

A DEED OF VARIATION DATED

19th August

2016

GIVEN BY:

(1) DAVID ERIC SMITH

TO:

(2) BROADLAND DISTRICT COUNCIL

**DEED OF VARIATION TO A UNILATERAL
UNDERTAKING
MADE UNDER SECTIONS 106 AND 106A
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

relating to the development of land to the rear
of Lower Street, Salhouse, Norwich

 **HOWES
PERCIVAL**

Flint Buildings
1 Bedding Lane
Norwich
NR3 1RG
Tel: 01603 762103
Fax: 01603 762104

THIS DEED OF VARIATION is dated

19th August

2016

GIVEN BY:

- (1) **DAVID ERIC SMITH** of The Old Maltings, Anchor Street, Coltishall, Norwich, Norfolk, NR12 7AQ ("the Owner");

TO:

- (2) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Thorpe St. Andrew, Norwich, NR7 0DU ("District Council").

INTRODUCTION

- (1) The District Council is the local planning authority for the purposes of Section 106 of the Act for the area in which the Site is situated.
- (2) The Owner is the freehold owner of the Site registered at the Land Registry under title number NK315364.
- (3) The Owner has secured Planning Permission in respect of the Development granted by the District Council on 2 October 2015 subject to the Original Unilateral Undertaking.
- (4) The Owner seeks to vary the terms of the Original Unilateral Undertaking in the terms set out in this Deed.

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

"Original Unilateral Undertaking"	the unilateral undertaking dated 1 October 2015 given by David Eric Smith (1) to Broadland District Council (2)
-----------------------------------	---

2. CONSTRUCTION OF THIS DEED

- 2.1 The terms and conditions of the Original Unilateral Undertaking shall remain in full force and effect except as varied by this Deed.
- 2.2 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.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 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.
- 2.5 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.
- 2.6 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.
- 2.7 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 District Council the successors to their respective statutory functions.
- 2.8 The headings and contents list are for reference only and shall not affect construction.

- 2.9 Unless otherwise stated defined terms used in this Deed shall have the meanings given to them in the Original Unilateral Undertaking and the terms of the Original Unilateral Undertaking shall apply to this Deed

3. LEGAL BASIS

- 3.1 This Deed is supplemental to the Original Unilateral Undertaking and is made pursuant to Section 106 and Section 106A of the Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and all other relevant enabling powers
- 3.2 The covenants and obligations imposed on the Owner under this Deed are planning obligations for the purposes of Section 106 of the Act and shall be binding and enforceable against the Owner by the District Council.

4. VARIATION TO THE ORIGINAL UNILATERAL UNDERTAKING

- 4.1 The definition of "*Changing Room Permission*" in the Original Unilateral Undertaking shall be deleted and replaced with the following:

"the planning permission for the erection of replacement changing room facilities and relocation of storage containers being either: a) granted by the District Council on 1 September 2015 and allocated reference number 20151128; or b) to be granted by the District Council pursuant to the application validated on 18 May 2016 and allocated reference 20160901."

5 MISCELLANEOUS

- 6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.2 This Deed may be registrable as a local land charge by the District Council.
- 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 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)
- 6.5 No person shall be liable 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 such part of the Site in respect of which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest AND FOR THE AVOIDANCE OF DOUBT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause.
- 6.6 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.
- 6.7 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the District Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 6.8 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 6.9 The obligations in this Deed will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker.

7. DISPUTE PROVISIONS

- 7.1 In the event of any dispute or difference arising between any of 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.

7.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 7.1 or as to the appropriateness of the professional body then such question may be referred by either party 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.

7.3 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.

7.4 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.

8 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England. .

9 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.

SIGNED as a deed by **DAVID ERIC SMITH** in the presence of:)

Signature of Witness: 

Name of Witness: EVAN Donoghue

Address of Witness: 43 Woodland RD NR 6SR4