

Dated

12 August.

2021

(1) South Holland District Council

and

(2) Deirdre Anne Pocklington

PLANNING OBLIGATION BY DEED
Section 106 of the Town and Country Planning Act 1990

**Relating to land adjoining 51 Seas End Road,
Moulton Chapel, Spalding**

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

SHDC Reference: LD/H13-0651-20

Date

12 August

2021

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **DEIRDRE ANNE POCKLINGTON** of No.1 Station Farm Cottages, Denton Road, Horton, Northampton, NN7 2BG ("the Owner");

INTRODUCTION

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.
- (B) The Owner is the freehold owner of the Land part of which is registered under Title Number LL382697.
- (C) Pocklington Farms of Station Farm, Denton Road, Horton, Northampton, NN7 2BG have via their agent applied to the Council for outline planning permission for the Land under reference H13-0651-20 for residential development for two (2) Dwellings.
- (D) The Council resolved on 3 March 2021 to grant outline Planning Permission for the Development in accordance with the Application subject to the Owner entering this Deed without which Planning Permission for this Development would be refused.
- (E) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- (F) The parties agree that the planning obligations contained in this Deed are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

NOW THIS DEED WITNESSES AS FOLLOWS:**1. DEFINITIONS**

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

"Act"	means the Town and Country Planning Act 1990 as amended
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"Application"	means the application for Planning Permission for the Development and allocated reference number H13-0651-20
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of • access, • site clearance, • demolition work, • archaeological investigations, • investigations for the purpose of assessing ground conditions, • remedial work in respect of any contamination or other adverse conditions, • the laying or diversion of services, • the erection of hoardings or other temporary means of enclosure, and • the temporary display of site notices or advertisements
"Commencement Notice"	means written notice to the Council of the intended date of Commencement of Development
"Development"	means the residential development of the Land for two (2) Dwellings, pursuant to the Planning Permission
"Donated Land"	means the existing Moulton Seas End War Memorial together with the grassed frontage parcel of land being a depth of 9 metres as shown edged blue on the Plan

	and for the avoidance of doubt excluding the private drive as shown on the Plan
"Dwelling"	means any unit of residential accommodation constructed pursuant to the Planning Permission
"Index"	means All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if such index no longer exists such other index as is agreed between the parties
"Interest"	means interest at the base rate of Lloyds Bank PLC plus 4%
"Land"	means the land as described in Schedule 1 against which this Deed may be enforced as shown edged red on the Plan
"Occupation" and "Occupied"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
"Parish Council"	means Moulton Parish Council
"Plan"	means the plan attached to this Deed being the location plan submitted with the Application
"Planning Permission"	means the planning permission to be granted by the Council for the Development pursuant to the Application which is subject to this Deed and attached in draft hereto at Schedule 2 or such other planning

	permissions for the Development granted pursuant to section 73 or 96A of the Act
"Working Days"	means any day other than a Saturday Sunday or public or bank holiday in England

2. CONSTRUCTION OF THIS DEED

- 2.1 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.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 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
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 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 Land or any part thereof and in the case of the Council, successors to its functions.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and Section 93 of the Local Government Act 2003 and all other enabling powers with the intent that the covenants and obligations shall run with the Land.

- 3.2 The covenants, restrictions and obligations imposed upon the Owner under this Deed are planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4. CONDITIONALITY

- 4.1 This Deed and the obligations contained herein are conditional upon:

- (a) the grant of Planning Permission and;
- (b) the Commencement of Development

SAVE FOR the provisions of Clauses 8.2, 8.4 and 10 (legal costs, local land charge and change of ownership clauses) and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5. THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in Schedule 3

6. THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in Schedule 4 .

7. NOTICES AND RECORD KEEPING

- 7.1 Any notices required to be served pursuant to this Deed shall be deemed to have been properly served if delivered by hand or sent by recorded or special delivery to the principal address or registered office (as appropriate) of the relevant party or other such other address as may be notified by one party to other from time to time.

- 7.2 The Owner shall serve the Commencement Notice upon the Council at least 20 Working Days prior to the Commencement of the Development.

8. MISCELLANEOUS

- 8.1 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, powers and duties of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of the functions as a local authority.

- 8.2 On completion of this Deed, the Owner shall pay to the Council their reasonable legal costs that have been incurred in the negotiation and completion of this Deed
- 8.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.4 This Deed shall be registerable as a local land charge by the Council.
- 8.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 8.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) modified by any statutory procedure or expires prior to the Commencement of Development.
- 8.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they shall have irrevocably parted with their entire interest in the Land or part of the Land but without prejudice to liability for any subsisting breach arising in relation to that part prior to parting with such interest.
- 8.9 This Deed shall not be enforceable against:
- 8.9.1 any party solely as a result of such party possessing an interest in the Land relating to subsoil of land which has been adopted by the Council or any other relevant public body as maintainable at public expense;
 - 8.9.2 statutory undertakers acquiring an interest in the Land for the purposes of their undertaking;
- 8.10 Representatives of the Council may enter upon the Land at any reasonable time upon reasonable prior written notice to ascertain whether the terms of this Deed are being or have been complied with.

