

Dated

21 July

2021

(1) South Holland District Council

and

(2) Platform Housing Limited

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

**Relating to Section 106 Agreement at land off
Main Road, Quadring, Spalding**

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

SHDC Reference: LD/H15-0758-20

Date

21 July

2021

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **PLATFORM HOUSING LIMITED** (a registered society under the Co-operative and Community Benefit Societies Act 2014, number 8288) of 1700 Solihull Parkway, Birmingham Business Park, Birmingham, B37 7YD ("the Owner")

BACKGROUND

- (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 registered under title number LL379045
- (C) On 16 July 2019 the Council and ACD Developments Limited entered into the Original Agreement.
- (D) On 26 October 2020 the Council and the Owner entered into the First Deed of Variation.
- (E) On 11 September 2020 Hilljet Construction Ltd (Company Registration Number 07899883) of Stuart House – East Wing, St John's Street, Peterborough, PE1 5DD ("the Developer") have via their agent submitted the Second S73 Application to vary condition 4 to allow amendments to previously approved bricks
- (F) Without prejudice to the terms of 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.
- (G) This agreement is made under section 106A of the 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 dated 26 October 2020 between the Council and the Owner
"First S73 Application"	means the application submitted under S73 of the 1990 Act received by the Council on 27 November 2019 for the variation of condition 2 of the Original Planning Permission and allocated Council reference number H15-1158-19
"Original Agreement"	means the agreement made under section 106 of the 1990 Act relating to land off Main Road, Quadring, Spalding dated 16 July 2019 between the Council and ACD Developments Limited
"Second S73 Application"	means the application submitted under S73 of the 1990 Act received by the Council on 11 September 2020 for the variation of condition 4 of the Original Planning Permission and allocated Council reference number H15-0758-20

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 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 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 Sections 106 and 106A of the 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 Land.

4. **VARIATIONS TO THE ORIGINAL AGREEMENT**

- 4.1 Recital (D) in the Introduction section in the Original Agreement shall be deleted and replaced with the following:

"The Owner submitted the Planning Application to the Council for the Development of the Site as varied by reference H15-1158-19 and reference H15-0758-20"

- 4.2 The Following definitions shall be added to the Original Agreement

"First Deed of Variation"	means the agreement made under sections 106 and 106A of the 1990 Act dated 26 October 2020 between the Council and the Owner
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Original Planning Application	means the application for planning permission for the demolition of existing structures and erection of 19 dwellings allocated under the Council's reference number H15-0203-19
Original Planning Permission	means the planning permission for the Site granted pursuant to the Original Planning Application as attached at Schedule 2
"Second S73 Application"	means the application submitted under S73 of the 1990 Act received by the Council on 11 September 2020 for the variation of condition 4 of the Original Planning Permission and allocated Council reference number H15-0758-20
"Second S73 Permission"	means the planning permission for the Site to be issued pursuant to the Second S73 Application substantially in the form as the attached draft at Schedule 2B

- 4.3 The definition of "Planning Application" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

"Planning Application"	means the Original Planning Application or the First S73 Application or the Second S73 Application
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- 4.4 The definition of "Planning Permission" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

"Planning Permission"	means either the Original Planning Permission or the First S73 Permission or the Second S73 Permission or such
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	other planning permissions for the Development granted pursuant to section 73 or 96A of the 1990 Act
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- 4.5 The definition of "S73 Application" in Clause 1.1 to the Original Agreement as amended by the First Deed of Variation shall be deleted and replaced with the following:

"First S73 Application"	means the application submitted under S73 of the 1990 Act received by the Council on 27 November 2019 for the variation of condition 2 of the Original Planning Permission and allocated Council reference number H15-1158-19
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- 4.6 The definition of "S73 Planning Permission" in Clause 1.1 to the Original Agreement as amended by the First Deed of Variation shall be deleted and replaced with the following:

"First S73 Permission"	means the planning permission for the Site issued pursuant to the First S73 Application substantially in the form as the attached draft at Schedule 2A
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- 4.7 Clause 4.1.1 in the Original Agreement shall be deleted and replaced with the following:

"4.1.1 the provisions of this Deed shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999 and for the avoidance of doubt, this deed shall not be enforceable against any purchaser or tenant of an individual Dwelling built on the site subject to the Planning Permission, or against any mortgagee of the same"

- 4.8 The following Clause shall be inserted after Clause 4.1.11 of the Original Agreement to the Original Agreement:

*"4.1.12 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 1990 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 an application under section 73 of the 1990 Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council should 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 obligations."*

- 4.9 The document annexed to this Deed at Schedule 1 shall be added to the Original Agreement as a new Schedule 2B.

- 4.6 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.

5. THE OWNER'S COVENANTS

- 5.1 The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by the First Deed of Variation and this Deed.

6. LOCAL LAND CHARGE

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

7. COUNCIL'S COSTS

- 7.1 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

8. VAT

- 8.1 Any consideration given under this Deed shall be done (so far as practicable and lawful) in such a way that the VAT liability is borne by the Owner and not the Council.

9. THIRD PARTY RIGHTS

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

10. JURISDICTION

- 10.1 This Deed is governed by and interpreted in accordance with the laws of England

11. 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
PLANNING PERMISSION (H15-0758-20)
ISSUED UNDER SECOND S.73 APPLICATION

William Saunders Partnership Llp
Sheppard Lockton House
Cafferata Way
Newark On Trent
NG24 2TN

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: H15-0758-20

Date of Decision:

Applicant: Hilljet Construction Ltd.
Stuart House - East Wing
St John'S Street
Peterborough
PE1 5DD

Location: Land Off Main Road Quadring Spalding

Description: Demolition of existing structures and erection of 19 dwellings with access, landscaping and associated works - approved under H15-0203-19.
Modification of Condition 4 to allow alternative external materials

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

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Application form

11974-WMS-ZZ-00-DR-A-10000-S4-C9

11974-WMS-ZZ-00-DR-A-10001-S2-P1

Materials Schedule submitted 07 October 2020 at 13:05

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

Notes:

As this S73 continuance permission is compatible with the continued effect of the earlier permission relating to this development scheme then the original conditions not relating to the matters dealt with by this application remain binding, specifically applications referenced H15-0203-19.

The original conditions are only affected if they are discharged or removed. As long as there is nothing in the new S73 permission to affect the continued operation of the previous conditions then they remain in effect.

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>



Phil Norman
Planning and Building Control Manager
South Holland District Council

19th February 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

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

was hereunto affixed
in the presence of:-



Authorised Signatory

13434



SIGNED as a **DEED** by
PLATFORM HOUSING LIMITED
acting by a Director and its
Secretary or two Directors:-

Marion Duffy
Chief Operations Officer

Signature of Director



Signature of Secretary/Director

Gerraint Oakley
Executive Director
(Growth and Development)



PHL
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