

DATE: 3 February

2023

SEP PROPERTIES LIMITED
AND
NATIONAL WESTMINSTER BANK PLC

**PLANNING OBLIGATION BY WAY OF UNILATERAL
UNDERTAKING Pursuant to Section 106 of the Town and Country
Planning Act 1990 (as amended)**

**Relating to the Development of land at
Buckland Mill Service Station, Crabble Hill,
Dover, CT17 0RZ**

Ref: DOV/17/01452

THIS DEED is made the **3** day of **February** 20**23**

GIVEN BY

- (1) **SEP Properties Limited** (Company Registration No. 02072876) of Aldershawe Hall, Claypit Lane, Lichfield WS14 0AQ. ("the Owner"); and
- (2) **National Westminster Bank PLC** (Company Registration No. 929027) of whose registered office is at 250 Bishopsgate, London EC2M 4AA and whose address for service is Credit Documentation, PO Box 339, Manchester M60 2AH ("the Mortgagee").

TO

DOVER DISTRICT COUNCIL ("the Council") of White Cliffs Business Park, Dover, Kent, CT16 3PJ

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The County Council is the County Planning Authority and is responsible for the provision of education, library, social and waste services for the area in which the Property is situated.
- (C) The Owner owns the Property and has made the Planning Application and is proposing to carry out the Development.
- (D) The Mortgagee is the registered proprietor of the charge dated 3 February 2016 referred to in entries 3 and 4 of the Charges Register of title K119272 and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- (E) The Council has decided to grant planning permission pursuant to its scheme of officer delegations to carry out the Development subject to the prior completion of this Deed and the conditions to which the Planning Permission is expressed to be subject.

AGREED TERMS

1. INTERPRETATION

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

1.1

Definitions:

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations:

- demolition works;
- site clearance;
- ground investigations;
- site survey works;
- temporary access construction works;
- archaeological investigation; and
- erection of any fences and hoardings around the Property.

Commencement Date: the date of Commencement of Development.

Community Learning Contribution: means the sum of £180.62 paid as a contribution towards additional equipment, services, and resources for the new learners at Dover Adult Education Centre

Council: DOVER DISTRICT COUNCIL of White Cliffs Business Park, Dover, Kent, CT16 3PJ

County Council: the KENT COUNTY COUNCIL of County Hall, Maidstone, ME14 1XQ

Development: the development of the Property described in the Planning Application.

Indexation: means the BCIS General Building Cost Index or such other index as the Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published, or its name or methodology be materially altered

Library Service Contribution: means the sum of £609.95 paid as a contribution towards additional services, resources and stock (including digital infrastructure and resources) to be made available at Dover Library

Plan: the plan attached to this deed.

Property: the freehold land at Buckland Mill Service Station, Crabble Hill, Dover, CT17 0RZ shown edged red on the Plan and registered at HM Land Registry with absolute title under title number K119272.

Planning Application: an application for outline planning permission for the erection of a four storey building incorporating 11no. flats and ground floor retail unit with associated car parking received by the Council on 1 December 2017 and given reference number DOV/17/1452.

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

Prior Approval Permission: the planning permission granted pursuant to the Prior Approval Application.

Social Care Contribution: means the sum of £1615.68 paid as a contribution towards specialist care accommodation, assistive technology systems and equipment to adapt homes, adapting Community facilities,

sensory facilities and Changing Places within the district.

TCPA 1990: Town and Country Planning Act 1990.

Waste Contribution: means the sum of £599.17 paid as a contribution towards works at Dover HWRC to increase capacity

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

Youth Service Contribution: means the sum of £720.50 paid as a contribution towards additional equipment and resources for the Dover Youth Service.

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 **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

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

If the Council agrees pursuant to an application under Section 73 or 73A of the TCPA 1990 to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under Section 78 of the TCPA 1990 this Agreement shall also apply to any development carried out pursuant to such varied planning permission granted pursuant to Section 73 or 73A or 78 of the TCPA 1990 and the covenants or provisions in this Agreement shall be deemed to be accordingly modified to correspond to any such varied permission.