- 8.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

9. WAIVER

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

10. CHANGE OF OWNERSHIP

- 10.1 The Owner agrees with the Council to give the Council written notice within 10 working days of any change in the ownership of any of its interest in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferees name and address together with details of the part of the Land disposed of.

11. INTEREST

- 11.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the actual date of payment.

12. VAT

- 12.1 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.

13. DISPUTE RESOLUTION

- 13.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed by agreement between the parties or in the absence of agreement as to the identity of the person by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute.

- 13.2 In the absence of agreement as to the appropriateness of the professional body then such question may be referred by any party to the president for the time being of the Royal Institution of Chartered Surveyors for him to determine the appropriate professional body.
- 13.3 Any person appointed pursuant to this clause shall act as an expert and his decision shall be final and binding on the parties in the absence of manifest error or fraud.
- 13.4 The expert's costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 13.5 Any expert shall be appointed subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than forty Working Days after appointment.
- 13.6 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten Working Days written submissions and supporting material and each party will be entitled to make a counter written submission on the other party's original submission within a further ten Working Days.

14. SECTION 73 APPLICATIONS

- 14.1 It is agreed between the parties that where planning permission is issued in relation to the Development pursuant to an application under section 73 of the Act this Deed shall continue to bind the Development and shall be in full force and effect subject to and in accordance with the provisions contained herein **AND PROVIDED THAT** in the event that upon receipt of a relevant application under section 73 of the Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligation.

15. JURISDICTION

- 15.1 This Deed is governed by and interpreted in accordance with the law of England.

16. 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.

SCHEDULE 1

DETAILS OF THE OWNERS'S TITLE, AND DESCRIPTION OF THE LAND

The Land is known as land adjoining 51 Seas End Road, Moulton Chapel, Spalding and falling within Title Number LL382697 shown edged red on the Plan.

X. A. Belmiston



Status

POCKLINGTON FARMS
POCKLINGTON, LINCOLN

1:200 SD19-045/7
JULY-20 B.GILHAM.



SCHEDULE 2
DRAFT PLANNING PERMISSION

Status Design
2 Edinburgh Walk
Holbeach
Spalding
Lincs
PE12 7AP

Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE

Admin 01775 764723
DC Officers 01775 761161
Facsimile 01775 762937

planningadvice@sholland.gov.uk
www.sholland.gov.uk

TOWN AND COUNTRY PLANNING ACT 1990

DRAFT APPROVAL

Reference: H13-0651-20

Date of Decision:

Applicant: Pocklington Farms
Station Farm
Denton Road
Horton
Nr Northampton
NN7 2BG

Location: The War Memorial Seas End Road Moulton Seas End Spalding

Description: Residential Development - 2 Dwellings

South Holland District Council hereby give notice that permission has been GRANTED (or equivalent) subject to the following condition(s):

- 1 Application for approval of reserved matters must be made not later than three years beginning with the date of this permission, and the development must be begun before the expiration of two years from the final approval of reserved matters or in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: As required by Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:
1:1250 Location Plan;
SD19-045/2;
Heritage Impact Assessment Study by Neville Hall dated December 2020;
Flood Risk Assessment by Ellingham Consulting Ltd (ref. ECL0293/Status design) dated August 2020.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 No development shall take place without the prior written approval of the Local Planning Authority of all details of the following matters:
- i) the layout, scale and external appearance of the building(s) (including a schedule of external materials to be used);
 - ii) the means of access to the site, including construction of the private roadway; and
 - iii) the landscaping of the site (including boundary treatment).

The development shall be carried out as approved.

Reason: To meet the requirements of Section 92 of the Town and Country Planning Act 1990.

- 4 Before any dwelling is commenced, full details of the existing and proposed site levels and proposed floor levels of the buildings, hard surfaced areas and garden/amenity areas, including any mitigation measures arising as a consequence (for example increased height of boundary treatment), shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed and retained in accordance with the details so approved.

Note: Where levels are raised above existing ground levels, the submission shall be supported by cross-sectional drawings showing the relationship with adjoining uses and buildings to enable the Local Planning Authority to be satisfied that sufficient mitigation measures will be in place.

Reason: To reduce the risk of flooding of the development and to ensure that the Local Planning Authority retains control over the finished site and floor levels of the development, in the interests of the amenity of adjacent residents and its visual and architectural relationship with adjacent development.

This Condition is imposed in accordance with Policies 2, 3 and 4 of the South East Lincolnshire Local Plan, 2019.

