

DATED

2024

Michelle Suzanne White (1)
and
OneSavings Bank plc t/a Kent Reliance (2)
To
Dorset Council (3)

UNILATERAL DEED OF PLANNING OBLIGATION
made pursuant to
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (as amended)
relating to
Anchor Paddock, Batchelors Lane, Holtwood, Holt BH21 7DS

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DRAFT

THIS UNILATERAL DEED OF PLANNING OBLIGATION is dated the day of _____ 2024
AND GIVEN BY

- (1) **MICHELLE SUZANNE WHITE** of; Anchor Paddock, Holtwood, Holt, Wimborne BH21 7DS (the "Owner") and
 - (2) **OneSavings Bank plc t/a Kent Reliance** of Reliance House, Sun Pier, Chatham, Kent, ME4 4ET (the "Mortgagee")
- to
- (3) **DORSET COUNCIL** of County Hall, Colliton Park, Dorchester, DT1 1 XJ (the "**Council**")

BACKGROUND

- (A) The Owner is the freehold owner of the Land registered at HM Land Registry under title number DT129944 with title absolute subject to a charge in favour of the Mortgagee.
- (B) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (C) The Council issued three Planning Enforcement Notices on 24 July 2024 in respect of various matters. The Owners have submitted Planning Enforcement Notice Appeals for determination by the Secretary of State.
- (D) The Owner is prepared to enter into this deed in order to secure the planning obligations it creates in the event that Deemed Planning Permission is granted pursuant to the Planning Enforcement Notice Appeals.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. INTERPRETATION AND DEFINITIONS

- 1.1. In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

Act means the Town and Country Planning Act 1990 as amended;

Class AA Permitted Development means the volume of the potential Class AA permitted development which the Inspector in his decision letter deems is plausible and appropriate to be set off against otherwise inappropriate development in the green belt (if any)

Deemed Planning Permission means deemed permission granted by the Inspector pursuant to the Planning Enforcement Notice Appeal under ground (a) of section 174 of the Act for the First Development

Development development the subject of any Deemed Planning Permission

Demolition Floorspace	means a minimum of so much of the floorspace as the Inspector determines is required to be equalised over and above the Class AA Permitted Development and specified in his decision letter
Inspector	means the inspector appointed by the Secretary of State to determine the Planning Enforcement Notice Appeal and/or the Planning Appeal
Land	means the land against which this Deed may be enforced being land known as Anchor Paddock, Batchelors Lane, Holtwood, Holt BH21 7DS which is registered at HM Land Registry under title number DT129944 as shown for identification purposes only edged red on the Plan
Plan	means the plan annexed to this Deed
Planning Enforcement Notice	means one or more of the enforcement notices served by the Council on 24 July 2024 on the Owners in relation to an alleged breaches of planning control comprising enforcement notice one, enforcement notice two and enforcement notice three
Planning Enforcement Notice Appeal	means the appeal submitted by the Owner to the Secretary of State against the Planning Enforcement Notices issued by the Council and given appeal references APP/xxx & APP/yyy and APP/zzz
Secretary of State	means the Secretary of State for Housing, Communities and Local Government or other minister or other authority for the time being having or entitled to exercise the powers given under sections 77, 78 and 79 of the Act
Working Day	means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England;

- 1.2. The Clause and schedule headings within this Deed shall not affect the interpretation of this Deed.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4. A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. References to clauses and Schedules are the clauses and Schedules of this Deed unless otherwise stated.
- 1.9. Where 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 jointly and against each other individually unless there is an express provision otherwise.
- 1.10. References to the Council and the Owners shall include the successors in title and assigns of each party including any local authority successor.
- 1.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. LEGAL BASIS

- 2.1. This Deed is made pursuant to section 106 of the Act and Section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other relevant enabling powers
- 2.2. The obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owners with the intention that they run with and bind the Land. and their respective successors and assigns.
- 2.3. The obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the Act.

3. CONDITIONALITY

With the exception of Clauses 6 and 7 which shall come into effect immediately upon completion of this Deed, this Deed will not have effect unless the Deemed Planning Permission and/or Planning Permission has been granted.

4. COVENANTS TO THE COUNCIL

The Owners covenant with the Council to observe and perform the covenants, restrictions and obligations contained in this Deed including the Schedule hereto, subject to the Inspector determining in his (or her) decision letter the quantum of floorspace that is require to be .

5. RELEASE

No person shall be liable for any breach of any of this Deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest.

6. LOCAL LAND CHARGE

This Deed will be registered as a local land charge.

7. COUNCIL'S COSTS

7.1 The Owner undertakes to pay to the Council on or before the date of this Deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed.

