

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

relating to Land North of Mill Close Orford
Woodbridge Suffolk

Dated: 2nd November 2020

EAST SUFFOLK COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

MICHAEL SAMUEL CORDLE (3)

TILLER (ORFORD) LTD (4)

DC/19/2513/FUL

DATE

2nd November

2020

PARTIES

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House , Station Road, Melton Woodbridge IP12 1RT ("the Council")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP7 2BX ("the County Council")
- (3) **MICHAEL SAMUEL CORDLE** of Chantry Farm, Orford, Woodbridge Suffolk IP12 2NG ("the Owner")
- (4) **TILLER (ORFORD) LTD** of Hopleys Farm, Horringer, Bury St Edmunds Suffolk IP29 5PX ("the Developer")

INTRODUCTION

1. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations in this Deed are enforceable.
2. The County Council is a local planning authority for the purposes of the Act and the highway authority for the area in which the Site is situated.
3. The Owner is the freehold owner in relation to the Site which is unregistered land.
4. The Developer has a conditional contract dated 25 June 2018 as varied by a Deed of Variation dated 5 March 2019
5. The Site lies within the area to which the Local Plan applies. The Council and the Owner acknowledge that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to section 106 of the Act the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings and shall be read in conjunction with the definitions set out in the O:

"Act"	the Town and Country Planning Act 1990 as amended;
"Application"	the application for full planning permission validated by the Council on 17 July 2019 for the Development and allocated reference number

DC/19/2513/FUL;

"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 other than (for the purposes of this Deed and for no other purpose) operations consisting of 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, site clearance, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly;

"Completion of Development"

the date that the last Dwelling is first Occupied

"Development"

the development of Construction of 11 dwellings (resubmission following withdrawal of application DC/19/1280/FUL)

"Dwelling"

any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission;

"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 any subsequent indices of the same;

"Index Linked"

the increase in any sum referred to in the Third Schedule and Fourth Schedule to an amount equivalent to the increase in the Index to be calculated in accordance with Clause 10 of this Deed

"Interest"

interest at four per cent above the base lending rate of the Bank of England from

"Local Plan"	time to time; Suffolk Coastal District Local Plan Core Strategy & Development Management Policies July 2013
"Occupation" and "Occupied"	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;
"Plan"	the plan attached to this Deed;
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application substantially as set out in the draft annexed to the Second Schedule;
"School Transport Contribution"	means the sum of £6,025 (Six Thousand Pounds and Twenty Five Pence) (Index Linked) for secondary school transport costs calculated as follows: One secondary age pupil is forecast to arise from the proposed development. Funding school transport provision is required for a minimum of five years for secondary age pupils. Annual school transport cost per pupil is £1,205. Therefore, contribution is £1,205 x 1 pupil x 5 years = £6,025
"Section 73 Consent"	means a planning permission granted pursuant to Section 73 of the TCPA 1990 which varies and./or removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to Section 73 of the TCPA 1990 was granted
"Site"	the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification

purposes only on the Plan; and

“Working Days”

Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause or paragraph of or schedule 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 interchangeable 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 or Directive of the European Union shall include any modification, extension or re-enactment of that Act or Directive 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 Directive or deriving validity from it.
- 2.6 Any 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 in the case of the Council the successors to their respective statutory function.
- 2.7 The headings are for reference only and shall not affect construction.
- 2.8 Any notices required to be given under the terms of this Deed may (in addition to any other valid method of service) be given or served by sending the same by recorded delivery post addressed to the party as set out below:

- (i) Council: as given in this Deed;
- (ii) County Council: as given in this Deed;
- (iii) Owner: as given in this Deed; and
- (iv) Developer: as given in this Deed.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and its successors in title.

3.3 Insofar as any of the covenants contained in this Deed are not planning obligations within section 106 of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

3.4 The covenants, restrictions and requirements contained in this Deed shall only be capable of being varied by a supplemental deed between the parties hereto or their respective successors in title or assigns made under section 106A of the Act.

4. CONDITIONALITY

4.1 This Deed is conditional upon:

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

5. THE OWNER AND DEVELOPERS COVENANTS

5.1 The Owner hereby covenants with the Council as set out in the Third Schedule so as to bind the Site and each and every part thereof.

5.2 The Owner hereby covenants with the County Council as set out in the Fourth Schedule so as to bind the Site and each and every part thereof.

5.3 The Owner covenants and warrants to the Council it is the freehold owner of the Site and has the capacity to enter into this Deed.

