Gedney, Oliver

From: Fidler, Richard
Sent: 02 December 2020 15:42
To: _planningadvice
Subject: FW: H09-0902-20: Deed of Variation relating to land at Balmoral Way, Holbeach
Attachments: 20201117 - Completed DOV - Balmoral Way.pdf

3106

Sent from Mail for Windows 10

Richard Fidler | Development Manager | **South Holland District Council**
DDI: 01775 764428
www.sholland.gov.uk



From: Davies, Lisa
Sent: 23 November 2020 14:08
To: Isus, Joan
Cc: Fidler, Richard; Norman, Phil; Wilson, Catherine; Doherty, Angela; Seaton, Amanda; Bunn, Dawn (PSPS)
Subject: H09-0902-20: Deed of Variation relating to land at Balmoral Way, Holbeach

Hi Joan,

Please find attached a copy of the above Deed of Variation, which was completed on 17 November 2020. The decision notice can now be issued.

Catherine – Copy attached for adding to the Local Land Charges Register

Angela – For information as this amends the "chargee" definition and the Mortgagee Exemption Clause.

Amanda/Dawn – For information as there are no amendments to the financial contributions.

Kind regards
Lisa

Lisa Davies | Senior Planning Lawyer | **South Holland District Council**
DDI: 01775 764511
Mobile: 07747 631415
Email: ldavies@sholland.gov.uk

www.sholland.gov.uk

Council Offices | Priory Road |Spalding | PE11 2XE

My working week is Monday and Wednesday 8:30 – 16:45; Tuesday 7:30 – 15:00 and Thursday 8:30 – 16:30

https://www.sholland.gov.uk/COVID19



Dated 17 November 2020

(1) South Holland District Council

and

(2) Lincolnshire County Council

and

(3) Ashley King (Developments) Limited

and

(4) HBSC UK BANK PLC

DEED OF VARIATION
Sections 106 and 106A of the Town and Country Planning Act 1990

Relating to a Section 106 Agreement and Deed of Variation at Balmoral Way, Holbeach, Spalding

South Holland District Council
Council Offices
Priory Road
Spalding
PE11 2XE

SHDC Reference: LD/H09-0902-20

Date 17 November 2020

BETWEEN

(1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council");

(2) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, LN1 1YS ("the County Council");

(3) **ASHLEY KING (DEVELOPMENTS) LIMITED** (Company Registration Number 04242280) whose registered office is at 1 Goodison Road, Lincs Gateway Business Park, Spalding, Lincolnshire, England, PE12 6FY ("the Owner"); and

(4) **HSBC UK BANK PLC** (Co No 9928412) whose registered office is at 1 Centenary Square, Birmingham B1 1HQ ("the Mortgagee")

INTRODUCTION

(A) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Site is situated.

(B) The County Council is the local education authority for the County of Lincolnshire within which the Site is situated.

(C) The Council and the County Council are local authorities for the purposes of the 1972 Act and the 2011 Act.

(D) The Owner is the freehold owner of the Site registered at HM Land Registry under Title Number LL131625.

(E) The Mortgagee is the registered proprietor of the charge dated 6 November 2019 referred to in entry number C7 of the charges register of Title Number LL131625 and has agreed to enter into this Deed to give its consent to the terms of this Deed.

(F) On 19 February 2018 the parties entered into the Original Agreement and on 18 November 2019 the parties entered into the First Deed of Variation

(G) Without prejudice to the terms and the other covenants contained in the Original Agreement (as varied by the First Deed of Variation) the parties have agreed to vary the terms of the Original Agreement (as varied by the First Deed of Variation) as set out in this Deed.

(H) This Deed is made under sections 106 and 106A of the 1990 Act and is supplemental to the Original Agreement (as varied by the First Deed of Variation).

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"First Deed of Variation"	means the agreement made under sections 106 and 106A of the 1990 Act relating to land at Balmoral Way, Holbeach, Lincolnshire dated 18 November 2019 between (1) the Council; (2) the County Council; and (3) the Owner
"Original Agreement"	means the agreement made under section 106 of the 1990 Act relating to land at Balmoral Way, Holbeach, Lincolnshire dated 19 February 2018 between (1) the Council; (2) the County Council; and (3) David Owen King and Ashley John King

2. CONSTRUCTION OF THIS DEED

2.1 Unless the context otherwise requires and save as herein varied all words and phrases defined in the Original Agreement (as varied by the First Deed of Variation) shall have the same meaning in this Deed.

2.2 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.

2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Site or any part thereof and in the case of the Council and/or County Council (as the case may be), successors to its functions.

3. LEGAL BASIS

3.1 This Deed is made pursuant to Sections 106 and 106A of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers with the intent that the covenants and obligations shall run with the Site.

