

Dated

2018

SOUTH TYNESIDE COUNCIL

-and-

MR K BROGAN

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990 relating to The Waters Edge Public House, Trow Lea, South Shields, NE33 2JH.

Application Reference: ST/0740/16/FUL

South Tyneside Council
Town Hall and Civic
Offices
Westoe Road
South Shields
Tyne and Wear
NE33 2RL

This Agreement is made the

day of

2018

By

1. **SOUTH TYNESIDE COUNCIL** of Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL ("**the Council**");
2. **MR KEVIN BROGAN** of The Waters Edge Public House, Trow Lea, South Shields, NE33 2JH ("**the Owner**");

Whereas

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and is the authority by whom the obligations hereby created are enforceable.
- B. The Owner is the owner in fee simple in possession of the Land registered at the Land Registry under title number **TBC**.
- C. The Application was submitted to the Council on 25 August 2016 by Mr Kevin Brogan.
- D. 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:

1. **Definitions**

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

- | | |
|---|--|
| "Act" | the Town and Country Planning Act 1990; |
| "Ecological Mitigation Contribution" | the sum of eleven thousand, two hundred and one pounds (£11,201) which is to be used for strategic ecological mitigation.. |
| "Community Safety Contribution" | the sum not exceeding ten thousand pounds (£10,000) which is to be used for a re-deployable CCTV camera that would be situated on an existing lighting column. |
| "Application" | the application for full planning permission dated 25 August 2016 submitted to the Council for the Development and allocated reference number ST/0740/16/FUL; |
| "Chargee" | means any of the following:
(i) any person who from time to time holds (a) a charge by deed expressed to be by way of legal mortgage, (b) a legal mortgage (c) an equitable mortgage (d) a fixed charge and/or (e) a floating charge over the whole or any part of the Affordable Housing Units or the Site including |

(but not limited to) charges by deed expressed to be by way of legal mortgage, legal mortgages, equitable mortgages and fixed charges (“**Security Interest**”);

- (ii) any receiver, manager or administrative receiver appointed by the holder of a Security Interest;

“Commencement of Development” the date on which development pursuant to the Planning Permission is commenced on the Site (and where for the avoidance of doubt “Planning Permission” as defined for the purposes herein comprises more than one such Planning Permission the earliest date after the date hereof on which any such said planning permission is commenced on the Site) within the meaning of material operation in Section 56 of the Act provided that the following shall not amount to a material operation:- operations consisting of site clearance, demolition work, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly;

“Development” the development of the Site for residential development comprising of demolition of the existing public house and construction of 23 residential apartments in one three storey development, with detached garage blocks, car parking, boundary treatments, detached bin store and vehicle access/egress

“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 and “Occupy and Occupied” shall be construed accordingly;

“Plan 1” the plan marked “Plan 1” attached to this Deed;

“Planning Permission” the planning permission to be granted by the Council pursuant to the Application;

"Practical Completion"

the date upon which a certificate of practical completion is issued by the Owner's architect or such other person who is monitoring the Development on behalf of the Owner;

"Site"

the land against which this Deed may be enforced as shown edged red on Plan 1 and identified in the First Schedule;

2. Construction of this Deed

- 2.1. 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 (unless the context otherwise requires).
- 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. Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly, or against each of them individually unless there is 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 deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.7. The headings and contents list are for reference only and shall not affect construction.
- 2.8. Any covenant by the Owner or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.9. 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.

3. Legal Basis

- 3.1. This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all powers so enabling.

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.

4. **Conditionality**

4.1. The obligations in this Deed in the Second Schedule are conditional upon:

4.1.1. the grant of the Planning Permission; and

4.1.2. the Commencement of Development.

save for clauses 5, 7, 8, 9, 17, 21 and 22 which shall come into effect on the date hereof.

5. **The Owner Covenants**

The Owner covenants with the Council (so as to bind the Site) to fully observe and perform the obligations in this Deed including those obligations set out in the Schedules and hereby agree that the Site shall be subject to the obligations, restrictions and covenants herein, such obligations being planning obligations for the purposes of section 106 of the Act as set out in the Second Schedule.

6. **The Council's Covenants**

The Council covenants with the Owner to observe and perform the obligations on its part in this Deed including those obligations set out in Third Schedule.