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 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 Property 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

The Owner covenants with the Council:

- (a) To pay the Community Learning Contribution to the Council on behalf of the County Council. Payment to be made prior to the commencement of the Development.
- (b) Not to permit the commencement of the Development unless and until the Community Learning Contribution has been paid to the Council on behalf of the County Council.
- (c) To pay the Library Service Contribution to the Council on behalf of the County Council. Payment to be made prior to the commencement of the Development.
- (d) Not to permit the commencement of the Development unless and until the Library Service Contribution has been paid to the Council on behalf of the County Council.
- (e) To pay the Social Care Contribution to the Council on behalf of the County Council. Payment to be made prior to the commencement of the Development.
- (f) Not to permit the commencement of the Development unless and until the Social Care Contribution has been paid to the Council on behalf of the County Council.
- (g) To pay the Waste Contribution to the Council on behalf of the County Council. Payment to be made prior to the commencement of the Development.
- (h) Not to permit the commencement of the Development unless and until the Waste Contribution has been paid to the Council on behalf of the County Council.
- (i) To pay the Youth Service Contribution to the Council on behalf of the County Council. Payment to be made prior to the commencement of the Development.
- (j) Not to permit the commencement of the Development unless and until the Youth Service Contribution has been paid to the Council on behalf of the County Council.

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 Property, except in respect of any breach subsisting prior to parting with such interest.

5. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) 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. COUNCIL'S COSTS

The Owner shall pay to the Council on the date of this deed:

- (a) the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.
- (b) the sum of £239 as a contribution towards the Council's costs of monitoring the compliance of the Development with the terms of this deed.

8. OWNERSHIP

8.1

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

8.2

~~Until the obligations in Clause 3 have been complied with the Owner will give to the Council within 10 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 Property:~~

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

9. NOTICES

9.1

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

(a) delivered by hand; or

(b) sent by pre-paid first-class post or other next working day delivery service.

9.2

Any notice to be given under this deed must be sent to the relevant party as follows:

(a) to the Council at: Dover District Council, White Cliffs Business Park, Dover, Kent, CT16 3PJ marked for the attention of the Head of Planning and Development;

(b) to the Owner at: 1st Floor Dudley House Stone Street Dudley DY1 1NS marked for the attention of Engrez Singh ;

or as otherwise specified by the relevant person by notice in writing to each other person.

9.3

Any notice given in accordance with *Clause 9.1* and *Clause 9.2* will be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the address] 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;

(b) 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.

9.4

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.

10. INDEXATION

Any sum which become payable under this Deed other than the Council's Costs shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

11. MORTGAGEE'S CONSENT

11.1 The Mortgagee consents to the completion of this Deed and declares that its interest in the Land 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 Mortgagee's interest in the Land.

11.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land.

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 **SEP PROPERTIES LIMITED**

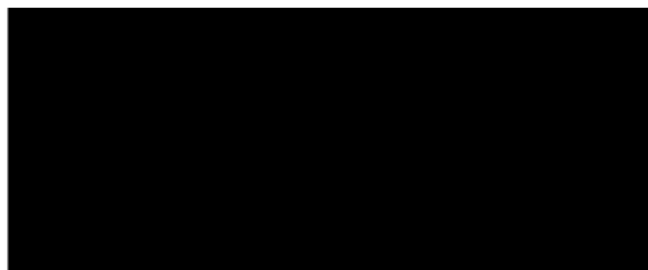
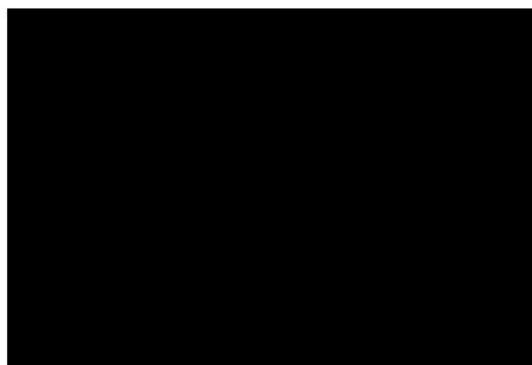
acting by [redacted] a director in the

