

Planning Obligation Under Section 106 of the Town and Country Planning Act 1990 Relating to Land Between 82 and 86 Wellington Parade, Walmer, Kent

DOVER DISTRICT COUNCIL

and



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THIS DEED IS MADE ON THE 2nd DAY OF March 2022 3

Parties

(1) **DOVER DISTRICT COUNCIL** of White Cliffs Business Park, Whitfield, Dover, Kent (the **Council**);

(2) [REDACTED]

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 Owner is the freehold owner of the Property free from encumbrances.
- (C) The Planning Application has been made on behalf of the Owner for permission to carry out the Development.
- (D) The Council having regard to the provisions of the Local Plan and to all other material considerations resolved at its Planning Committee meeting of 14 July 2022 that Planning Permission should be granted for the Development subject to the prior completion of this Deed.

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this Deed:

1.1 Definitions:

Base Rate means the higher of 4% and the base rate from time to time of Barclays Bank plc.

Commencement of Development means 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 means the date Development Commences.

Default Interest Rate means 4% per annum above the Base Rate.

Development means the development of the Property authorised by the Planning Permission.

Index Linked means increased in accordance with the following formula:

Amount payable = the payment specified in this Deed x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date the payment is due.

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

Plan means the plan attached as Appendix A.

Planning Application means the application for full planning permission registered by the Council on 9th December 2020 under reference number DOV/20/01482.

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

Property means the land between 82 and 86 Wellington Parade, Walmer shown edged red on the Plan and registered at HM Land Registry with absolute title under title number K587462.

TCPA 1990 means Town and Country Planning Act 1990.

VAT means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

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 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council 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** faxes and e-mail.
- 1.11 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.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 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.
- 1.15 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.

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 section 2 of the Local Government Act 2000 and any other enabling powers.

2.2 The covenants, restrictions and obligations contained in 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 The covenants, restrictions and obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. Conditionality

With the exception of clause 2, clause 3, clause 7, clause 10, clause 11, clause 13, clause 16, clause 17, clause 19, clause 20, clause 21, clause 22 and clause 24 (which take effect immediately), this Deed is conditional on the grant and issue of the Planning Permission.

4. Covenants to the Council

4.1 The Owner covenants with the Council to:

4.1.1 observe and perform the covenants, restrictions and obligations contained in Schedule 1.

4.1.2 give at least 10 Working Days written notice to the Council of the intended Commencement Date.

5. Covenants by the Council

The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2.

6. Indexation

6.1 All financial contributions payable to the Council shall be Index Linked.

6.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

7. Section 73 Permissions

Unless otherwise agreed between the Parties, if a Section 73 Permission is granted by the Council in relation to the Development, then with effect from the date that each such Section 73 Permission is granted:

- 7.1 the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent Section 73 Permissions and the Site itself without any further act by the Parties;
- 7.2 the definitions of Development, Planning Application and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the 1990 Act, the Section 73 Permission granted pursuant to any such application and the development permitted by such Section 73 Permission

PROVIDED THAT:

- (a) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the 1990 Act and in particular shall not prevent the Council from requiring a variation to or modification of this Deed as a pre-condition of the grant of any Section 73 Permission; and
- (b) to the extent that any of the obligations in this Deed have already been discharged at the date that any Section 73 Permission is granted they shall remain discharged for the purposes of the Section 73 Permission.

8. Release

No person shall be liable for any breach of a covenant, restriction or obligation 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.

9. Determination of deed

9.1 The obligations in this Deed (with the exception of clause 11) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- 9.1.1 expires;
- 9.1.2 is varied or revoked other than at the request of the Owner; or
- 9.1.3 is quashed following a successful legal challenge.

10. Local land charge

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

11. Council's costs

11.1 The Owner shall pay to the Council on or before the date of this Deed:

11.1.1 the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed.

11.1.2 the sum of £236 as a contribution towards the Council's costs of monitoring the implementation of this Deed.

12. Interest on late payment

If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that 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.

13. Ownership

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

14. Reasonableness

Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed.

15. Cancellation of entries

15.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

15.2 Following the performance and full satisfaction of all the terms of this agreement or if this Deed is determined pursuant to clause 9 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this Deed.

16. Disputes

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

16.1.1 the tribunal shall consist of one arbitrator appointed jointly by the parties;

16.1.2 in default of the parties' agreement as to 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;

16.1.3 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

16.1.4 the seat of the arbitration shall be London.

17. No fetter of discretion

Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

18. Waiver

No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Future Permissions

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

20. Agreements and Declarations

20.1 The parties agree that:

20.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and

20.1.2 nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

21. Notices

21.1 Any notice or other communication to be given under this Deed must be in writing and must be:

21.1.1 delivered by hand; or

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

21.2 Any notice or other communication to be given under this Deed must be sent to the relevant party as follows:

21.2.1 to the Council at White Cliffs Business Park, Whitfield, Dover, Kent marked for the attention of Head Of Planning;

21.2.2 to the Owner at 34 Bradbourne Rise, Beckenham BR3 6SG marked for the attention of the owner.

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

21.3 Any notice or other communication given in accordance with clause 21.1 and clause 21.2 will be deemed to have been received:

21.3.1 if delivered by hand, on signature of a delivery receipt [or at the time the notice or document 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; or

21.3.2 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.

21.4 A notice [or other communication] given under this Deed shall not be validly given if sent by e-mail.

21.5 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.

22. 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.

23. Value added tax

23.1 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this Deed is exclusive of VAT (if any).

23.2 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

24. 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.