7. **Fees**

The Owner shall pay to the Council on completion of this Deed the sum of **TBC** incurred in the negotiation, preparation and execution of this Deed.

8. **Local Land Charge**

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

8.2. Following the performance and satisfaction of all the obligations contained in 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.

9. **Communication and Council's Consent or Approval**

Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the 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 Council by the Head of Development Management 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.

10. **Termination of this Deed**

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 (without the consent of the Owner) or it is modified by any statutory procedure or expires prior to the Commencement of Development.

11. **The Contracts (Rights of Third Parties) Act 1999**

Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the Council this Deed shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims whatsoever thereto.

12. **Liabilities**

No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Deed after it shall have parted with all or part of its interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

13. **Exemptions**

This Deed shall not be enforceable against owner-occupiers or tenants of the Development or any statutory authority or service company acquiring part of the Site or any electricity sub-station gas governor or other land within the Site.

14. **Council's Powers**

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

15. **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 from acting upon any subsequent breach or default.

16. **Change in Ownership**

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site save in respect of any disposal to a plot purchaser tenant or occupier of an individual Apartment occurring before all the obligations under this Deed have been discharged such notice 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 purchased by reference to a plan.

17. **VAT**

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

18. **Dispute Provisions**

18.1. In the event of any dispute or difference arising between 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.

18.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 18.1 or as to the appropriateness of the professional body then such question may be referred by either part 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.

18.3. 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.

18.4. 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.

19. **Community Infrastructure Levy**

19.1. For the purpose of this Clause "CIL" means a tax tariff or charge introduced by the Council pursuant to regulations enabled by the Planning Act 2008 or any subsequent proposed legislation to fund the delivery of infrastructure known as the "Community Infrastructure Levy" or known by any other name.

19.2. If after the date of this Agreement a CIL is introduced that is applicable to the Development then the parties to this Deed will use reasonable endeavours to agree variations to this Deed with the intent that:

19.2.1. The planning benefits secured by this Deed should continue to be secured and delivered; and

19.2.2. The Owner must not be in a position where it is in a financially worse position directly or indirectly due to the introduction of a CIL in discharging the

obligations contained in the Second Schedule than it would be if it discharged the obligations in this Deed and no CIL had been introduced.

20. **Future / Amended Planning Permission(S)**

20.1. In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the Act this Deed shall continue in full force in respect of the Planning Permission with the relevant condition or conditions so varied.

20.2. In the event that an application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission and planning permission is granted in respect of that application references to Planning Permission in this Deed shall be to the new planning permission granted pursuant to Section 73 of the Act 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 SAVE THAT if the Section 73 application has the effect of changing the number of Dwellings then this clause shall have no effect.

21. **Jurisdiction**

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

22. **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.

FIRST SCHEDULE

Details of Title and description of the Site

The land known as The Waters Edge Public House, Trow Lea, South Shields, NE33 2JH as shown for identification purposes only edged red on Plan 1.

SECOND SCHEDULE

The Owner's Covenants with the Council

The Owner covenants with the Council as follows:

1. **Ecological Mitigation Contribution**

No more than ten apartments can be occupied until the Ecological Mitigation Contribution has been paid to the Council.

2. **Community Safety Contribution**

No more than ten apartments can be occupied until the Community Safety Contribution has been paid to the Council.

THIRD SCHEDULE

The Council's Covenants with the Owner

The Council covenants with the Owner as follows:

1. To use all sums received pursuant to an obligation in the Second Schedule of this Deed for the purposes specified therein.
2. In the event that any payment made to the Council in accordance with any of the provisions of this Deed has not been spent or committed for expenditure by the Council within ten (10) years following the date of receipt of the said payment the Council shall refund to the person who made the said payment any part of the payment which has not been spent or committed for expenditure.

Discharge of obligations

3. 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.

THE COMMON SEAL of)
SOUTH TYNESIDE COUNCIL)
Was hereunto affixed in)
the presence of)

Duly Authorised Officer

EXECUTED AS A DEED by)
MR KEVIN BROGAN)
in the presence of)

Owner

Witness
Signature

Name (capital
letters)

Address
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