5.4 The Developer covenants with the Council and the County Council to pay to their proper and reasonable legal costs incurred in the negotiation preparation and execution and completion of this Deed prior to the completion of this Deed

5.5 The Developer covenants with the County Council to pay the monitoring fee of £412 on completion of this Deed

6. THE COUNCIL'S AND COUNTY COUNCIL COVENANTS

6.1 The Council hereby covenants with the Owner as set out in the Fifth Schedule.

6.2 The County Council hereby covenants with the Owner as set out in the Sixth Schedule

7. MISCELLANEOUS

7.1 NOTICE

7.2 The Owner and the Developer covenant to inform the County Council by way of written Notice within Seven (7) Days following

7.3 Commencement of Development

7.4 Occupation of the First (1st) Dwelling

7.5 Completion of the Development

7.6 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

7.7 This Deed shall be registrable as a local land charge by the Council.

- 7.8 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or the County Council under the terms of this Deed, such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Councils by the Head of Planning Services (or the officer of the Council fulfilling such functions) and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party and in the case of the County Council marked for the attention of the Executive Director of Growth Highways and Infrastructure.
- 7.9 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.10 Insofar as any clause or paragraph of this Deed is 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.
- 7.11 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 consent of the First Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.12 No person 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 but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.13 This Deed shall not be enforceable against an owner-occupier or tenant of a Dwelling constructed pursuant to the Planning Permission or any mortgagee or chargee of any owner-occupier or tenant of a Dwelling or any person deriving title from any such person.
- 7.14 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.
- 7.15 Unless the local planning authority requires otherwise if a Section 73 Consent is granted by the Council (or the Secretary of State) in relation to the Development, then with effect from the date that each such Section 73 Consent is granted
- (a) the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent Section 73 Consents and the Site itself without any further act by the Parties
- (b) the definitions of Development, Application and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the Act, the Section 73 Consent granted pursuant to any such application and the development permitted by such Section 73 Consent

PROVIDED THAT

(i) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act; and

(ii) to the extent that any of the obligations in this Deed have already been discharged at the date that any Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent

7.16 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its function as a local authority.

7.17 The Owner covenants from the date that this Deed takes effect to allow the Council and its respectively duly authorised officers or agents at all reasonable times to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed.

7.18 The Owner hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.

7.19 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Council.

8. WAIVER

No waiver (whether expressed or implied) by the Council 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 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 the County Council to give the Councils written notice within fourteen days (14) of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice quoting the Council's reference DC/19/2513/FUL giving 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 and the title number or numbers thereof.

10. INDEXATION

Any sum referred to in the Third and Fourth Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the 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:

10.1 A is the sum payable under this Deed;

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

- 10.3 C is the Index for the month two months before the date on which the sum is payable;
- 10.4 D is the Index for the month two months before the date of this Deed; and
- 10.5 C/D is greater than one.

11. INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12. VAT

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

13. DISPUTE PROVISIONS

- 13.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 13.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation.
- 13.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him, within ten Working Days of notification of his appointment, written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.
- 13.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific

performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

14. JURISDICTION

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

15. EXECUTION

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

FIRST SCHEDULE

Details of the Owners Title, and Description of the Site

The freehold unregistered land shown edged red for indicative purposes only on the Plan and known as the land North of Mill Close Orford Woodbridge Suffolk

SECOND SCHEDULE
Details of the Application

Application Number	DC/19/2513/FUL
Application Type	Full
Date Validated	17 July 2019
Location	Land North of Mill Close Orford Woodbridge Suffolk
Proposal	Full application - Construction of 11 dwellings (resubmission following withdrawal of application DC/19/1280/FUL)
Applicant	Mr George Wells – Hartog Hutton Ltd

THIRD SCHEDULE
The First Owner Covenants with the Council

1. DEFINITIONS

- “Affordable Housing”** housing that will be available to eligible households and as defined in Annex 2 of the National Planning Policy Framework (2019) (as amended) whose needs are not met by the market and eligibility is determined with regard to local incomes and local house prices (unless otherwise agreed in writing with the Council);
- “Affordable Housing Contribution”** means the sum of THREE HUNDRED AND SEVENTY FIVE THOUSAND POUNDS (£375,000) to be used towards the provision of Affordable Housing in the East Suffolk District through the acquisition of land or the construction or development of new properties or the purchase or refurbishment of existing properties in the East Suffolk District
- Habitat Mitigation Contribution** The sum of THREE HUNDRED AND TWENTY ONE POUNDS AND TWENTY TWO PENCE (£321.22) per Dwelling (11 X £321. 22) the total amount being THREE THOUSAND FIVE HUNDRED AND THIRTY THREE POUNDS AND FORTY TWO PENCE (£3533.42) Index Linked payable to the Council to be used in accordance with the RAMS Strategy published evidence July 2019

1.AFFORDABLE HOUSING CONTRIBUTION

- 1.1 The Owner covenants to pay the Affordable Housing Contribution to the Council prior to first Occupation of the 6th Dwelling.

