

Dated 29th July 2021

PERSIMMON HOMES LIMITED

and

EAST SUFFOLK COUNCIL

and

SUFFOLK COUNTY COUNCIL

**DEED OF VARIATION OF PLANNING
AGREEMENT UNDER SECTION 106 OF THE
TOWN AND COUNTRY PLANNING ACT 1990**

relating to development of land at Candlet Road,
Felixstowe



Flint Buildings
1 Bedding Lane
Norwich
NR3 1RG

Ref: JZM/227801.0019

THIS DEED OF VARIATION is dated 29th July

2021

PARTIES:

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT (referred to as "the Council"); and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich IP1 2BX (referred to as "the County Council"); and
- (3) **PERSIMMON HOMES LIMITED** incorporated and registered in England and Wales with company number 04108747 whose registered office is at Persimmon House, Fulford, York YO19 4FE (referred to as "the Owner")

together referred to as 'the Parties'

INTRODUCTION

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated and by whom terms of the Original Undertaking and this Deed are enforceable.
- (B) The County Council is the local planning authority and the local education authority for the purposes of the 1990 Act for the area in which the Site is situated and by whom terms of the Original Undertaking and this Deed are enforceable.
- (C) The Owner is the freehold owner of the part of the Site transferred pursuant to a transfer between Emmaline Jemma Stennett and Heather Elisabeth Ruth Stennett (1) and the Owner (2) dated 7 April 2021, being the part of the Site to which this Deed relates and hereafter defined as the "**Residential Site**" in this Deed.
- (D) The Planning Appeal was allowed by the Secretary of State on 31 August 2017 and the Planning Permission was granted subject to the Original Undertaking.
- (E) The Original Undertaking was varied pursuant to a deed of variation entered into between (1) Jennifer Emmaline Jemma Stennett and Heather Elisabeth Ruth Stennett (2) Alan Edward Krailing, Heather Elisabeth Ruth Stennett and Mark Richard Stennett (acting as Trustees of the E G Stennett Will Trust) (3) the Council (4) Suffolk County Council on 19 March 2019

- (F) A further deed of variation was entered into on 29 March 2021 by (1) Suffolk County Council and (2) Heather Elisabeth Ruth Stennett and Jennifer Emmaline Jemma Stennett to vary the Original Undertaking
- (G) The Council resolved to grant the Section 73 Application subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed.

DEFINITIONS

1.1. In this Deed the following expressions have the following meanings:

"1990 Act"	the Town and Country Planning Act 1990
"Commencement"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the development under the Planning Permission (as defined in this Deed) begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, diverting or laying of services, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" and "Commence" shall be construed accordingly
"Original Undertaking"	the undertaking dated 7 October 2016 given by Jennifer Emmaline Jemma Stennett and Heather Elisabeth Ruth Stennett (1) and Alan Edward Krailing, Heather Elisabeth Ruth Stennett and Mark Richard Stennett (2) to Suffolk Coastal District Council (3) and Suffolk County Council (4)

“Section 73
Application”

the application for planning permission pursuant to section 73 of the Act and allocated reference DC/21/0670/VOC for the development of Land at Candlet Road, Felixstowe for the variation of conditions 27 and 29 of planning permission DC/15/1128/OUT (for the erection of 560 dwellings including a local community centre, a 60 bedroom extra care home and 50 assisted living units, 2 small business units and open space provision with associated infrastructure) granted pursuant to the Planning Appeal on 31 August 2017.

2. CONSTRUCTION OF THIS AGREEMENT

- 2.1. Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless specifically staged otherwise or the context otherwise requires) is a reference to a clause, paragraph 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 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 in the case of the Council and County Council shall include any successors to their statutory functions (as appropriate)
- 2.7. The headings and contents list are for reference only and shall not affect construction and/or interpretation

- 2.8. Unless otherwise stated defined terms used in this Deed shall have the meanings given to them in the Original Undertaking and the terms of the Original Undertaking shall apply to this Deed mutatis mutandis

3. LEGAL BASIS

This Deed is supplemental to the Original Undertaking and is made pursuant to Section 106 and Section 106A of the Act to the extent it creates planning obligations and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Council against the Site

4. CONDITIONALITY

This Deed is conditional and shall become binding upon the grant of the Section 73 Application and Commencement of the Development (as defined in this Deed) on the Residential Site save for the provisions of this Clause and Clauses 6, 7 and 8 which shall come into effect immediately upon completion of this Deed.

5. VARIATIONS TO THE ORIGINAL UNDERTAKING

- 5.1. The Parties agree that the Original Undertaking shall be varied as follows:

- 5.1.1. The definition of "*Planning Permission*" shall be amended to read:

"the planning permission granted for the Development pursuant to the Planning Application following the determination of the Planning Appeal or the Section 73 Permission or such other Section 73 Consent."

- 5.1.2. The reference to "*Clause 8*" in the definition of "*Index Linked*" shall be amended to read "*Clause 9*"

- 5.1.3. A new definition of "*Section 73 Consent*" shall be added as follows:

"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."

