

DATED 20252026

NORTH HERTFORDSHIRE DISTRICT COUNCIL

and

and

HAMISH BORNO

and

ZAHRA TRUDI AKKERHUYS

DEED

Under Section 106 of the Town & Country Planning Act 1990
Relating to Land ~~To The Rear Of Banyers Hotellying to the south west of~~ King James Way
Royston Hertfordshire ~~SG8-7BZ~~

THIS DEED is made the day of 20252026

BETWEEN:

- 1 **NORTH HERTFORDSHIRE DISTRICT COUNCIL** of Council Offices Gernon Road
Letchworth Garden City Hertfordshire SG6 3JF (the "**Council**") and
 - 2 **HAMISH BORNO** of White Cottage, Church Street, Great Chesterford, Saffron
Walden CB10 1NP and **ZAHRA TRUDI AKKERHUYS** of 71 Percy Street, Oxford
OX4 3AD (**the "Owner"**)
- together "The Parties".

RECITALS

- A The Council is the local planning ~~authorities~~authority for the Land for the
purposes of the Act.
- B The Council is a principal council for the purposes of the Local Government Act
1972.
- C The Owner is the registered freehold proprietor of the Land registered at HM Land
Registry under Title Numbers HD507711 free from encumbrances that would
prevent the Owner from entering into this Deed.
- D The Parties hereto have agreed to enter into this Deed to make provision for
regulating the Development and securing the matters hereinafter referred to
which are required in order to enable the Development to proceed pursuant to the
grant of Planning Permission.

OPERATIVE PROVISIONS:

1. DEFINITIONS

- 1.1 In this Deed the following expressions shall have the following meanings unless inconsistent with the text:

"Act"

means the Town and Country Planning Act 1990 as amended;

"Application"

means the application for full planning permission for the Development submitted to the Council by the Owner with the application plans and other materials and allocated reference number 25/00104/FP

"BCIS Index"

means the Building Cost Information Service All-in Tender Price Index published monthly

"Commencement"

means the carrying out by any person (which for the avoidance of doubt may or may not be a party to this Deed or their agents or representatives) of a material operation comprised in the Development within the meaning of Section 56 of the Act save that for the purposes of this Deed only "material operation" shall not include:

- a. site clearance;
- b. demolition of existing buildings;
- c. archaeological investigation;
- d. the assessment of contamination;
- e. remedial action in respect of any contamination;
- f. diversion and laying of services;
- g. the erection of fencing or other means of enclosure for site security;

- h. the display of advertisements;
- i. any off-site highways works

and the term Commence and Commences shall be construed accordingly;

"Contributions"

means any financial contribution payable by the Owner pursuant to this Deed to the Council

"Development"

means the residential development to provide 9 flats with associated vehicular parking and access via existing dropped kerb from King James Way with ancillary bike and refuse store authorised by the Planning Permission;

"Dwelling"

means an individual residential unit permitted as part of the Development and "Dwellings" shall be construed accordingly;

"Index Linked"

means that for those Contributions listed in the table at Annex 1 to be index linked by reference to the index specified in Annex 1 against such Contribution as published by the relevant organisation from time to time from a base figure as specified in Annex 1 against such Contribution to the finalised figure applicable to the quarter in which the Contribution is paid in accordance with clause 11;

"Interest"

means interest at four percentage points above the base lending rate of Lloyds Bank from time to time;

"Land"

the Land ~~to the rear of Banyers Hotel, lying to the south west of~~ King James Way, Royston, Hertfordshire ~~SG8 7BZ~~ which for identification purposes only is shown edged red on the Plan;

"Monitoring Fee"

means the sum of £750.00 (seven hundred and fifty pounds) (Index Linked) in consideration of the Council's monitoring of compliance with this Deed;

"Plan"

means the plan attached to this Deed and labelled "Site Location Plan";

"Planning Permission"

means the planning permission to be granted pursuant to the Application;

"SPONS Index"

means the index linked by reference to the price adjustment formula for construction contracts in the monthly bulletin of indices published by the Building Cost Information Service (BCIS) as collated into a single index known as the Price Adjustment Formulae Indices (Civil Engineering) Series 2 which shall apply to the Sustainable Transport Contribution;

