

Dated

7 April

2015

BERLIET LIMITED

(as Owner)

-to-

BROADLAND DISTRICT COUNCIL

(as Council)

Deed of Undertaking pursuant to S.106

Town and Country Planning Act 1990

(as amended) in relation to land

at Pinebanks, Yarmouth Road, Thorpe St Andrew, Norwich

THIS DEED IS MADE ON THE

7

DAY OF APRIL 2015

BY

1. **BERLIET LIMITED** of ⁴⁴ Ogier House, The Esplanade, St Helier, Jersey JE4 9WG ("the Owner")

TO

2. **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU ("the Council")

WHEREAS

- (1) 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 local planning authority entitled to enforce the planning obligations hereinafter recited.
- (2) The Owner is the freehold owner of the majority of the Site under registered titles NK116588, NK183874, and NK373222.
- (3) The Owner is the freehold owner of the 43 Henby Way Land under registered title NK412235, shown for the purposes of illustration only edged red on Plan 2.
- (4) The Owner was granted the Planning Permission by the Council and intends to implement the Planning Permission or the S.73 Permission.
- (5) The Owner has submitted the S.73 Application to the Council.
- (6) The Owner enters into this Deed to secure the planning obligations contained in this Deed.
- (7) The Council are desirous that the Site is redeveloped in accordance with the Planning Permission to provide much needed new housing in Thorpe St Andrew, to regenerate this long vacant site, and to benefit the conservation area.

NOW THIS DEED WITNESSETH as follows:

OPERATIVE PART

1 INTERPREATION AND DEFINITIONS

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

"43 Henby Way Land"	the land comprised in title number NK412235, formerly being part of the garden of 43 Henby Way, Thorpe St Andrew and shown for illustrative purposes only edged red on Plan 2;
"Act"	the Town and Country Planning Act 1990 (as amended);
"Covenants"	the restrictive covenants imposed in paragraphs 1 and/or 2 of the Third Schedule of the Transfer;
"Development"	the erection of 231 dwellings, construction of two new vehicular accesses together with associated infrastructure, roads, open space and landscaping. Part demolition of Pinebanks building and conversion of the retained Pinebanks building for residential use (Outline);
"Plan 1"	the plan attached hereto numbered 23847/002/C;
"Plan 2"	the plan attached hereto being the registered title plan for title NK412235;
"Planning Permission"	the planning permission dated 28 June 2013 given reference number 20130649 granted by the Council for the Development of the Site;
"S.73 Application"	the planning application given reference number 20150094 by the Council for the S.73 Development of the Site;
"S.73 Development"	variation of Condition 24 of Planning Permission 20130649 – Erection of 231 dwellings, construction of two new vehicular accesses together with associated infrastructure, roads, open space and landscaping. Part demolition of Pinebanks building and conversion of the retained Pinebanks building for residential use (Outline) – Variation to allow access to the site from either both Henby Way and Hillcrest Road or solely from Hillcrest Road;
"S.73 Permission"	the planning permission to be granted pursuant to the S.73 Application;
"Site"	the land shown for illustrative purposes only edged red on Plan 1; and

"Transfer"	the transfer dated 9 May 1988 made between (1) Michael George Hamlin and Cecilia Bernice Hamlin and (2) Wilcon Homes Limited registered on the charges register of title number NK412235 against the 43 Henby Way Land.
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- 1.2 In this Deed:
- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa;
- 1.2.3 the reference to any statute or section of a statute includes 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;
- 1.2.4 any reference to a clause, a paragraph, a schedule or plan is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of or in the case of a plan attached to this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears;
- 1.2.5 references to the Site or the 43 Henby Way Land include any part or parts thereof;
- 1.2.6 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;
- 1.2.7 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owner to do any act matter or thing include an obligation to procure that it be done.

2 EFFECT OF THIS DEED

- 2.1 This Deed is entered into pursuant to Section 106 of the Act. To the extent that these fall within the terms of Section 106 of the Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council.
- 2.2 The Owner enters into the obligations to the intent that the obligations hereunder shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or the 43 Henby Way Land or any part or parts thereof.

3 CONDITIONALITY

- 3.1 Save for Clause 4.1 and Schedule 1 which shall come into effect on the date of grant of the S.73 Permission, this Deed shall come into effect immediately upon its completion.

4 THE OWNER'S COVENANTS

- 4.1 The Owner covenants to the Council so as to bind its interest in the Site and the 43 Henby Way Land and any part or parts thereof to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 1 hereto.

