

SCDC Planning Ref Numbers:
S/2476/03/O, S/1424/08/RM, S/1624/08/RM, and S/1688/08/RM

DATED _____ 2009

BDW TRADING LIMITED

and

THE VARRIER-JONES FOUNDATION

In favour of

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

UNILATERAL UNDERTAKING

Pursuant to section 106 Town and Country Planning Act 1990 (as amended)

Development at land South of Church Lane and West of Ermine Street South
Papworth Everard, Cambridgeshire

GAD 27-01-09

THIS DEED is made the day of 2009

By:-

BDW TRADING LIMITED (Company Registration no. 03018173) of registered office address at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville LE67 1UF ("the Owner")

And

THE VARRIER-JONES FOUNDATION (Company Registration no. 3377965) of registered office address at Upper Pendrill Court, Ermine Street North, Papworth Everard, Cambridge CB23 8UY ("the Chargee")

In favour of:

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL of South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA ("the Council")

W H E R E A S :-

- (1) The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated
- (2) The Owner is the owner in fee simple of the land described in the First Schedule hereto ("the Property") free from incumbrances
- (3) The Chargee has the benefit of two registered charges dated 18 November 2005 and 18 June 2008 respectively that affect the Property
- (4) For the purposes of Section 106 of the Town and Country Planning Act 1990 ("the Act") (as amended by the Planning and Compensation Act 1991)
 - (a) the obligations on the part of the Owner hereinafter contained in Clause 5 and the Second Schedule hereto ("the Obligations") are planning obligations
 - (b) the land the subject of the Obligations is the Property
 - (c) the Council is the local planning authority by whom the Obligations are enforceable as hereinafter provided
- (5) Outline planning permission has been granted by the Council for the development of the Property for a scheme described as comprising "Residential Development including Public Open Space, Vehicular Accesses together with Demolition of Nos 18, 20, 52 and 54 Ermine Street South, and 1 & 3 St John's Lane" subject to those conditions set out in a Decision Notice under reference S/2476/03/O and bearing date 30 September 2005 ("the Outline Consent")
- (6) In accordance with the Outline Consent the Council has approved details of reserved matters for the "Siting, Design and External Appearance of 365

Dwellings and the Landscaping of the Site” subject to those additional conditions set out in a Decision Notice under reference S/0093/07/RM and bearing date 6 December 2007 (“the Approval of Reserved Matters”)

- (7) Three further Applications respectively registered 23 September 2008, 12 August 2008, and 19 September 2008 have been made to the Council for approval of reserved matters in accordance with the Outline Consent in respect of those parts of the Property to which they relate and have each been respectively allocated Council references S/1688/08/RM, S/1424/08/RM, and S/1624/08/RM (“the Applications” which expression shall include any amendments thereto accepted by the Council and any renewals thereof whether affecting each or any of such applications)
- (8) It appears to the Owner that additional conditions 1, 9, 15, 24, 27, and 31 to which the Approval of Reserved Matters is subject are matters equally relevant to the Applications for the same reasons as stated but more appropriately expressed as planning obligations
- (9) The Owner has accordingly entered into this Deed to secure the Obligations in favour of the Council should the Council be satisfied that the details of reserved matters as disclosed by the Applications (“the Reserved Matters”) are such as may be approved by the Council under the Act
- (10) The Chargee has entered into this Deed to consent to the creation of the Obligations

NOW THIS DEED WITNESSETH as follows:-

1. This Deed is made in pursuance of Section 106 of the Act
2. This Deed shall be registrable as a local land charge
3. This Deed shall take effect at the date hereof except that Clause 5 (insofar only as it shall relate to Clauses (i), (ii), (iii) and (iv) of Schedule 2) and those Clauses (i), (ii), (iii) and (iv) of Schedule 2 shall take effect only upon the Commencement of Development in accordance with the Outline Consent and ‘Commencement of Development’ for the purposes of this Deed shall have the meaning in that behalf provided at Section 56 of the Act other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, 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, erection of any temporary means of enclosure, the temporary display of site notices or advertisements;
4. The Owner shall not be liable for a breach of the Obligations or other covenants on the part of the Owner herein contained in respect of any period during which it no longer has an interest in that part of the Property on which the said breach

occurs but, subject thereto, the Obligations and covenants shall be enforceable by the Council against the Owner and any person deriving title from the Owner other than as aforesaid

