

DATED 9th June 2016

(1) THE LONDON BOROUGH OF BARNET

- and -

(2) BDW TRADING LIMITED

DEED OF VARIATION

Made under Section 106 and 106A of the Town and Country Planning Act 1990
Relating to land known as land off High Rd/Chandos Avenue N20, Bretheren Meeting Hall
and Well Grove School N20 9EQ

THIS DEED OF VARIATION is dated

9th June

2016

and is made BY:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET** of North London Business Park, Oakleigh Road South, London N11 1NP (**"the Council"**)
- (2) **BDW TRADING LIMITED** (company registration number 3018173) whose registered office is at Barratt House Cartwright Way Forest Business Park Bardon Hill Coalville Leicestershire LE67 1UF (**"the Owner"**)

BACKGROUND

- A. The Council is the local planning authority for the purposes of the 1990 Act in respect of the Land
- B. The Owner is the registered proprietor with title absolute of the freehold interest in the Land registered at HM Land Registry under title number MX292106
- C. On 29 March 2012 the Council, and the then owner and mortgagees of the Land entered into an agreement pursuant to section 106 of the Town and Country Planning Act 1990 (**"the Principal Agreement"**) relating to the development of the Land under planning permission B/03068/11 dated 3 April 2012 for "the demolition of existing buildings and redevelopment comprising 70no dwellings (62no houses and 8no flats). Erection of 512sqm building for use class D1 purposes (non-residential institution). Provision of associated car parking, landscaping and open space. Use of existing accesses from High Rd and Well Grove. (Outline application)" on the Land
- D. On 30 September 2014 David Wilson North Thames applied through its agent to amend planning permission B/03068/11 (**"the New Application"**) as follows:

Section 73 material amendment application to vary condition 1 (approved plans), condition 5 (compliance with approved plans) and condition 34 (restricted use office/community building) pursuant to planning permission B/03068/11 dated 29/3/2012 for 'demolition of existing buildings and redevelopment comprising of 70no dwellings (62no houses and 8no flats). Erection of 512sqm building for use class D1 purposes (non-residential institution). Provision of associated car parking, landscaping and open space. Use of existing accesses from High Road and Well Grove. (Outline application)' amendments to include: amendment to description of development to read 'demolition of existing buildings and redevelopment comprising of 70 dwellings (60 no houses and 10no flats). Erection of 512sqm building for use class D1 purposes (non-residential institution). Provision of associated car parking, landscaping and open space. Use of existing accesses from High Road and Well grove. (Outline application)'; updated list of approved plans listed in conditions 1 and 5; alteration to wording of condition 34 to include children's nursery within the permitted use class D1 uses that can occupy the Community Hub building; alterations to plans contained within the s106 agreement showing the proposed public open space and community hub land.

The New Application was allocated reference number B/05370/14

- E. On 17 March 2015 the Council and the then owners and mortgagee of the Land entered into a deed of variation pursuant to section 106A of the Town and Country Planning Act 1990 ("the Deed of Variation") linking the Principal Deed to the planning permission B/05370/14 dated 17 March 2015 and amending the definition of "Community Hub Building Works" "Community Hub Land" "Public Open Space Land"; statutory references within the Principal Deed and replacing drawing 0729/CH/OS/01 with drawing 12461_S_90_13-3.2

- F. On 10 July 2015 the Owner's agent made a written request to the Council to vary the Principal Agreement as amended by the Deed of Variation to modify obligations relating to public open space land, affordable housing phasing, affordable housing tenure and transfer of Community Hub Land
- G. The Council and the Owner have agreed to enter into this deed in order to amend the Principal Agreement as modified by the Deed of Variation as set out herein
- H. This Deed is supplemental to the Principal Agreement as amended by the Deed of Variation and should be read in conjunction with the Principal Agreement as amended by the Deed of Variation.

NOW THIS DEED WITNESSES as follows:

1. INTERPRETATION

- 1.1 In this Deed the words and expressions used shall have the meanings prescribed in this Deed or in the Principal Agreement unless as otherwise stated

2. LEGAL EFFECT

- 2.1 This Deed is made under sections 106 and 106A of the 1990 Act and all or any obligations restrictions and covenants contained in this Deed are planning obligations for the purposes of the said section 106 of the 1990 Act and are enforceable by the Council against the Owner and its successors in title to the Land
- 2.2 The covenants in this Deed shall take effect immediately upon the completion hereof.
- 2.3 This Deed shall take effect on the date set out above

3. COVENANTS

- 3.1 The Council and the Owner agree that from the date of this Deed that the Principal Agreement as amended by the Deed of Variation shall be further amended as follows:

3.1.1 Delete clause 3.21 and replace with

"within twenty six (26) months of Implementation to transfer the Community Hub Land together with the Community Hub Building Works substantially completed pursuant to paragraphs 3.11, 3.12, 3.13 and 3.17 to the Council and the terms of the aforesaid Transfer shall be substantially in the form of the Transfer attached at Schedule Five of this Agreement"

3.1.2 Delete the definition "Public Open Space Maintenance Contribution"

3.1.3 Delete the reference to "Public Open Space Maintenance Contribution" from the "Contributions" definition

3.1.4 Delete paragraph E of clause 3.2

3.1.5 Delete clause 3.14 and replace with the following:

3.14.1 To complete the works in accordance with Clause 3.12 and 3.13 and to make the Public Open Space Land the LEAP and all the facilities thereon available for use by the public from that time onwards as an open amenity or recreation area and (subject to clause 13.14.2) to allow the public to have unrestricted access at any time during the hours of daylight thereafter to the Public Open Space Land the LEAP and all the facilities including the right to gain access to the Open Space Land the LEAP and all the facilities at any time over any roads and associated footways on the Land and also over any footpaths intended for public use on the Land even if any of them remain private highways after the Development has been completed and to ensure from this time onwards that no reasonably foreseeable source of danger exists to the public by the use of the Public Open Space Land the Leap and all the facilities