5.1.4. A new definition of "Section 73 Permission" shall be added as follows:

"the planning permission granted pursuant to section 73 of the 1990 Act and allocated reference DC/21/0670/VOC for the development of Land at Candleet Road, Felixstowe for the variation of conditions 27 and 29 of planning permission DC/15/1128/OUT (for the erection of 560 dwellings including a local community centre, a 60 bedroom extra care home and 50 assisted living units, 2 small business units and open space provision with associated infrastructure) granted pursuant to the Planning Appeal on 31 August 2017"

5.1.5. A new clause 2.6 shall be added to Clause 2 Effect of this Deed as follows:

2.6 Unless otherwise agreed between the Parties 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 TCPA 1990, 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 TCPA 1990; and

(ii) if the Council considers that the obligations contained in this Deed shall be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into the secure the appropriate obligation and;

(iii) 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

5.1.6. A new part 6 shall be added at Schedule 2 of the Original Undertaking as follows:

Part 6

Habitats Sites Mitigation Provisions

In this Part, the following words and expressions shall have the following meanings:-

"Habitats Sites Mitigation Contribution" means the sum of £121.89 per Dwelling (Index Linked) to be paid by the Owner to the Council to be used in accordance with the RAMS Strategy published evidence July 2019 PROVIDED THAT when calculating the increase by reference to index linking in clause 9 of the Original Undertaking the increase shall be by an amount equivalent to the Index for the month 2 months before the Habitat Mitigation Contribution is payable and the Index for the month 2 months before the date of this Deed

- 1. The Owner covenants to pay the Habitats Sites Mitigation Contribution for the Dwellings within a Phase to the Council prior to Commencement of Development of that Phase*
- 2. The Owner covenants not to Commence Development on that Phase until it has paid the Habitats Sites Mitigation Contribution for the Dwellings within that Phase to the Council.*
- 3. For the avoidance of doubt, the Habitat Mitigation Contribution has been paid for Phase 1 (being 255 Dwellings) and therefore no Habitat Mitigation Contribution will be due on Commencement of Phase 1 PROVIDED THAT the total number of Dwellings proposed under Phase 1 is 255 Dwellings*

6. MISCELLANEOUS

- 6.1. This Deed may be registerable as a local land charge by the Council.
- 6.2. Following the performance and satisfaction of all the obligations contained in the Original Undertaking and this Deed the Council shall forthwith effect the cancellation of all entries made in the register of local land charges in respect of this Deed
- 6.3. 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
- 6.4. In all other respects the terms and conditions of the Original Undertaking shall remain in full force and effect except as varied by this Deed
- 6.5. The Owner hereby agrees on or before the date hereof to pay the Council's and the County Council's reasonable legal costs of negotiating and completing this Deed
- 6.6. No person shall, subject as hereinafter provided, be liable to observe or perform the Owner's obligations under this Deed or for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or the part of the Site to which the obligation or breach relates PROVIDED always that this shall be without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED FURTHER THAT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or part of the Site) shall constitute an interest for the purposes of this clause
- 6.7. 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
- 6.8. A party who is not a party to this Deed shall not have any rights under the Contracts (Third Party) Rights Act 1999 to enforce the terms of this Deed

7. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England

8. 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 as a deed on the day and year first before written.

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



Authorised Signatory: [Redacted]

and this deed has been duly and properly executed in accordance with the constitution of East Suffolk Council

574

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



Authorised Signatory: [Redacted]

and this deed has been duly and properly executed in accordance with the constitution of Suffolk County Council

25025

EXECUTED as a deed by **PERSIMMON
HOMES LIMITED** acting by its attorneys



in the presence of:

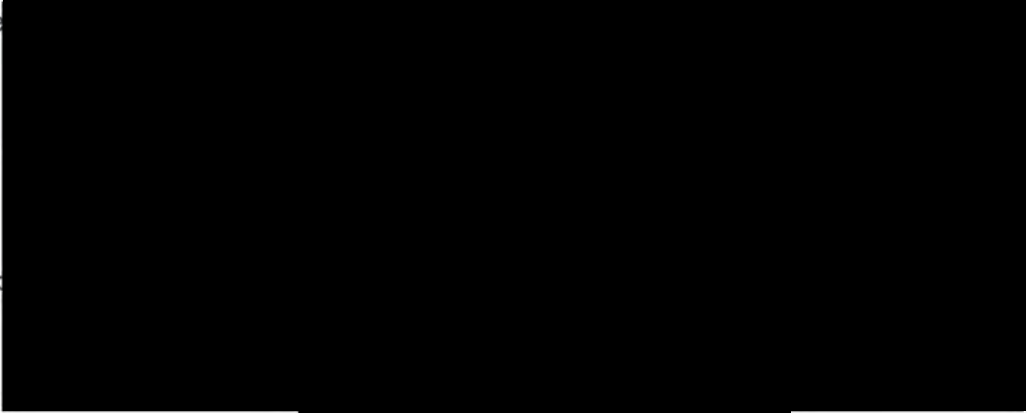
Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

and



in the presence of:

Witness Signature:

Witness Name:

Witness Address:

