

Planning Obligation By Way of Unilateral Undertaking Under Section 106 of the Town & Country Planning Act 1990 Relating to Land at East Side of Short Lane Alkham, Kent

Given to

DOVER DISTRICT COUNCIL

By

DAVID JOHN BARNES

MICHAEL JAMES BARNES

STEPHEN PETER BARNES

Brachers LLP
Somerfield House
59 London Road
Maidstone
Kent ME16 8JH

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Ref: BAR7022/1

TABLE OF CONTENTS

1.	Interpretation	1
2.	Statutory provisions	3
3.	Covenants with the Council	3
4.	Release	4
5.	Determination of deed	4
6.	Local land charge	4
7.	Interest on late payment	4
8.	Council's costs	4
9.	Ownership	4
10.	Notices	4
11.	Disputes.....	5
12.	Third party rights	6
13.	Governing law	6

THIS DEED IS MADE ON THE 29th DAY OF January 2024

And is given by:

- (1) **DAVID JOHN BARNES** of Bonnyrigg Hall, Bardon Mill, Hexham, NE47 7AR (the First Owner)
- (2) **MICHAEL JAMES BARNES** of Downs Farm, Wye, Kent, TN25 5DJ (the Second Owner)
- (3) **STEPHEN PETER BARNES** of Barnslands Farm, Cleobury Mortimer, DY14 8QU (the Third Owner)

To: **Dover District Council** of White Cliffs Business Park, Whitfield, Dover, Kent CT16 3PJ (the Council)

Background

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Land is situated.
- (B) The Owner is the freehold owner of the Land.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development on the Land.
- (D) The Owner gives this undertaking to perform the obligations set out in this deed.

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Commencement of Development means the date on which any material operation (as defined in section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed only) operations consisting of: site clearance; demolition works; archaeological investigations; investigations for the purpose of assessing ground conditions; remedial work in respect of any contamination or other adverse ground conditions; diversion and laying of services; any underground works; construction of Infrastructure; laying out of temporary construction accesses; erection of any temporary means of enclosure/site security; temporary display of site notices or advertisements; and/or any other preparatory works as may be agreed with the Council and **Commence the Development** and **Commencement Date** shall be construed accordingly

Development means the development of the Land as described in the Planning Application.

Index Linked means increased in accordance with the following formula:

Amount payable = the Play Space Contribution x (A/B) where:

A = the figure for the Retail Prices Index (All Items) that applied immediately preceding the date of actual payment;

B = the figure for the Retail Prices Index (All Items) that applied where the Index was last published prior to the date of this Deed

The Land means the land shown edged in red on Plan 1 being part of the land registered at HM Land Registry with absolute title under title number K596182

Monitoring Fee means the sum of £236 to be applied towards the Council's costs in monitoring the Development in accordance with National Planning Practice Guidance

The Owner means together the First Owner, the Second Owner and the Third Owner

Plan 1 means the plan attached to this deed at Annex 1 and headed "The Land"

Planning Application means an application for planning permission for the erection of 8 dwellings with associated access and landscaping on the Land registered by the Council on 25 July 2023 under reference number DOV/23/00546.

Planning Permission means the planning permission to be granted by the Council in respect of the Planning Application.

Play Space Contribution means the sum of Three Thousand Four Hundred and Eleven Pounds and Seventy Pence (£3,411.70) index linked to be paid towards Children's Equipped Play Space at Alkham Recreational Ground

TCPA 1990 means the Town and Country Planning Act 1990 (as amended).

Working Day means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2 Clause headings 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 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.

- 1.8 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.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 References to clauses are to the clauses of this deed.
- 1.12 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.14 Nothing contained or implied in this Deed shall prejudice or otherwise affect the rights powers duties and obligations of the Council in their exercise of their functions as Local Planning Authority or in any other capacity and that all rights powers duties and obligations under any public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council was not a party to this Deed

2. Statutory provisions

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns.
- 2.3 This deed shall come into effect on the date of grant of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. Covenants with the Council

- 3.1 The Owner covenants with the Council:
 - 3.1.1 to pay the Play Space Contribution to the Council prior to the Commencement of Development.
 - 3.1.2 To pay the Monitoring Fee to the Council within 28 days of the date upon which the Planning Permission is granted.
 - 3.1.3 to give at least 10 Working Days written notice to the Council of the Commencement Date.