"Sustainable Transport Contribution"

means the sum of £61,434.00 (sixty one thousand four hundred and thirty-four pounds) (Index Linked) which shall be applied towards active travel schemes around Melbourn Road, Royston;

"Therfield Health Mitigation Strategy Contribution"

means a contribution of £10,710.00 (ten thousand seven hundred and ten pounds) (Index Linked) towards Therfield Heath visitor mitigation strategy;

"Working Day"

means any day other than a Saturday or a Sunday or a Statutory or Public Holiday and "Working Days" shall be construed accordingly;

2. **INTERPRETATION**

- 2.1 Words of the masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice versa.
- 2.2 A reference to any party means a party to this Deed and in the case of the Owner shall include its successors in title and assigns and any persons deriving title through or under them and in the cases of the Council shall include successors to their respective functions.
- 2.3 Where a party includes more than one person any obligations of that party shall be joint and several.
- 2.4 A reference to any statute or any section of a statute includes any statutory re-enactment or modification.
- 2.5 References to clauses, plans, annexes and schedules are references to clauses, plans, annexes and schedules to this Deed.
- 2.6 Clause headings shall not form part of or affect construction or interpretation of this Deed.
- 2.7 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.8 Where a party is required to give consent or approval by any specific provision of this Deed such consent or approval shall not be unreasonably withheld or delayed; and
- 2.9 Any covenant by the Owner not to do any act or thing includes a covenant not to willingly and knowingly permit, allow or suffer the doing of that act or thing.

3. **STATUTORY PROVISIONS AND COVENANTS**

- 3.1 This Deed and the covenants within it are made pursuant to section 106 of the Act. To the extent that they 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 against the Owner and each of their successors in title and assigns to each and every part of the Land

and any person deriving title to each and every part of the Land through or under the Owner.

- 3.2 To the extent that any of the obligations in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers.
- 3.3 The Owner enters into the obligations for itself and its successors in title with the Council to the intent that the obligations in this Deed 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 Land or any part thereof PROVIDED THAT

3.3.1 the provisions contained in this Deed shall not be binding against any individual owner or occupier or any mortgagee of any individual owner or occupier of a Dwelling comprised within the Development;

3.3.2 the obligations and restrictions in this Deed shall not be enforceable against a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker or in respect of any easements relating to cables, pipes or other service media running under the Land nor enforceable against any highway authority which may be responsible for any public highway maintainable at the public expense.

4. **CONDITIONALITY**

4.1 This Deed is conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development;

SAVE THAT the provisions of clauses 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 shall come into effect immediately upon completion of this Deed.

5. **PLANNING OBLIGATIONS**

- 5.1 The Owner covenants with the Council to observe the restrictions and to perform the obligations and activities specified in Schedule One to this Deed.
- 5.2 The Owner covenants with the Council to give notice to the Council at least 5 Working Days prior written notice of the Commencement Date.
- 5.3 The Council covenants with the Owner to perform the obligations or activities specified in Schedule Two to this Deed.

6. **EXERCISE OF THE POWERS OF THE COUNCIL**

Nothing in this Deed whether express or implied shall prejudice or affect the rights discretion powers duties and obligations of the Council under any statute, bye-law, statutory instrument, order or regulation in the exercise of its functions as local planning authority.

7. **WAIVER**

No waiver whether expressed or implied by the Council of any breach or default by the Owner in performing or observing any of the covenants in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing or from acting upon any subsequent breach or default of any of the covenants.

8. **CONSENTS**

The Owner warrants and confirms that it is the freehold owner of the Land with full power to enter into this Deed.

9. **SUCCESSORS IN TITLE**

No Person shall be liable for breach of any covenants or obligations in this Deed occurring after the date on which they have parted with their entire interest in the Land PROVIDED THAT they will remain liable for any breach occurring before that date. Neither the reservation of rights nor the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause.

10. **PLANNING PERMISSION**

This Deed shall cease to have effect if the Planning Permission is quashed, revoked, expires, is modified by any statutory procedure without the consent of the Owner or is otherwise withdrawn.