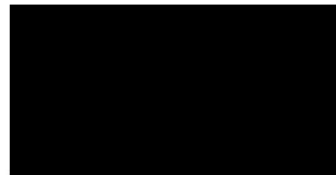
This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The common seal of **DOVER DISTRICT COUNCIL** was affixed to this document in the presence of:

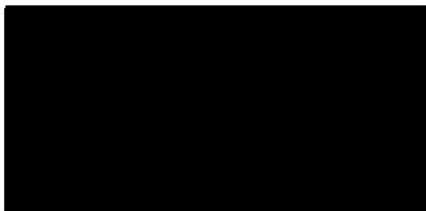


1213 76.

Authorised signatory



[signature]

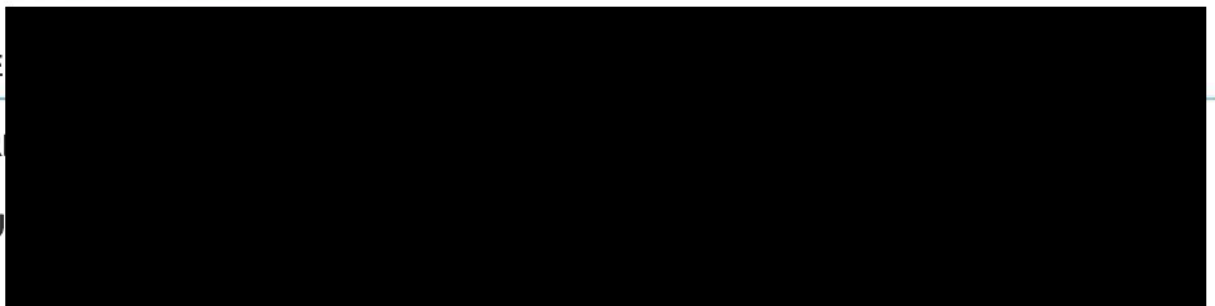


SIGNATURE OF WITNESS

NAME

ADDR

OCCU



SCHEDULE 1 - Covenants to the Council

1. Wildlife Contribution

- 1.1 On or before the Commencement Date to pay to the Council the sum of £20,000 (the Wildlife Contribution) towards the cost of improved management of the Kingsdown and Walmer Beach Local Wildlife Site ("LWS") within which the property is situated including revisions to the LWS Management Plan and on site management works comprising:

1.1.1 A contribution to management plan review for whole LWS

1.1.2 Annual surveys for Bright Wave and Sussex Emerald moths

1.1.3 LWS site management costs

including costs incurred in:

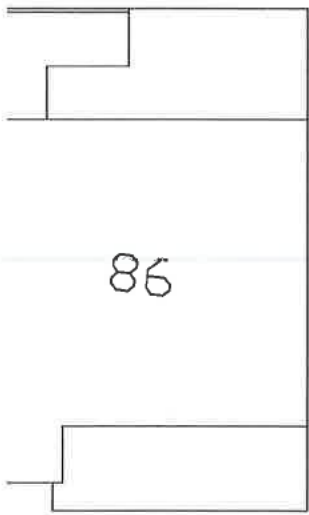
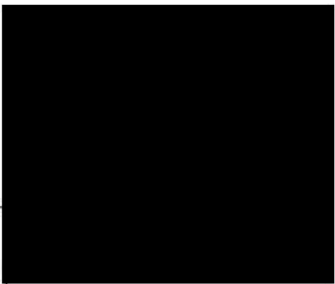
removal/treatment of invasive species, scrub clearance and management, removal and monitoring of fly-tipping, collection and scattering of seed as appropriate.

SCHEDULE 2- Covenants by the Council

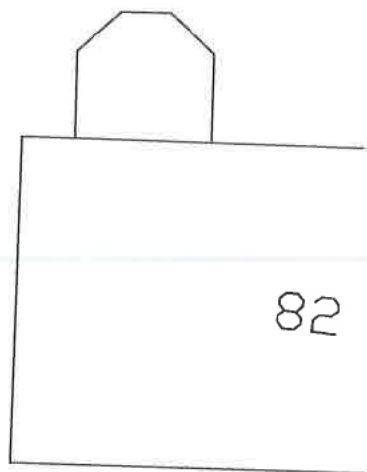
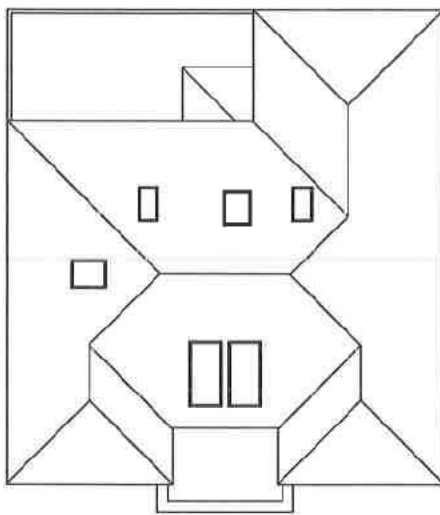
1. Wildlife Contribution

- 1.1 To pay the Wildlife Contribution into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable.
- 1.2 Not to use any part of the Wildlife Contribution other than for the purposes for which it was paid (whether by the Council or another party).
- 1.3 Upon request from the Owner to provide a detailed account of how the Wildlife Contribution has been expended
- 1.4 In the event that the Wildlife Contribution has not been spent by the Council within 5 years following the date of receipt of the Contribution the Council shall refund to the Owner any part of the Wildlife Contribution which has not been spent or committed for expenditure, together with any accrued interest on the unspent part of the Wildlife Contribution.

APPENDIX A- Plan



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WELLINGTON PARADE



SCALE 1:200

KINGSDOWN BEACH