4. Release

No person shall be liable for any breach of an obligation, restriction or covenant contained in 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.

5. Determination of deed

5.1 This deed (with the exception of clause 8) shall be determined and have no further effect if the Planning Permission:

5.1.1 expires before the Commencement of Development;

5.1.2 is varied or revoked other than at the request of the Owner; or

5.1.3 is quashed following a successful legal challenge.

6. Local Land Charge

This deed is a local land charge and shall be registered as such by the Council.

7. Interest on late payment

If any sum or amount payable under this deed has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that sum or amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

8. Council's costs

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

9. Ownership

9.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Land.

9.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 15 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Land:

9.2.1 the name and address of the person to whom the disposition was made; and

9.2.2 the nature and extent of the interest disposed of.

10. Notices

10.1 A notice to be given under or in connection with this deed must be in writing and must be:

10.1.1 delivered by hand; or

- 10.1.2 sent by pre-paid first class post or other next working day delivery service.
- 10.2 Any notice to be given under this deed must be sent to the relevant party as follows:
 - 10.2.1 to the Council at: Dover District Council of White Cliffs Business Park, Whitfield, Dover, Kent CT16 3PJ marked for the attention of the Head of Planning and Development;
 - 10.2.2 to the each of the Owners at: the respective addresses given in this deed marked for the attention of each of the Owners;or as otherwise specified by the relevant person by notice in writing to each other person.
- 10.3 Any notice given in accordance with clause 10.1 and clause 10.2 will be deemed to have been received:
 - 10.3.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
 - 10.3.2 if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.
- 10.4 A notice given under this deed shall not be validly given if sent by e-mail.
- 10.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11. Disputes

Any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination of the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- 11.1 the tribunal will consist of one arbitrator appointed jointly by the parties;
- 11.2 in default of the parties' agreement on the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
- 11.3 the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
- 11.4 the seat of the arbitration shall be London.

12. Third party rights

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

13. Governing law

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by
DAVID JOHN BARNES

D. Barnes

In the presence of:

S. Knapp

NAME S. Knapp
ADDRESS Ventners Hall, Hattunishle
OCCUPATION builder

Executed as a deed by
**MICHAEL JAMES
BARNES**

Michael Barnes

In the presence of:

