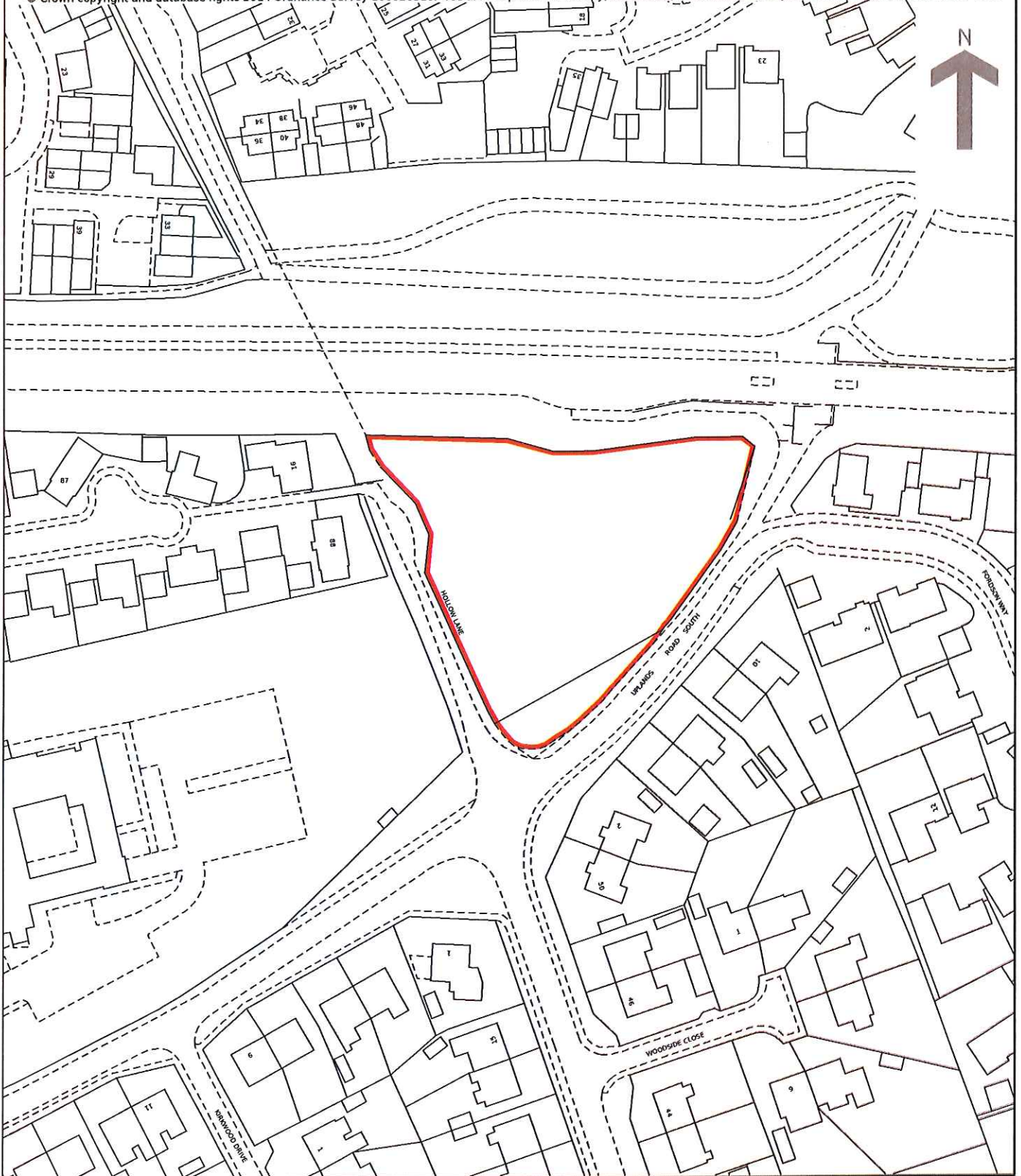
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HM Land Registry  
Official copy of  
title plan

Title number **SK354485**  
Ordnance Survey map reference **TM5190NW**  
Scale **1:1250 enlarged from 1:2500**  
Administrative area **Suffolk : East Suffolk**



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THIS UNDERTAKING is given on

15 JUNE

2020

**BY**

**DONALD G. HAYDEN (CHEMISTS) LIMITED** (company registration number 00397744) of Hayden House, Bridge Road, Lowestoft NR32 3LL ("**the Owners**"); and