- 4.2 The Owner covenants that:-
- 4.2.1 it is the freehold owner of interests in the Site and is the freehold owner of the 43 Henby Way Land as set out in Recitals (2) and (3);
- 4.2.2 the Owner's interests in the Site and the 43 Henby Way Land are free from all encumbrances material to this Deed; and
- 4.2.3 save as indicated in Recital (2) no other party has an interest in the Site or the 43 Henby Way Land.

5 MISCELLANEOUS

- 5.1 This Deed is a local land charge and may be registered as such by the Council.
- 5.2 Upon the satisfaction of the terms of this Deed the Owner may request that the Council procure that all entries in the register of local land charges relating to these shall be removed or marked as discharged as soon as is reasonably practicable.
- 5.3 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto.
- 5.4 Any notice to the Owner or the Council under this Deed shall be deemed to be sufficiently served if delivered personally or sent by first class or recorded delivery post to the following officials/persons at the respective addresses hereinafter specified or to such substitute address or person as may be notified by the Owner to the Council or vice versa in writing:
- 5.4.1 In respect of the Owner at the address referred to above addressed for the attention of "The Directors".
- 5.4.2 In respect of the Council at the address referred to above addressed for the attention of "The Chief Executive".
- 5.5 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.
- 5.6 No waiver whether express or implied by the Council of any breach or default by the Owner in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default.
- 5.7 The Owner shall not be liable for a breach of any of its obligations under this Deed or obligations relating to any part of the Site in which it holds an interest or the 43 Henby Way Land after it shall have parted with all of its interests respectively in the Site and the 43 Henby Way Land save in either case for antecedent breaches.
- 5.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site or the 43 Henby Way Land in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed.

6 JURISDICTION

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

7 DISPUTE RESOLUTION

- 7.1 Without prejudice to the right of injunctive relief under section 106(5) of the 1990 Act if any dispute arises between the Owner and the Council relating to the terms of this Deed then the parties to the dispute may use reasonable endeavours for a period of not less than one month to mediate the dispute through appropriate senior representatives from within the respective organisations.

EXECUTED AS A DEED on the day first written above.

SCHEDULE 1

The Owner's Covenants

- 1.1 The Owner covenants with the Council to use reasonable endeavours for a period of 6 weeks from the date of grant of the S.73 Permission to take the following steps on a without prejudice basis in an attempt to negotiate with Taylor Wimpey the release of the Covenants in respect of the 43 Henby Way Land:
- (a) Holding meeting(s) with Taylor Wimpey at a mutually convenient time and location;
 - (b) Holding meeting(s) with valuers/agents/surveyors or other professionals instructed by Taylor Wimpey at a mutually convenient time and location;
 - (c) Making commercial financial offers to Taylor Wimpey and responding to any counter-offers within 72 hours of receipt (excluding weekends and bank holidays);
 - (d) Corresponding with Taylor Wimpey and promptly replying to any correspondence received from Taylor Wimpey and in any event within 72 hours (excluding weekends and bank holidays) whether such correspondence is by letter, by e-mail, or by telephone;
 - (e) Instructing if appropriate valuers/agents/surveyors or other professionals to negotiate with their opposite number instructed by Taylor Wimpey;
 - (f) Negotiating terms with Taylor Wimpey to secure such release;
 - (g) To seek to agree heads of terms for a deed of release if a negotiated solution is achieved;
 - (h) Instructing lawyers to draft and negotiate a deed of release if a negotiated solution is achieved.
- 1.2 The Owner's approach to negotiating the release of the Covenants in relation to Taylor Wimpey shall be at its absolute discretion provided that the Owner makes reasonable endeavours to so negotiate.
- 1.3 If a negotiated solution is reached within the 6 week period referred to in paragraph 1.1 then the Owner covenants that it will enter into a deed of release on the terms so negotiated or the terms set out in a heads of terms document (as the case may be) as soon as reasonably practicable after the expiry of that period.
- 1.4 References in this Schedule to Taylor Wimpey shall mean Taylor Wimpey plc or the relevant company in the Taylor Wimpey group of companies.

Executed as a deed by

BERLIET LIMITED

Acting by two directors

)

) Signature.....

Jon Barratt
Alternate Director

)

Name.....

Director

Signature.....

Name.....DAVID CLAYTON.....

Director

For details of the surveying method used, see page 10



LEGEND

Site Boundary



Land at Purebando
No. 1000

SITE LOCATION PLAN

Area	1000	1000	1000	1000
Acres	1000	1000	1000	1000

BARTON
WILLMORE

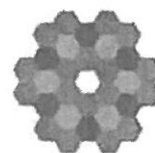


1000

U.S. Coast

Land Registry
Official copy of
title plan

Title number **NK412235**
Ordnance Survey map reference **TG2509SE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Norfolk : Broadland**



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