- 5 When application is made to the Local Planning Authority for approval of reserved matters, that application shall be accompanied by a scheme of landscaping and tree planting indicating, inter alia, the number, species, heights on planting and positions of all trees in respect of the land to which that application relates, together with details of post-planting maintenance and such a scheme shall require the approval of the Local Planning Authority before any development is commenced. Such scheme as is approved by the Local Planning Authority shall be carried out and completed in its entirety during the first planting season following practical completion of the development. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Reason: To ensure that the development is adequately landscaped, in the interests of its visual amenity and that of the area in which it is set. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 6 Prior to its installation, details of the proposed boundary treatments, including a schedule of fencing levels, heights and materials, and details of the size and species of any hedging, shall be submitted to and approved in writing by the Local Planning Authority, and the details so approved shall be implemented in full before the development is first brought into use and retained thereafter.

Note: The western boundary of the site adjoining land associated with the War Memorial (grade II listed) should be de-lined by native hedging and tree planting.

Reason: In the interests of the character and appearance of the development and the amenity of the area in which it is set including the amenity of nearby occupiers.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 7 A detailed scheme of construction management to minimise disturbance during the construction process through noise, dust, vibration and smoke shall be submitted to and approved in writing by the Local Planning Authority before any dwelling is commenced and the construction process shall be carried out in accordance with the scheme so approved. It shall also include a method statement detailing how construction traffic, site personnel vehicles, materials deliveries and site accommodation will be managed to safeguard the War Memorial, highway safety, free passage along Seas End Road and residential amenity.

Reason: In the interests of the amenity of local residents and to protect the War Memorial, which is grade II listed.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 8 The development hereby permitted shall be carried out in accordance with the measures set out in the Flood Risk Assessment forming part of this planning application. The mitigation measures shall be fully implemented prior to occupation.

Notes:

1. The applicant is advised to refer to the following document for information on flood resilience and resistance techniques that could be incorporated into the development: "Improving Flood Performance of New Buildings - Flood Resilient Construction" (Department for Communities and Local Government, 2007);
2. Future occupants are advised to sign up to the Environment Agency's free Floodline Warnings Direct Service.

Reason: To ensure that the development does not increase the risk of flooding or be at risk of flooding.

This Condition is imposed in accordance with Policies 3 and 4 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

- 9 Before the commencement of the development hereby granted beyond oversite, full

details of the proposed means of foul and surface water disposal to separate systems shall be submitted to and approved in writing by the Local Planning Authority and the details so approved shall be implemented in full before there are any flows into the receiving systems.

Reason: To ensure that the site is adequately drained, to avoid pollution, and to prevent increased risk of flooding.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

- 10 The water consumption of each dwelling hereby permitted should not exceed the requirement of 110 litres per person per day (as set out as the optional requirement in Part G of the Building Regulations 2010 and the South East Lincolnshire Local Plan, 2019). The person carrying out the work must inform the Building Control Body that this duty applies. A notice confirming the requirement for the water consumption has been met shall be submitted to the Building Control Body and Local Planning Authority, no later than five days after the completion of each individual dwelling.

Reason: To protect the quality and quantity of water resources available to the district.

This Condition is imposed in accordance with Policy 31 of the South East Lincolnshire Local Plan, 2019.

Notes:

The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise, and by identifying matters of concern within the application and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at <http://planning.sholland.gov.uk/OcellaWeb/planningSearch>

This planning permission is subject to an Agreement under Section 106 of the Town & Country Planning Act 1990.

The frontage property should be of a high standard of design and reflect traditional vernacular to preserve the setting of the War Memorial, which is grade II listed. The property at the rear should be single storey and the section of the private roadway adjoining the War Memorial should be block paved.



Phil Norman

Planning and Building Control Manager
South Holland District Council

27th May 2021

BUILDING REGULATIONS:

This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or bcadmin@sholland.gov.uk

SCHEDULE 3
THE OWNERS'S COVENANTS

The Owner covenants with the Council as follows:

1. DONATED LAND

- 1.1 Not to Occupy or permit the Occupation of the Dwellings unless and until the Donated Land has been transferred free from encumbrances (save for any matters contained in the title entries of the register of title number LL382697 as at the date of this Deed (if any)) to the Parish Council.

SCHEDULE 4
COUNCIL'S COVENANTS

The Council covenants with the Owner as follows:

1. GENERAL

- 1.1 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall as soon as practically possible effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 1.2 At the written request of the Owner the Council shall provide written confirmation of the full or partial discharge of the obligations given for the benefit of the Council contained in this Deed when satisfied that such obligations have been performed.

The **COMMON SEAL** of **SOUTH
HOLLAND DISTRICT COUNCIL**

was hereunto affixed
in the presence of:-




Authorised Signatory

SIGNED as a **DEED** by

D A Pocklington

DEIRDRE ANNE POCKLINGTON

in the presence of:

Name of Witness

D BERKSHIRE

Signature of witness

D Berk

Address

33 Waterpump court

Occupation

*Therapist
Northampton
NN3 845
Teaching*