

_planningadvice

From: Polly Harris-Gorf
Sent: 22 September 2021 13:25
To: _planningadvice
Subject: FW: H16-0107-21 & H16-0673-21: Deed of Variation and Release relating to Millfield Nursery
Attachments: 20210922 - Completed DOV and Release Millfield Nursery.pdf

H16-0107-21 & H16-0673-21:
3106 (Deed of Variation dated 22.9.21)

Dated

22ND SEPTEMBER

2021

(1) South Holland District Council

and

(2) JoJos Beheer BV

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

Relating to land at
Millfield Nursery, Spalding Common, Spalding

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

SHDC Reference: LD/H16-0107-21 & H16-0673-21

Date 22ND SEPTEMBER,

2021

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **JOJOS BEHEER BV** of Millfield Nursery, Spalding Common, Spalding, PE11 3AU ("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 LL148860 which is subject to a unilateral notice in respect of a contract for sale in favour of PJK Millfield Limited (Company Registration No. 11637060) of 33 Boston Road South, Holbeach, Spalding, PE12 7LR dated 20 December 2018 referred to in entry number 2 of the charges register of title number LL148860
- (C) On 5 March 2018 the Council and the Owner entered into the Original Agreement.
- (D) Seagate Homes (UK) Ltd of Holbeach Manor, Fleet Road, Fleet, Spalding, PE12 7AX together with Longhurst Group Limited of 50 Newhall Hill, Birmingham, B1 3JN have via their agent submitted to the Council the Section 73 Application to vary condition 2 and 18 relating to flood risk assessments in the Original Planning Permission.
- (E) PJK Millfield Limited have submitted to the Council the Section 106A Application to discharge a planning obligation dated 22nd October 1993 relating a bungalow on the Land, known as 301 Cradge Bank
- (F) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of the Original Agreement as set out in this Deed.
- (G) The parties have agreed to enter into this Deed to give its consent to the terms of this Deed.
- (H) This Deed is made under sections 106 and 106A of the Act and is supplemental to the Original Agreement.

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

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

"Original Agreement"	means the agreement made under section 106 of the Act relating to land at Millfield Nursery, Spalding Common, Spalding dated 5 March 2018 and made between (1) the Council and (2) the Owner
"Section 73 Application"	means the application submitted under section 73 of the Act and received by the Council on 4 February 2021 for the variation of conditions 2 and 18 of the Original Planning Permission and allocated Council reference number H16-0107-21
"Section 73 Permission"	means the planning permission for the Land issued pursuant to the Section 73 Application
"Section 106A Application"	means the application submitted under section 106A of the Act received by the Council on 28 June 2021 and allocated Council reference number H16-0673-21 for the discharge of a planning obligation relating to deed dated 22 October 1993 entered into under planning ref H16-0069-93

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 (C) in the Introduction section in the Original Agreement shall be deleted and replaced with the following:

"The Owner applied to the Council for outline planning permission for the Land for residential development for up to 135 Dwellings under reference H16-0668-16 as varied by reference H16-0107-21"

4.2 The Following definitions shall be added to the Original Agreement

"Original Planning Permission"	means the planning permission for the Development of the Land issued by the Council on 13 March 2018 and allocated Council reference number H16-0668-16
"S.73 Application"	means the application submitted under section 73 of the Act and received by the Council on 4 February 2021 for the variation of conditions 2 and 18 of the Original Planning Permission and allocated Council reference number H16-0107-21
"S.73 Permission"	means the planning permission for the Land issued pursuant to the S.73 Application

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

"Application"	means the application for the Original Planning Permission or the S.73 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 S.73 Permission or such other planning permissions for the Development granted pursuant to sections 73 or 96A of the 1990 Act
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- 4.5 The following Clause shall be inserted after Clause 8.12 of the Original Agreement to the Original Agreement:

*"8.13 It is agreed between the parties that if 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 a further 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."*

- 4.6 The document annexed to this deed at Schedule 1 shall be added to Schedule 2 of the Original Agreement.
- 4.7 In all other respects the Original Agreement (as varied by this deed and the First Deed of Variation) 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 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 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. RELEASE

The Council releases the agreement under Section 106 of the Act dated 22 October 1993 and made between (1) the Council and (2) Parigo Horticultural Company and Barclays Bank PLC and from the date of this Deed the said Agreement shall be of no further effect.

11. JURISDICTION

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

12. 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 (H16-0107-21)
ISSUED UNDER S.73 APPLICATION

Seagate Homes (Uk) Ltd.
Holbeach Manor
Fleet Road
Fleet
Spalding
PE12 7AX

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:	H16-0107-21	Date of Decision:
Applicant:	Seagate Homes & Longhurst Group Holbeach Manor Fleet Road Holbeach Spalding PE12 7AX	
Location:	Millfield Nursery Spalding Common Spalding	
Description:	Residential Development - approved under H16-0668-16. Modification of Conditions 2 & 18 relating to Flood Risk (new Flood Risk Assessment submitted)	

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

Notes:

The determined plans and documents are:

Application form
Flood Risk Assessment Prepared by S M Hemmings Dated 15th February 2021
MNSC-SH-SP-AR-002
MNSC-SH-SP-AR-009 D

This planning permission is subject to an Agreement under Section 106 of the Town & Country Planning Act 1990 dated 5 March 2018 subject to a Deed of Variation dated xxxx. This permission can only be implemented as a consequence of meeting the provisions of that Agreement

the applicant is reminded of the conditions of outline consent H16-0668-16 that still apply.



Phil Norman
Planning Manager
South Holland District Council

24th June 2021

BUILDING REGULATIONS:

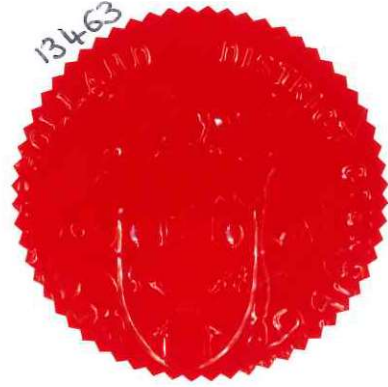
This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building 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:-

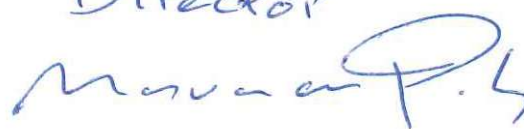

Authorised Signatory



SIGNED as a **DEED** by

JOJOS BEHEER BV

in the presence of

Director


Name of Witness:

Signature of Witness:

Address:

Occupation


Kerklaan 131 2101 HM Heemstede
the Netherlands
office manager