**TO**

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

## **RECITALS**

- 1 The County Council is the local highway authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated
- 2 The ownership and other interests in the Site are as set out in the First Schedule
- 3 The Owners have entered into this Deed in order to secure the planning obligations contained in this Deed

## **NOW THIS DEED WITNESSES AS FOLLOWS:**

### **OPERATIVE PROVISIONS**

#### **1 DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"Act" the Town and Country Planning Act 1990

"Application" the application for full planning permission to develop the Site in accordance with the application plans and other materials deposited with the District Council and validated on 15 August 2018

and bearing the District Council's reference number DC/18/3428/FUL

BCIS Index”

the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) an alternative and comparable basis of indexation as reasonably agreed between the Owners and the County Council

“CIL Regulations”

the Community Infrastructure Regulations 2010 (as amended)

“CIL Tests”

means the tests set out in Regulation 122(2) of the CIL Regulations

“Commencement of Development”

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site pursuant to the Planning Permission other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, construction of access to the Site and the temporary display of site notices or advertisements and “Commence” and “Commencement” and “Commence Development” shall be construed accordingly

“Completion of Development”	the date that the Site is first Occupied
“Development”	the development of the Site in accordance with the Planning Permission
“District Council”	East Suffolk Council of Riverside, 4 Canning Road, Lowestoft NR33 0EQ
“Interest”	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
“Occupation”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupied” and “Occupy” shall be construed accordingly
“Planning Permission”	the planning permission as may be granted by the Secretary of State for Housing, Communities and Local Government or the Inspector pursuant to the Application
“Site”	the land against which this Deed may be enforced as shown edged red for identification purposes only on the Site Plan
“Site Plan”	the plan marked “Site Location Plan” attached to this Deed
“Total CIL Payable”	means the total amount payable to the District Council in respect of the Development as a result of the District Council’s adoption of a charging schedule (in force at the time of Commencement of Development) for the purposes of charging



community infrastructure levy pursuant to the CIL Regulations

“TRO Contribution” Means £12,000.00 (twelve thousand pounds) towards the cost of a implementing a Traffic Regulation Order

## 2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, sub-clause, schedule, paragraph, sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause, sub-clause, schedule, paragraph, sub-paragraph or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 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 severally unless there is an express provision otherwise.
- 2.5 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.
- 2.6 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 references to the County Council shall include the successors to its statutory functions.
- 2.7 The headings are for reference only and shall not affect the construction of this Deed.

2.8 Any covenant by the Owners not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

### **3 LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and all other enabling powers.

3.2 The covenants restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the County Council as local planning authority against the Owners and their successors in title.

3.3 This Deed is a deed and may be modified or discharged in part or in total at any time after the date of this Deed by deed between the parties in the form of a deed.

3.4 This Deed is a local land charge and upon completion shall be registerable by the District Council as such.

### **4 CONDITIONALITY**

4.1 This Deed shall take effect on the date that it is completed but performance of the planning obligations contained in this Deed at Clause 5 and the Schedules are conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

### **5 THE OWNERS' COVENANTS**

5.1 The Owners covenant with the County Council as set out in the Second Schedule.

5.2 By entering into this Deed the Owners who hold the freehold of the Site fully bind the Site to the terms of this Deed.

### **6 MISCELLANEOUS**

- 6.1 The Owners shall act in good faith and shall co-operate both with the County Council to facilitate the discharge and performance of all obligations contained herein and following the Commencement of Development the Owners shall comply with any reasonable requests of the County Council and their duly authorised officers or agents to have reasonable access to any part of the Site (for the purposes of inspection only) or any reasonable requests to provide documentation within the Owners' possession (at the Owners' expense) for the purposes of monitoring compliance with the obligations contained herein.
- 6.2 The Owners agree declare and covenant with the County Council to observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Deed.
- 6.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.4 This Deed shall be registrable as a local land charge.
- 6.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 6.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the written consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.7 No person or entity shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT the reservation of any rights or the inclusion of any covenants in any transfer shall not constitute an interest for the purposes of this clause.



- 6.8 None of the covenants in this Deed shall be enforceable against any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services
- 6.9 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.
- 6.10 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authority.
- 6.11 If any provision of this Deed shall be held to be unlawful or unenforceable in whole or in part under any enactment or rule of law such provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall not be affected.
- 6.12 The Owner hereby covenants to pay to the County Council on completion of this Deed the County Council's reasonable legal costs incurred in the preparation and negotiation of this Deed to a maximum of £1,000.
- 6.13 The Owner agrees declares and covenants to pay the County Council prior to Commencement of Development the reasonable fee incurred by the County Council for monitoring compliance with the obligations within this deed in the sum of £412.

