

DATED

5th February 2024

2024

(1) TENDRING DISTRICT COUNCIL

-and-

(2) HILLS RESIDENTIAL CONSTRUCTION LIMITED

-and-

(3) CLOSE BROTHERS LIMITED

-and-

(4) ESSEX COUNTY COUNCIL

DEED OF VARIATION

under Section 106A of the Town and Country Planning Act 1990

relating to

Application DOV 23/01580/DOVU5 in respect of Land at Moorlands Farm, Great Bentley, Essex, CO7 8RS (Planning reference 21/02176/FUL)

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..... ERROR! BOOKMARK NOT DEFINED.

5th February

PARTIES

- (1) TENDRING DISTRICT COUNCIL of Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE ("the District Council"); and
- (2) HILLS RESIDENTIAL CONSTRUCTION LIMITED (company registration number 03919214) of Bridge Mill House, Brook Street Business Centre, Brook Street, Colchester, CO1 2UZ ("the Owner");
- (3) CLOSE BROTHERS LIMITED (company registration number 195626) of 10 Crown Place, London, EX2A 4FT ("the Bank"); and
- (4) ESSEX COUNTY COUNCIL of County Hall, Chelmsford, Essex, CM1 1QH ("the County Council").

Together known as "the Parties"

BACKGROUND

- (A) The District Council and the County Council are the local planning authority for the purposes of the Town and Country Planning Act 1990 (as amended) ("the Act") for the area within which the Site is situated and by whom the obligations contained in this Deed are enforceable
- (B) The Owner is the freehold owner of the Site which is registered with HM Land Registry under title numbers AA56476 and AA12729
- (C) The Bank has the benefit of a registered charge against title number AA56476 dated 31 March 2023
- (D) On 16 January 2023 (1) Janet Lang Strutt and Frank Derrick Strutt and (2) Hills Residential Construction Limited entered into a Unilateral Undertaking to the District Council and Essex County Council made under Section 106 of the Act 21/02176/FUL ("the Original Undertaking")
- (E) On 20 January 2023 the District Council granted the Planning Permission for the Development subject to conditions and the Original Undertaking.
- (F) The County Council is the local education authority for statutory age education and pre-statutory age education and childcare for the County of Essex and in whose administrative area the Site is located.
- (G) The Parties wish to amend the Original Undertaking as set out in this Deed with effect from the date of this Deed ("Variation Date") to amend the trigger for the construction and transfer of the Affordable Housing Dwellings.

(H) The Parties to this Deed are satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development.

AGREED TERMS

1 DEFINITIONS

1.1 In this Deed, all words phrases and expressions defined in the Original Undertaking shall have the same meaning in this Deed save where the context otherwise dictates and save for the following words and phrase which shall have the following meanings:

“Original Undertaking” means the undertaking dated 16 January 2023 given by (1) Janet Lang Strutt and Frank Derrick Strutt (the former owner of the Site) and (2) Hills Residential Construction Limited to the District Council and Essex County Council in respect of the Planning Application;

“Variation Date” means the date of this Deed;

1.2 The rules of interpretation set out in the Original Undertaking apply to this Deed.

2 LEGAL BASIS

2.1 This Deed is supplemental to and varies the Original Undertaking and is made pursuant to Section 106 and 106A of the Act and the covenants and obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act enforceable by the District Council and to the extent that any obligations contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

2.2 The covenants, restrictions and obligations contained in this Deed are entered into by the Owner with the intention that they bind the interests held by the Owner in the Site and their respective successors and assigns

2.3 The Owner warrants that they have full power to enter into this Deed and there is no other person save for as recited in this Deed whose consent is necessary to make this Deed binding on the Site.

2.4 Except as varied in Clause 4 of this Deed, the Original Undertaking shall remain in full force and effect.

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

GOVERNING LAW

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The Owner on completion of this Deed shall pay the District Council's and the County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed.

COSTS

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If any provision of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed to be affected or impaired.

5.3

A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

5.2

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.

5.1

OTHER PROVISIONS

5

2. Not to Occupy (or allow, cause or permit the Occupation of) more than eighteen (18) Market Dwellings unless and until the Affordable Housing Dwellings referred to in the approved Affordable Housing Scheme have been:..."

Paragraph 2 of the First Schedule shall be deleted and replaced with:
With effect from the Variation Date, the parties agree the following amendment to the Original Undertaking:

4.1

VARIATION

4

The Bank consents to the completion of this Deed and declares that its interest in the Site shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Bank's interest in the Site provided that the Bank shall not be liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Bank is in possession of all or any part of the Site.

3.1

BANK'S CONSENT

3

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

JURISDICTION



