

DATED

2017

- (1) ECOLOGICAL LAND LIMITED
- (2) WEALDEN DISTRICT COUNCIL
- (3) THE A TEAM FOUNDATION

ORIGINAL/COUNTERPART

SECTION 106 UNILATERAL UNDERTAKING

DRAFT no. 2

17/03/2017

BETWEEN:

- (1) Ecological Land Limited (Community Benefit Society Number 30770R) whose registered office is at Unit B04, The Brighton Eco-centre, Brighton, BN1 3PB ('the Owner')
- (2) Wealden District Council whose office is at Vicarage Lane, Hailsham, BN27 2AX ('the Council')
- (3) The A Team Foundation Limited (charity registration number 1077094, company limited by guarantee 3775136) whose registered office is at 61 Grosvenor Street, London, W1K 3JE ('the Lender')

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner owns the Property subject to a secured loan in favour of the Lender.
- (C) The Owner has made the Planning Application and is proposing to carry out the Change of Use and Development.
- (D) The Lender is the registered proprietor of the Charge dated 20 May 2016 referred to in the Charges Register of title number ESX348019 and has agreed to enter into this Deed to give its consent to the terms of the Unilateral Undertaking.

1 AGREED TERMS

1.1 The definitions and rules of interpretation in this clause apply to this Deed.

'Commencement of Development' means the carrying out in relation to the Development of any material operation as defined by Section 56(4) of the TCPA 1990.

'Development' means the development of the Property described in the Planning Application.

'Property' the freehold land known as Field to the south of Copyhold Cottages, formerly part of Wilbees Farm, Arlington Hailsham, East Sussex, BN26 6RU registered with freehold title absolute under title number ESX348019.

'Planning Application' means an application for planning permission registered by the Council on 2017 under reference number.

'Planning Permission' the planning permission to be granted by the Council in respect of the planning application.

'TCPA 1990' means the Town and Country Planning Act 1990.

1.2 Clause headings shall not affect the interpretation of this deed.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.

- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written does not include [faxes or] e-mail.
- 1.11 References to clauses and plans are to the clauses and plans of this deed.
- 1.12 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.13 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.14 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2 STATUTORY PROVISIONS

- 2.1 This Deed constitutes a planning obligation for the purposes of Section 106 of the TCPA 1990, Section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this Deed are planning obligations for the purposes of Section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the Owner and its successors and assigns.
- 2.3 This Deed shall come into effect on the date of the grant of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this Deed are enforceable by the Council in accordance with Section 106 of the TCPA.

3 COVENANTS WITH THE COUNCIL

The Owner covenants with the Council -

- 3.1 To provide the Council with an annual report prepared by the Owner under the Management Plan showing to what extent the aims and objectives of the Management Plan have been achieved and where these have not been achieved what measures have been and are being taken to achieve them.
- 3.2 Where a progress report prepared and submitted in accordance with clause 3.1 above shows that the aims and objectives of the Management Plan have not been achieved to submit to the Council upon request an action plan setting out those measures to be taken to achieve them.
- 3.3 To retain the Property as one whole and indivisible land holding.
- 3.4 Not to occupy or procure or permit the occupation or use of any of each of the Dwellings other than by persons who operate the agricultural (as defined by s 336(i) of the 1990 Act) business operated from the Property or a widow or widower of such persons together with their spouse partner or resident dependents.
- 3.5 Unless otherwise agreed with the Council:
- (a) upon the expiry of the Planning Permission; or
 - (b) should the Planning Permission be quashed or revoked prior to its expiry
- to remove the relevant Dwelling(s) from the Property and make good the land SAVE WHERE an alternative planning permission permitting the continued existence of the Dwellings for agricultural purposes only has been granted by the Council (or the Secretary of State).
- 3.6 Where
- (a) any action plan submitted pursuant to clause 3.2 above has not been implemented in accordance with the terms of such action plan; or
 - (b) where activities are taking place on the Property that are in breach of clause 3.4 above;
- the Council may serve notice on the Owner requiring that the action plan is implemented or that the activities that are taking place on the Property in breach of clause 3.4 cease.

3.7 Where:

(a) the Owner has not remedied the defect(s) referred to in a notice served pursuant to clause 3.6 within 9 (nine) months of the date of the notice; and

(b) if requested to do so in writing by the Council (acting reasonably)

to exercise its rights under the relevant Lease to terminate such Lease.

3.8 Where a relevant Lease has been terminated under the circumstances set out at clause 3.7 above the Owner shall seek to secure a new tenant and enter into a new Lease in respect of that part of the Property.

3.9 Where the Owner is unable to secure a new tenant and enter into a new Lease within 6 (six) months of the date of expiry of the previous Lease then unless otherwise agreed with the Council it shall remove the relevant Dwelling from the Property and make good the land upon which the Dwelling was sited.

3.10 Where, pursuant to clause 3.9, the Owner is unable to secure new tenants for all of the three Dwellings, and none of the Dwellings remain on the Property, the Owner will consult with Arlington Parish Council regarding the subsequent use of the agricultural barn and hardstanding.

4 LENDER'S CONSENT

4.1 The Lender consents to the completion of this Deed and declares that its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Lender's interest in the Property.

4.2 The Lender shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Lender is in possession of all or any part of the Property.

5 RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

6 DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

7 LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

8 OWNERSHIP

The Owner warrants that nobody other than the Owner and the Lender have any legal or equitable interest in the Property.

9 NOTICES

9.1 Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its registered office address or in the case of the Council at its principal office address or as otherwise specified by the relevant person by notice in writing to each other person.

9.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

10 THIRD PARTIES

No person other than a party to this undertaking and their respective successors and assigns and the Council and the successors to its respective statutory functions shall have any rights to enforce any term of this Deed.

11 SEVERANCE

11.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.

11.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the parties shall amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

12 GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed and delivered as a deed and takes effect on the date stated at the beginning of it.

Executed as a deed by Ecological Land Limited

Director

Secretary/Director

Executed as a deed by The A Team Foundation