11. **EXPENDITURE, INTEREST AND INDEXATION**

- 11.1 Where any sum in Schedule One as set out in Annex 1 is required to be Index Linked by reference to the **BCIS Index** figure as set out in Annex 1 to the finalised figure applicable to the quarter in which the contribution is paid and that sum payable shall be increased in accordance with any increase in the BCIS Index by the application of the formula:

$A = B \times (C \div D)$ where:-

A is the total amount to be paid;

B is the principal sum stated in this Deed;

C is the BCIS Index for the date upon which the interim payment described below is actually paid; and,

D is the BCIS figure applicable to the quarter as set out in Annex 1

where $C \div D =$ is equal to or greater than 1

- 11.2 Where any sum in Schedule One as set out in Annex 1 is expressed to be Index Linked by reference to **RPI Index** that sum shall be increased by application of the formula:

$A = B \times (C \div D)$ where:-

A is the total amount to be paid;

B is the principal sum stated in this Deed;

C is the Office of National Statistics Index of Monthly Retail Prices Information figure for the date upon which the interim payment described below is actually paid;

D is the Office of National Statistics Index of Monthly Retail Prices Information figure applicable to the quarter as set out in Annex 1; and,

where $C \div D =$ is equal to or greater than 1

- 11.3 It is further agreed by the Parties that if prior to the receipt of the Contributions by the Council incurs any expenditure in providing additional facilities the need for which arises from or in anticipation of the Development in relation to the purpose for which such Contribution is paid then the Council may immediately following receipt of such Contributions apply such expenditure incurred; and
- 11.4 If any payment due to the Council under this Deed by the Owner is paid late, Interest shall be added to such payment on a daily basis from the due date to the date of payment.

12. **COSTS & MONITORING FEE**

- 12.1 The Owner shall pay the Council's reasonable legal costs plus disbursements incurred in connection with the preparation negotiation and completion of this Deed immediately upon completion.
- 12.2 The Owner shall pay to the Council the Monitoring Fee before Commencement of the Development

13. **REGISTRATION OF THIS DEED**

This Deed shall be registered as a local land charge following completion by the Council as local planning authority.

14. **THIRD PARTIES**

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 its terms and provisions on any person who is not a Party or a successor in title to a Party.

15. **NOTICE**

- 15.1 The Owner shall give the Council prior written notice of
- 15.1.1 the Commencement of the Development;

- 15.1.2 any change of any interests in the Land occurring before all of the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of Land purchased by reference to a plan PROVIDED ALWAYS that this shall not apply to disposals of individual Dwellings nor to disposals to statutory undertakers.

16. SERVICE OF NOTICES AND DOCUMENTS

- 16.1 Any notice required or authorised to be given by any Party shall be in writing and shall contain the Application reference number [25/00104/FP 24/01444/FP](#) and reference to the date of this Deed and shall be sufficiently given if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:-

16.1.1 The Council - Development and Conservation Manager North Hertfordshire District Council, Council Offices Gernon Road Letchworth Garden City Hertfordshire SG6 3JF

16.1.2 The Owner - at the address stated in this Deed

17. DETERMINATION OF DISPUTES

- 17.1 In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions shall apply:

17.1.1 The Parties shall use their reasonable endeavours to resolve the dispute by agreement;

17.1.2 If agreement cannot be reached the matter in dispute shall be referred, to and settled by some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert on the application

of either party after giving notice in writing to the other party to this Deed;

- 17.1.3 The person to be appointed pursuant to clause 17.2 shall be a person having not less than ten years or more post qualification experience of projects comprising works of the scale and nature of the Development;
- 17.1.4 Reference to the expert shall be on terms that determination shall take place within 28 Working Days of the expert accepting his instructions;
- 17.1.5 The expert shall have the power to award costs of the determination in favour of either party to the dispute at the expense of the other party and failing such determination such costs shall be borne by the Parties in equal shares;
- 17.1.6 The expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision;
- 17.1.7 The findings of the expert shall (other than in the case of a manifest material error or fraud) be final and binding on the Parties to the dispute;

18. **MISCELLANEOUS**

- 18.1 Without prejudice to the Council's statutory rights the Owner hereby grants to the Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter any part of the Land to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed provided that the Council gives the Owner two Working Days notice and complies with any reasonable on site health and safety requirements of the Owner during any such inspection.
- 18.2 At the written request of the Owner SUBJECT TO being not more than six times in any calendar year at any time after any planning obligation or all of the planning obligations have been fully and satisfactorily discharged/performed, the Council may issue the Owner with written confirmation of the discharge of the

relevant planning obligations and/or the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