7. NO FETTER OF DISCRETION

Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

8. WAIVER

No failure or delay by the Council to exercise any right or remedy for any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligations of this Deed or by law shall constitute a waiver (whether express or implied) of that or any other right or remedy and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions contained in this Deed or acting on any subsequent breach or default of this Deed.. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

9. AGREEMENTS AND DECLARATIONS

It is declared that:

- 9.1. nothing in this Deed constitutes a planning permission or an obligation to grant planning permission;
- 9.2. insofar as any clause or clauses of this Deed are held (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;
- 9.3. in the event that an application is made pursuant to Section 73 of the Act for an amendment to Deemed Planning Permission as the case may be and planning permission is granted in respect of that application, references to Deemed Planning Permission in this Deed shall be to the new planning permission granted pursuant to Section 73 of the Act (“ **the Section 73 Consent**”) and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the Act PROVIDED ALWAYS THAT nothing in this clause shall prevent the Council

from deciding in determining any such Section 73 application that the issue of any planning permission under Section 73 as aforesaid should be subject to prior completion of a supplemental deed pursuant to Section 106A of the Act and/or other relevant powers.

9.4. Any Section 73 Consent shall include a condition/Informative substantially in the following form:

“The obligations under the planning obligation by way of Agreement dated [] pursuant to the previous application [] will be equally applied to and satisfy the requirements necessitated under this application []”

9.5. In the event that Deemed Planning Permission is varied pursuant to Section 96A of the Act this Deed shall continue in full force in respect of the Deemed Planning Permission as varied.

9.6. This Deed will cease to have effect if the Planning Enforcement Notice Appeals are all dismissed by the Inspector.

9.7. In the event that the Inspector appointed to determine the Planning Enforcement Notice Appeal states in his decision letter either:

9.7.1. that a planning obligation contained in this Deed (or relevant part of a planning obligation) is not a material consideration in the granting of the Deemed Planning Permission pursuant to the Planning Enforcement Notice Appeal; or

9.7.2. that a planning obligation contained in this Deed (or relevant part of a planning obligation) is incompatible with any one or more of the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended and advice set out in paragraph 204 of the National Planning Policy Framework (NPPF) AND

accordingly attaches no weight to that obligation in determining the Planning Enforcement Notice Appeal then that planning obligation (or part of the planning obligation), shall cease to have effect from the date of the decision letter and the Owners shall not be required to comply with that obligation.

10. NOTICES

10.1. Any notice required by this Deed will be effective only if it is in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.

11.2 Any notice, consent, demand or any other communication served on the Council shall be sent to the Head of Planning, Dorset Council of County Hall, Colliton Park, Dorchester, DT1 1 XJ including planning reference xxx or to such other address as may be notified in writing to the others at any time as its address for service.

12 NO COMPENSATION PAYABLE

12.1 No compensation shall be payable by the Council as a result of the obligations contained in this Deed.

13 THIRD PARTY RIGHTS

It is agreed that nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contract (Rights of Third Parties) Act 1999 and nothing in this Deed is intended to confer on any third party (whether referred to herein by name class description or otherwise) save for the Council, any benefit or any right to enforce any provision of this Deed.

14 GOVERNING LAW

This Deed shall be governed by and interpreted in accordance with the laws of England.

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

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SCHEDULE

Owners Obligations with regard Anchor Paddock, Batchelors Lane, Holtwood, Holt BH21 7DS

The Owner hereby covenants and undertakes to the Council:-

Demolition

1. Within 9 months from the grant of Deemed Planning Permission to demolish the Demolition Floorspace
2. Not to rebuild or re-erect the Demolition Floorspace without express planning permission by the Council, first being obtained.
3. Not to implement Class AA Permitted Development.
4. Not to object to or seek or claim to take any action against the Council to obtain compensation as a result of this Deed
5. To notify the Council of the date of demolition of the Demolition Floorspace in writing within 10 Working Days of its occurrence.
6. If there is failure to give notice in accordance with paragraph 6 of this Schedule the Council may investigate demolition of the Demolition Floorspace for the purpose of ascertaining whether the obligation in paragraph 1 of this Schedule has become operative and the Owner will pay to the Council as applicable the sum of £500 in respect of the costs of each such investigation.

Contributions

7. [Treehouse Dorset Heaths Contribution]
8. [White Barn Dorset Heaths Contribution]

APPENDIX 1

Plan

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APPENDIX 2

Built volume to be offset	Non-implmentation/demolition

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Executed as a Deed by
MICHELLE SUZANNE WHITE

.....
In the presence of a witness

Name

Address

Occupation

Executed as a Deed by
ONESAVINGS BANK PLC T/A KENT RELIANCE
Acting by

.....
In the presence of a witness

Name

Address

Occupation