2. HABITAT MITIGATION CONTRIBUTION

- 2.1. The Owner covenants with the Council that it will pay the Habitat Mitigation Contribution to the Council in accordance with the following:
- 2.2 The Owner shall not Commence the Development until the Habitat Mitigation Contribution has been paid to the Council.

FOURTH SCHEDULE
The Owner Covenants with the County Council

1. SCHOOL TRANSPORT CONTRIBUTION

1.1. The Owner covenants to pay to the County Council the School Transport Contribution prior to the first Occupation of the first (1st) Dwelling

1.2. The Owner hereby covenants not to Occupy or permit Occupation of any Dwellings until the School Transport Contribution has been paid to the County Council

FIFTH SCHEDULE – THE COUNCIL’S COVENANTS

Discharge of obligations

1. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. The Council covenants with the Owner that it will hold the Affordable Housing Contribution in a separate interest bearing account and apply it only towards the provision of Affordable Housing through the acquisition of land or the construction or development of new properties or the purchase or refurbishment of existing properties to bring back in to use as Affordable Housing within the East Suffolk District.
3. In the event that the Affordable Housing Contribution or any part of it has not been spent or committed by contract towards the provision of Affordable Housing through the acquisition of land or the construction or development of new properties or the purchase or refurbishment of existing properties for the use as Affordable Housing within the East Suffolk District within ten years from the date of receipt, the Council shall repay any uncommitted or unspent balance together with any interest accrued to the person who paid the Affordable Housing Contribution.
4. The Council covenants with the Owner that it will apply the Habitat Mitigation Contribution towards the purpose specified in the definition and for no other purpose whatsoever
5. In the event that the Habitat Mitigation Contribution has not been spent or committed by contract for its specified purpose within 10 years of receipt of the Habitat Mitigation Contribution the Council shall repay any uncommitted or unspent balance together with any interest accrued to the person who paid the Habitat Mitigation Contribution.

SIXTH SCHEDULE – THE COUNTY COUNCIL’S COVENANTS

1. The County Council shall if requested to do so in writing after the expiry of ten (10) years from the date of Completion of the Development repay such amount of the School Transport Contribution which has not been committed or expended by the County Council in accordance with the provisions of this Deed to the Owner or such other person who made the payment such repayment to be made within twenty (20) Working Days of such request
2. In the event that the School Transport Contribution paid to the County Council pursuant to this Deed was spent or committed by the County Council it shall upon written request after the expiry of ten (10) year from the date of Completion of the Development notify the Owner (or such other person who made the payment) that such monies have been spent or committed within a further period of twenty (20) Working Days such notice to include full details of what the said monies were spent on or committed on



**Phil Cobbold
Planning Ltd**



42 Beatrice Avenue Felixstowe IP11 9HB
info@philcobboldplanning.co.uk
www.philcobboldplanning.co.uk
01204 975431



Promapv2
LANDMARK INFORMATION

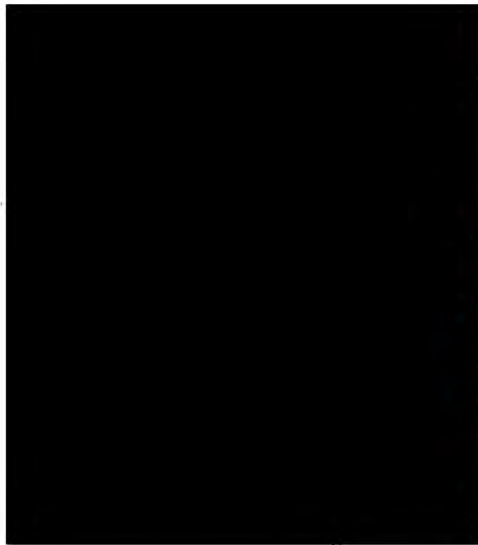
Ordnance Survey © Crown Copyright 2020. All Rights Reserved. Licence number 101022432

**ERECTION OF 11 DWELLINGS
LAND NORTH OF MILL CLOSE, IPSWICH ROAD, ORFORD.**

Location Plan Scale 1:1250

Phil Cobbold BA PGDip MRTPI - Member of the Royal Town Planning Institute - Chartered Town Planner
Phil Cobbold Planning Ltd
Registered in England No.09701814
Registered Office: 42 Beatrice Avenue Felixstowe IP11 9HB

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



ed Office

sed

thorized



THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL
Was affixed in the presence of:

EXECUTED AS DEED by
MICHAEL SAMUEL CORDLE



ture

ture

Signature of Witness

Name of Witness in Block Cap

Address of Witn

Occupation of V