5. The Owner hereby covenants with the Council that the Owner shall observe and perform (and that the Property shall be subject to) the Obligations specified in the Second Schedule hereto ("the Obligations")
6. The Owner agrees to pay the Council's reasonable costs in connection with the preparation of this Deed
7. The following expressions shall have the meanings hereby respectively assigned to them:-
 - (a) "the Council" and "the Owner" shall include their respective successors in function and title (or both) as the case may dictate
 - (b) "the Development" means the operational development and user of the Property permitted for the purposes of Part III of the Act by combined effect of the Outline Consent and any approvals issued by the Council in respect of the Reserved Matters
 - (c) "Dwelling(s)" means any residential unit approved by the Council pursuant to the Applications built on the Property as part of the Development;
 - (d) "Haul Road" means [????????????????]
 - (e) "Occupation" shall mean residential occupation of any specified Dwelling but excludes occupation for the purposes of construction internal and external refurbishment decoration fitting-out marketing or any other activity preparatory to such residential occupation and the words "Occupy" and "Occupied" shall be construed accordingly;
8. Save where expressly defined in this Deed the words phrases and abbreviations set out within the Obligations shall have meanings and be construed in manner consistent with their meaning and construal for the purposes of the relevant conditions of the Approval of Reserved Matters
9. The provisions contained herein and set out in the Second Schedule hereto shall remain in full force notwithstanding that similar conditions attached to any planning permission relating to the Property shall or may be less onerous in their Application or effect
10. Wherever any party to this Deed (whether as signatory or not) is more than one person and where more than one such party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually
11. This Deed shall terminate and cease to have effect if the planning permission granted pursuant to the Application expires before Commencement of Development or if (other than at the request of the Owners) such planning permission is quashed

or revoked or (without the consent of the Owner) modified in a material way under Section 97 of the 1990 Act

12. The Chargee is a party to this deed to give its consent to the obligations being entered into by the Owner and confirms that its interests in the Property shall be bound by the Obligations as if the Obligations shall have been in existence at the time its registered charges were created

IN WITNESS whereof the Owner has executed this as a Deed the day and year first before written

FIRST SCHEDULE: The Property

ALL THAT land and property situate and being land on the west side of Ermine Street South, Papworth Everard, Cambridgeshire, as is comprised within the registers of Title Number CB302520 and shown edged with a bold black line on the plan annexed hereto

SECOND SCHEDULE: The Obligations

- (i) The Haul Road and the means of access for all construction vehicles shall be located at and via the proposed Southern Entrance at Stirling Way and not at or via 52/54 Ermine Street South.
(Reason – To minimise disturbance, attendant noise and pollution to existing residents and to observe the weight limit north of the Southern Entrance at Stirling Way.)
- (ii) A scheme for the provision of a footpath and wheelchair/cycle link from the Development to Church Lane and School Walk in the northwest of the site shall be submitted to and agreed in writing by the Council. Such agreed footpath and wheelchair/cycle link shall be constructed and made available for use prior to Occupation of the first Dwelling in the northern half of the site.
(Reason – To encourage residents to use this direct, safe, pedestrian route to the village primary school and to minimise the use of cars for this purpose.)
- (iii) The proposed St Peters Recreation Area and associated facilities shall be completed prior to Occupation of 100 Dwellings.
(Reason – To ensure that the delivery of the amenity and formal Public Open Space is provided at an appropriate time in the development timetable.)
- (iv) Not to permit Occupation of the Dwellings comprising plots [????????] within the Development unless the LAPs, Equipped Play areas and (where applicable) Kick-about Area in closest proximity to such plots shall have first been implemented in accordance with the relevant approved drawings.
(Reason – To ensure adequate play provision throughout the scheme.)

(v) Within 12 months of approval of the Reserved Matters relating to that part of the Property upon which the facility is to be provided the design and timetable for the Youth Shelter shall be submitted to and agreed in writing by the Council. Such agreed Youth Shelter shall be constructed in accordance with the approved plans and timetable.

(Reason – To ensure the details of the development are satisfactory.)

(vi) Prior to Commencement of Development the Council and the Papworth Everard Parish Council shall be provided with a plan showing the boundaries of the curtilage of each Dwelling as is to be conveyed together with the boundaries of those amenity landscaping and Public Open Space areas as are to be adopted.

(Reason – To ensure there are no pockets of unallocated land.)

THE COMMON SEAL of)
BDW TRADING LIMITED)
was hereunto affixed)
in the presence of:-)

Director

Director/Secretary

THE COMMON SEAL of)
THE VARRIER-JONES)
FOUNDATION)
was hereunto affixed)
in the presence of:-)

Director

Director/Secretary