3.14.2 Clause 3.14.1 shall not prevent the Owners from

3.14.2.1 preventing access during the hours of darkness

- 3.14.2.2 temporarily preventing or restricting access during the hours of daylight where reasonably required in order to safely carry out works to the Public Open Space Land the LEAP and/or the means of access thereto
- 3.14.2.3 imposing reasonable rules and regulations concerning the use of the Public Open Space Land the LEAP and/or the means of access thereto, and
- 3.14.2.4 preventing persons who breach the rules and regulations referred to in clause 3.14.2.3 from using the Public Open Space Land, the LEAP and/or the means of access thereto

subject to the Council's right to monitor the operation of the clause 3.14.2 provisions"

3.1.6 Insert a new clause 2.11 as follows:

"The Owner shall permit the Council and its authorised employees and agents upon reasonable notice to enter the Land at all reasonable times for the purposes of verifying whether or not any planning obligations arising under this Deed has been performed or observed SUBJECT TO compliance by the Council and its authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice"

3.1.7 Delete clause 3.7 and replace with:

"3.7.1 the Owner covenants with the Council that not more than twenty five (25) of the Open Market Housing Units shall be Occupied until the Owner grants to the Council or the Council's Nominee being a Registered Provider 125 year (or longer) leasehold interests or a freehold interest in ten (10) Affordable Housing Units in accordance with the Affordable Housing Scheme (subject to Clause 6) and those Units have been constructed and have reached practical completion upon the terms and conditions contained in the Second Schedule hereto"

3.1.8 Insert a new clause 3.7.2 as follows:

"3.7.2 the Owner covenants with the Council that not more than thirty seven (37) of the Open Market Housing Units shall be Occupied until the Owner has entered into a contract with the Council or the Council's Nominee being a Registered Provider to grant 125 year (or longer) leasehold interests or a freehold interest in all of the Affordable Housing Units in accordance with the Affordable Housing Scheme (subject to Clause 6) and to construct the same upon the terms and conditions contained in the Second Schedule hereto"

3.1.9 Delete the definition "Affordable Housing Units" and replace with the following:

"means the provision of 20 housing units for Affordable Housing within the Development comprising eight (8) for Affordable Rent (6 x 3-bed (5 person houses and 2 x 4-bed (6 person) houses) and twelve (12) for Shared Ownership (2 x 3-bed (5 person) houses, 4 x 2-bed (3 person) flats, 2 x 2-bed (4 person) flats and 4 x 1-bed (2 person) flats) all within the Development which are to be transferred to the Council or the Council's nominee being a Registered Provider at a cost that allows affordable rents to be charged"

3.1.10 Amend Second Schedule paragraph 1 by adding the words "(or a freehold interest)" after the words "full repairing and insuring basis" in line 3

3.1.11 Amend Second Schedule paragraph 1.6 by adding the words "or transfer" after the words "grant of the lease" in line 1

3.1.12 Amend the draft transfer attached as Schedule 5 by

3.1.12.1 deleting the words "and cross hatched green" from panel 3

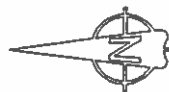
3.1.12.2 deleting the words "Not to use that part of the property identified on the attached plan as 'Open Space Land' other than for open space purposes" from panel 12

3.1.12.3 replacing the plan with the attached plan







Architectus
 Architectural Design and Technology
 Capella House, 4 Railway Approach, Worthing, West Sussex BN11 1UR
 Tel 01903 821001 Fax 01903 821711 Email designoffice@architectus.co.uk

CLIENT BDW NORTH THAMES
 DAVID WILSON HOMES
 PROJECT LAND TO REAR OF HIGH ROAD & WHETSTONE
 BARNET
 DRAWING COMMUNITY HUB SITE

C2 10/05/16 ML JR Land ownership to frontage of Community Hub revised
 REV DATE APPR APP REVISION
 15011-H6871-D1-1900 C2
 SCALE 1:1250@A3 DATE APR. 2016
 DRAWN ML APPROVED JR

3.2 **SAVE** as modified by this Deed, the covenants, conditions and other provisions in the Principal Agreement as modified by the Deed if Variation shall remain in full force and effect.

4. COSTS

The Owner undertakes that on the execution of this Deed it will pay the Council's costs incurred in the negotiation, preparation and settlement of this Deed in the sum of £563

IN WITNESS of which this Deed has been duly executed as a deed and has been delivered once dated.

THE COMMON SEAL of THE MAYOR
AND BURGESSES OF THE LONDON
BOROUGH OF BARNET was hereunto
affixed in the presence of:-


ASSISTANT
Assurance Director:

CLAIR Green.




Head of Governance:


~~Governance Team Leader~~


ANITA VALSOMANGALAM
ANDREW CHALLWOOD

EXECUTED as a Deed)
By BDW TRADING)
LIMITED acting by)
its attorneys)

[])

and)

[])


as attorney for BDW Trading Limited


as attorney for BDW Trading Limited

in the presence of:)

Witness Signature:



Name: FIONA HOUGH

Address: 19 BULLAH ROAD
CIPPING
ESSEX
CM16 6RH