## **7 WAIVER**

No waiver (whether expressed or implied) by the County Council or the Owners 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 County Council or the Owners (as appropriate) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **8 INTEREST**

If any payment due under this Deed is not paid within 14 days of falling due then Interest will be payable from the date payment fell due to the date of payment.

9 **VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

10 **CHANGE IN OWNERSHIP**

The Owners covenant with the County Council to give it written notice of any transfer in ownership of any of its freehold interests in the Site occurring before all the positive 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 THAT this obligation shall not apply to the transfer or grant of leases of electricity substations or gas governors or the like.

11 **RIGHT OF ENTRY**

11.1 At all times on not less than forty-eight (48) hours written notice except in case of emergency with or without notice the Owners shall allow any employee or agent of the County Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed only PROVIDED THAT:

11.1.1 such employee or agent on arrival at the Site shall if requested by any person present who appears to be the Owners the manager or person in charge thereof produce evidence of identity (but entry may be made if there is or appears to be no such person on the Site);

11.1.2 such entry shall be effected between 08.00 and 17.00 on any day;

11.1.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary;

11.1.4 such employee or agent may take photographs measurements and levels

11.1.5 such employee or agent may not remain on the Site for no longer than is reasonably necessary for carrying out a proper inspection;

11.1.6 such employee or agent and any other accompanying persons shall comply with the Owners' or the Owners' representative's reasonable directions and precautions in the interests of safety; and

11.1.7 such employee or agent may only enter onto the Site following the Commencement of Development.

11.2 For the avoidance of doubt the provisions of this Clause 11 shall be in addition to and does not prejudice the powers conferred on the County Council by Sections 169A, 169B and 169C of the Act.

**12 NOTICES**

12.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 12.2.

12.2 The address for any notice or other written communication in the case of each party to this Deed shall be as follows:-

The County Council	The Executive Director of Growth, Highways and Infrastructure (or a duly appointed successor) Endeavour House, 8 Russell Road, Ipswich Suffolk IP1 2BX
The Owners	Hayden House, Bridge Road, Lowestoft NR32 3LL

**13 INDEXATION**

13.1 Any sum referred to in the Second Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the

BCIS Index (unless the context reads otherwise) from the date hereof until the date on which such sum is payable using the application of the formula  $A + B \times (C/D)$  where:

13.1.1 A is the sum payable under this Deed;

13.1.2 B is the original sum calculated as the sum payable;

13.1.3 C is the BCIS Index for the month two (2) months before the date on which the sum is payable;

13.1.4 D is the BCIS Index for the month two (2) months before the date of this Deed.

**14 NOTIFICATION**

14.1 The Owners covenant to inform the County Council by way of written notice within ten (10) Working Days following:

a) Commencement of Development;

b) Completion of the Development.

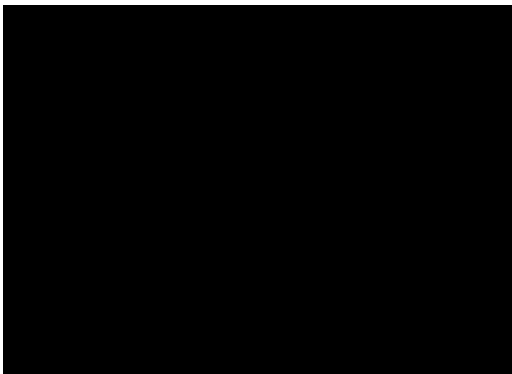
**15 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and the Owners submit to the non-exclusive jurisdiction of the courts of England.

**16 DELIVERY**

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

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.



Matthew Breeze, FCILEx  
Partner  
Norton Peskett Solicitors  
18 Church Plain  
Great Yarmouth  
NR30 1NF

## **FIRST SCHEDULE**

### **FREEHOLD INTERESTS**

The Owners are the freehold owners of the Site shown edged red for identification purposes only on the Site Plan the title to which is part of the land registered at the Land Registry with Title Absolute under Title Number SK354485

## SECOND SCHEDULE

### THE OWNERS' COVENANTS WITH THE COUNTY COUNCIL

#### 1 TRO CONTRIBUTION

- 1.1 The Owners hereby covenant with the County Council to pay the TRO Contribution to the County Council prior to the Commencement of the Development
- 1.2 The Owners hereby covenants not to Commence the Development unless and until the TRO Contribution has been paid to the County Council