3.2 This Deed and the obligations contained herein shall take effect immediately upon completion of this Deed

4. MORTGAGEE'S CONSENT

4.1 The Mortgagee acknowledges that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the Mortgagee over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed (and for the avoidance of doubt no liability under the Original Agreement or the First Deed of Variation) unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

5. VARIATIONS TO THE ORIGINAL AGREEMENT (AS VARIED BY THE FIRST DEED OF VARIATION)

5.1 The following definitions shall be added to the Original Agreement (as varied by the First Deed of Variation):

5.1.1 The definition of "Chargee" in Clause 1.1 to the Original Agreement (as varied by the First Deed of Variation) shall be deleted and replaced with the following:

"Chargee"	means a mortgagee or chargee (or any receiver (including an administrative receiver)) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Units

5.2 Clause 4.12 of the Original Agreement shall be deleted and replaced with the following:

"4.12 No person or party shall be bound by the terms of this Deed or liable for a breach of the restrictions and obligations contained in this Deed if it is:

4.12.1 a statutory undertaker which has an interest in any part of the Site for the purposes of its undertaking;

4.12.2 a mortgagee and/or chargee of the Site (or part of the Site as the case may be) unless such mortgagee and/or chargee has taken possession of the Site (or any part of the Site as the case may be) when it will then be bound by the obligations of the Owner as if it were a person deriving title from the Owner;

4.12.3 an individual purchaser, lessee, tenant or occupier of a Market Dwelling including their mortgagees, chargees or any administrator, receiver, administrative receiver, fixed charge receiver including any receiver appointed under the Law of Property Act 1925 or any person appointed under any security documentation by such mortgagee or chargee;

4.12.4 a Protected Tenant;

4.12.5 a tenant or owner-occupier of any of the Affordable Housing Units (including a mortgagee or chargee exercising a power of sale in relation to a Unit of Shared Ownership Housing);

4.12.6 (save in respect of PART C – AFFORDABLE HOUSING of the Third Schedule) a Registered Provider;

4.12.7 a Chargee which has first complied with Clause 8 of this Deed;

4.12.8 any person deriving title from anyone identified in Clauses 4.12.1 to 4.12.7"

5.3 Clause 8 of the Original Agreement shall be deleted in its entirety and replaced with the following wording:

The provisions in this Deed shall not be binding on a Chargee ***PROVIDED THAT*** *such Chargee shall first give written notice to the Council of its intention to dispose of any or all of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses* ***AND*** *if such disposal has not completed within the three (3) month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the restrictions in this Deed which provisions shall determine absolutely*

5.4 In all other respects the Original Agreement (as varied by the First Deed of Variation and this Deed) shall remain in full force and effect.

6. THE OWNER'S COVENANT

6.1 The Owner covenants to observe and perform the obligations on the part of the Owner contained in the Original Agreement as varied by the First Deed of Variation and this Deed and subject to the terms thereof.

7. LOCAL LAND CHARGE

7.1 This Deed shall be registerable as a local land charge by the Council.

8. COUNCIL'S COSTS

8.1 On completion of this Deed, the Owner shall pay to the Council their reasonable legal costs together with all disbursements that have been incurred in the negotiation and completion of this Deed.

9. COUNTY COUCIL'S COSTS

9.1 On completion of this Deed, the Owner shall pay to the County Council their reasonable legal costs together with all disbursements that have been incurred in the negotiation and completion of this Deed.

10. VAT

10.1 Any consideration given under this Deed shall be done in such a way that the VAT liability is borne by the Owner and not the Council.

11. THIRD PARTY RIGHTS

11.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

12. JURISDICTION

12.1 This Deed is governed by and interpreted in accordance with the laws of England.

13. EXECUTION AND DELIVERY

This Deed is executed as a deed by the parties and is delivered on the date first hereinbefore written

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

The **COMMON SEAL** of **SOUTH HOLLAND DISTRICT COUNCIL** was hereunto affixed in the presence of:-

13259

Authorised Signatory

The **COMMON SEAL** of **LINCOLNSHIRE COUNTY COUNCIL** was hereunto affixed in the presence of:-

Authorised Signatory

No. in Seal LE034341 Book .....

EXECUTED as a **DEED** by **ASHLEY KING (DEVELOPMENTS) LIMITED** acting by a Director in the presence of:

Witness Signature:

Name: Robyn Kendall

Address: 131 Willan Court Cowbit Spalding PE12 6GF

Occupation: Receptionist & Admin.

IN WITNESS WHEREOF this document which is intended to take effect as a Deed has been duly executed by a duly authorised Official of **HSBC UK Bank PLC** as Attorney of HSBC UK Bank plc on the date and year first above written **SIGNED AND DELIVERED** By Attorney of **HSBC UK BANK PLC:**

DAVID STUART PRICE

In the presence of

Witness (Signature): Paul Camill

Witness Full Name: PAUL CAMILL

Witness Address: CENTENARY PLAZA, 18 HOLLIDAY STREET, BIRMINGHAM, B1 1TB

Witness Occupation: LAWYER