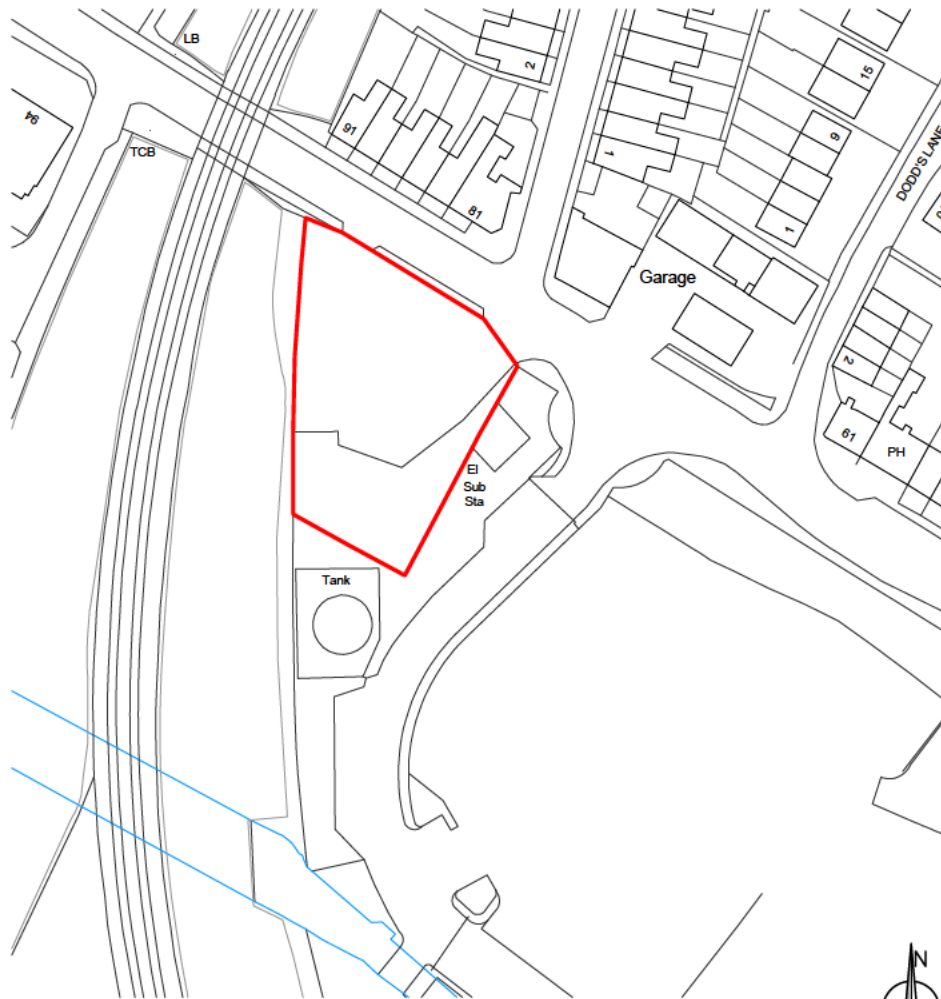
[redacted]

Director

[redacted]

Signed and delivered as a deed for and on behalf of
NATIONAL WESTMINSTER BANK PLC by a duly
authorised Attorney in the presence of:-





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Site Location Plan 1:1250



CHARTER HOUSE, 163 NEWHALL STREET
BIRMINGHAM B3 1SW
Telephone: 0121 6439337
Facsimile: 0121 6436407

CHARTER HOUSE, 163 NEWHALL STREET BIRMINGHAM B3 1SW Telephone: 0121 6439337 Facsimile: 0121 6436407		Scale 1:1250 @A4	Drawn by JVB	The designs and details on this drawing are copyright and must not be reproduced without the permission of JOHNSON FELLOWS LLP © 2022
Client	SEP Properties	Date September 2022	Revision	All dimensions, sizes etc., to be checked on site by the contractor before work commences. Figured dimensions to be used in preference to scaling. Any errors or omissions must be reported to JOHNSON FELLOWS LLP at once.
Project	SEP Properties Limited	Project No. S27.236	Drawing No. 020	