My

NAME MR LEE MAY
ADDRESS 59 LONDON RD MAIDSTONE KENT
OCCUPATION SOLICITOR

Executed as a deed by
**STEPHEN PETER
BARNES**

Stephen Barnes

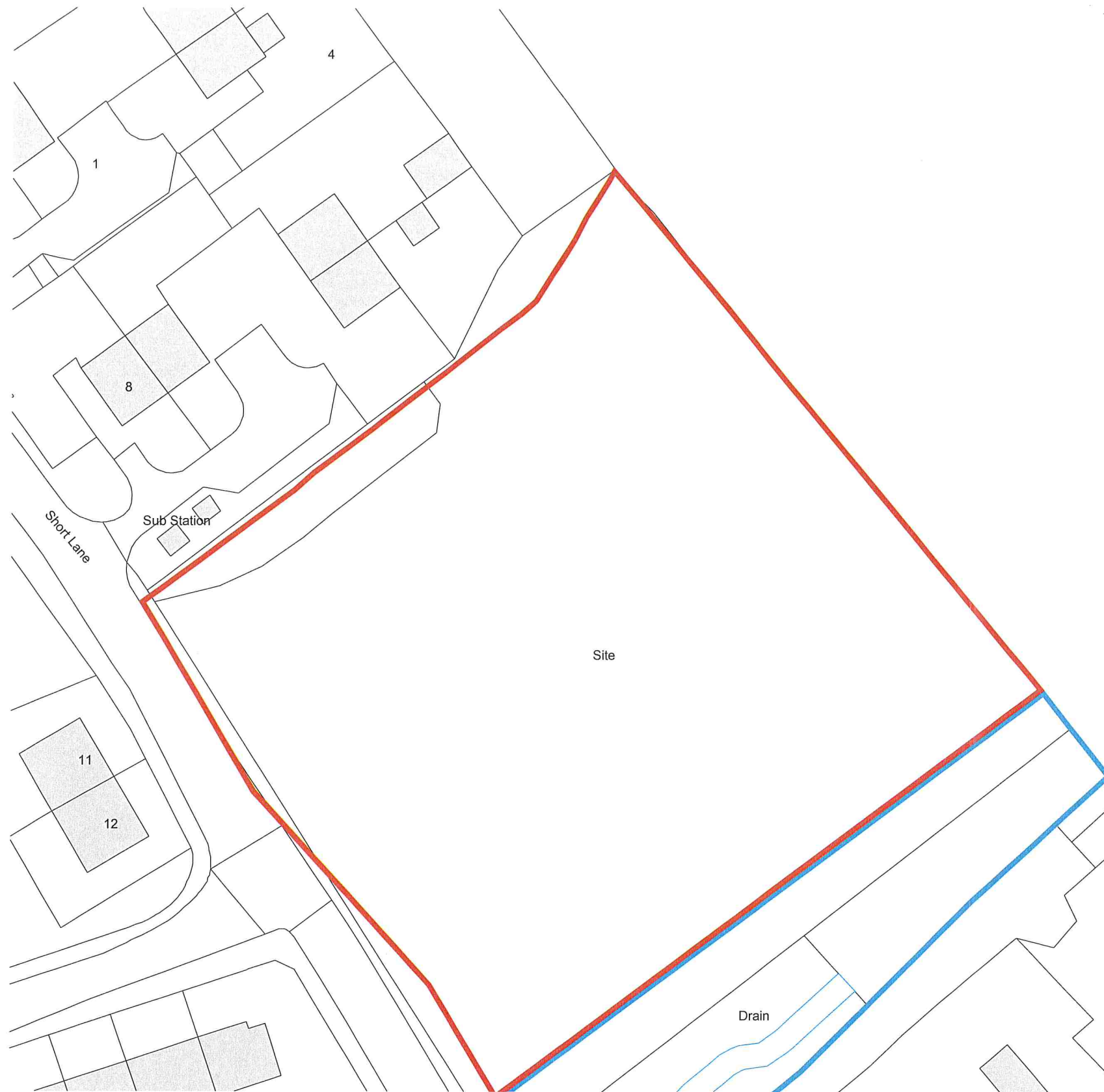
In the presence of:

R. Rowson

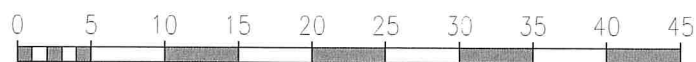
NAME ROGER ROWSON
ADDRESS WALKERSLOW FM., BURWARTON, BRIDGNORTH WV166RT
OCCUPATION FARMER

Annex 1

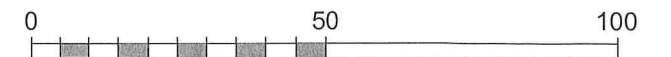
Plan 1 – The Land



Block Plan (Scale 1:500)



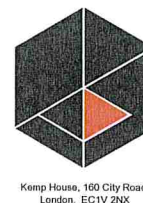
Location Plan (Scale 1:1250)



D. Bawn
Bawn
Musad Zameer

Rev	Date	Description
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APX ARCHITECTURE



Kemp House, 160 City Road,
 London, EC1V 2NX

Client / Project
 Proposed residential accommodation
 Land at Short Lane
 Alkham
 Kent

Drawing Description
 Site and Location Plan as Existing

Scale
 1:500/1250@A3

Date
 February 2023

Drawing Number
 22_114_01

Revision
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