- 18.3 Nothing in this Deed shall be construed as affecting prohibiting or limiting any rights to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted whether before or after the date of this Deed by the Council or the Secretary of State or any other competent authority
- 18.4 Where any approval, agreement, consent, confirmation or expression of satisfaction is required under the terms of this Deed the request for it shall be made in writing and where a request is made the approval, agreement, consent, confirmation or expression of satisfaction shall not be unreasonably withheld or delayed.
- 18.5 Nothing in this Deed constitutes a planning permission or an obligation to grant planning permission.
- 18.6 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.
- 18.7 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly paid.
- 18.8 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.
- 18.9 No compensation shall be payable by the Council as a result of the obligations contained in this Deed.

19. **PLANNING CONSENTS GRANTED PURSUANT TO SECTION 73 OF THE ACT**

- 19.1 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the Act (as amended) and unless otherwise agreed between the Council, with effect from the date that the any new planning permission is granted pursuant to Section 73 of the Act (as amended)

- 19.2 The obligations in this Deed shall (in addition to continuing to bind the Land in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Land granted pursuant to Section 73 of the Act and the Land itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the Act.
- 19.3 The definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s).
- 19.4 This Deed shall be endorsed with the following words in respect of any future Section 73 application:

"The obligations in this Deed relate to and bind the Land in respect of which a new planning permission referenced [] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act or of the Council the appropriate nature and/or quantum of Section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the Act whether by way of a new deed or supplemental deed pursuant to Section 106A of the Act

20. **SEVERENCESEVERANCE**

- 20.1 Any provision of this Deed which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Deed.

21. **JURISDICTION**

- 21.1 This Deed is to be governed by and interpreted in accordance with the laws of England.
- 21.2 The Courts of England are to have jurisdiction in relation to any disputes between the Parties arising out of or related to this Deed. This clause operates for the benefit of all of the Parties and the Council who retain the right to sue

and enforce any judgment against the Owner in the courts of any competent jurisdiction.

22. **EXECUTION**

- 22.1 The Parties have executed this Deed as a deed and it is delivered on the date set out above.

23. **DELIVERY**

- 23.1 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.

SCHEDULE ONE

OWNER'S COVENANTS TO THE COUNCIL

1. Sustainable Transport Contribution

The Owner covenants with the Council as follows:

- 1.1 to pay the Sustainable Transport Contribution to the Council prior to Commencement of Development; and
- 1.2 not to cause or permit Commencement until the Sustainable Transport Contribution has been paid to the Council.

The Owner covenants with the Council as follows:

- 2.1 to pay the Therfield Heath Mitigation Strategy Contribution to the Council prior to Commencement of Development; and
- 2.2 not to cause or permit Commencement until the Therfield Heath Mitigation Strategy Contribution ~~Sustainable Transport Contribution~~ has been paid to the Council.

SCHEDULE TWO

COUNCIL'S COVENANTS

1. The Council covenants with the Owner that it will [transfer the Sustainable Transport Contribution to Hertfordshire County Council within 5 Working Days](#).
3. The Council covenants with the Owner that it will apply the [Therfield Heath Mitigation Strategy Contribution Contributions](#) towards the [Therfield Heath visitor mitigation strategy](#). ~~provision of the relevant facilities as specified in the definition of each such Contribution.~~

Commented [SL1]: Does the definition need to be updated as it does not specify the relevant facilities?

Commented [RM2R1]: Updated in accordance with the definition

Annex 1

Contribution	Amount	Index to be applied	Date of Application
Monitoring Fee	£750.00	RPI Index	[]
-Sustainable Transport Contribution	£61,434.00	SPONS Index	January 2019
Therfield Heath Mitigation Strategy Contribution	£10,710.00	{-} N/A	Q1-2025

EXECUTED and DELIVERED as a **DEED** on the date of this document

EXECUTED under the Common Seal of
NORTH HERTFORDSHIRE
DISTRICT COUNCIL

in the presence of:

Duly Authorised Officer

EXECUTED as a **DEED** by
HAMISH BORNO In the presence of:

Witness

Witness Name

Witness Address

EXECUTED as a **DEED** by
ZAHRA TRUDI AKKERHUYS

In the presence of:

Witness

Witness Name

Witness Address