

**DATED**

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**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER  
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990  
RELATING TO LAND AT:**

**FORMER LONGDEAN LODGE SITE, HILLSLEY ROAD, PORTSMOUTH,  
PO6 4NH**

**AND**

**EDINBURGH HOUSE, SUNDRIDGE CLOSE, PORTSMOUTH PO6 3JL**

by

**PORTSMOUTH CITY COUNCIL**

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THIS DEED is dated \_\_\_\_\_ 2020

- (1) Portsmouth City Council whose office is at Civic Offices, Guildhall Square, Portsmouth PO1 2AL ("**Owner**") who shall be manifested through the Director of Adult Services (or their successor from time to time) as the senior officer with responsibility for the portfolio within which the Property is held pursuant to statutory duties relating to adult social care.

## **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 and the Nitrate Mitigation Land.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.
- (D) The Owner is desirous of ensuring that the Development is implemented and used in accordance with the principles of nutrient neutrality described in the Council's Interim Nutrient Neutrality Strategy and enters this deed accordingly.
- (E) The Owner gives this undertaking to perform the obligations set out in this deed.

## **AGREED TERMS**

### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in this deed.

#### **1.1 Definitions:**

**Commencement of Development:** the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.

**Commenced and Commences** shall be construed accordingly.

**Commencement Date:** the date of Commencement of Development.

**Council:** Portsmouth City Council of Civic Offices, Guildhall Square, Portsmouth PO1 2AL, manifested through the Assistant Director of Planning and Economic Development.

**Development:** the development of the Property described in the Planning Application.

**Interim Nutrient Neutrality Strategy:** the Council's Interim Nutrient Neutral Mitigation Strategy for New Dwellings (November 2019) to mitigate the impact of the adverse effects arising from the occupation of the Development in respect of nitrogen and phosphorous input into the Solent European Designated Sites of:

- (a) The Portsmouth Harbour Special Protection Area/RAMSAR Site;
  - (b) The Chichester and Langstone Harbours Special Protection Area/RAMSAR Site;
- the Solent and Isle of Wight Lagoons Special Area of Conservation; and
- (c) the Solent Maritime Special Area of Conservation.

**Nitrate Mitigation Land:** the freehold land edged blue on Plan 2 attached to this Deed, being land known as Edinburgh House, Sundridge Close, Portsmouth PO6 3JL registered at HM Land Registry with absolute title under title number PM24907.

**Plan 1:** the plan so marked depicting the Property edged red attached to this deed.

**Plan 2:** the plan so marked depicting the Nitrate Mitigation Land edged blue attached to this deed.

**Property:** the freehold land at Former Longdean Lodge Site, Hillsley Road, Portsmouth, PO6 4NH shown edged red on Plan 1 being part of the land registered at HM Land Registry with absolute title under title number PM20910.

**Local Plan:** 'A spatial plan for Portsmouth - the Portsmouth Plan (Portsmouth's Core Strategy) Adopted 24 January 2012'.

**Planning Application:** an application for planning permission validated by the Council on 7 March 2019 under reference number 19/00371/CS3 for construction of a part 3, part 4 storey building to provide 13 supported living flats with staff and communal facilities and associated landscaping.

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application.

**TCPA 1990:** Town and Country Planning Act 1990.

**Working Day:** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 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 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, 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 Unless the context otherwise requires, 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** excludes faxes and e-mail.
- 1.11 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses are to the clauses of this deed.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term 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, and a local land charge in its own right in accordance with section 1(b)(i) Local Land Charges Act 1975 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 a local land charge for the purposes of section 1(b)(i) Local Land Charges Act 1975 and any other enabling powers and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and the Nitrate Mitigation Land and their respective successors and assigns.

- 2.3 This deed shall come into effect on the date of grant of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council against successors in title in accordance with section 106 of the TCPA 1990 and any other enabling powers.

**3. COVENANTS WITH THE COUNCIL**

The Owner covenants with the Council:

- 3.1 to comply with the obligations in the Schedule to this deed at all times and in perpetuity; and,
- 3.2 to give the Council not less than 5 Working Days' notice of Commencement of Development.

**4. 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 or the Nitrate Mitigation Land respectively, except in respect of any breach subsisting prior to parting with such interest in so far as that obligation, restriction or covenant related to its respective interest(s).

**5. 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.

**6. LOCAL LAND CHARGE**

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

**7. OWNERSHIP**

- 7.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.
- 7.2 The Owner will give to the Council 20 Working Days' notice of the following details of any conveyance, transfer, lease for a term certain in excess of 3 years, assignment,

mortgage or other disposition to be entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

## **8. NOTICES**

8.1 A notice or other communication to be given under or in connection with this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

8.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at: Planning Services, Regeneration Directorate, Civic Offices, Guildhall Square, Portsmouth PO1 2AL marked for the attention of Assistant Director of Planning and Economic Development;
- (b) to the Owner at: Adult Social Care Services, Civic Offices, Guildhall Square, Portsmouth PO1 2AL marked for the attention of Director of Adult Services;

or as otherwise specified by the relevant person by notice in writing to each other person.

8.3 Any notice or other communication given in accordance with clause 8.1 and clause 8.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
- (b) if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

8.4 A notice or other communication given under this deed by e-mail may only be accepted at the sole discretion of the Council.

8.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**9. 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.

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



The common seal of PORTSMOUTH  
CITY COUNCIL was affixed to this  
deed in the presence of:

.....  
Authorised Signatory

## Schedule

### Nutrient Neutrality Obligations

1. The Owner acknowledges that the lawful planning use of the Nitrate Mitigation Land as a 32-bed care home prior to the implementation of the Planning Permission resulted in a nitrate load, assuming a water use of 300litres per person per day, of 30.59kg/TN/year.
2. The Owner acknowledges that the use of the Property in accordance with the Planning Permission will create a nitrate load of 11.77kg/TN/year and proposes to off-set the nitrogen load of the Development by restricting its use of the Nitrate Mitigation Land.
3. The Owner covenants that upon completion of this deed 11.77/kg/TN/year of nitrate load shall be subtracted from the extant 30.59kg/TN/year of the Nitrate Mitigation Land and applied for the benefit of the Development at the Property and for no other purpose.
4. The Owner further covenants further to a resolution of the Cabinet Member for Health, Wellbeing and Social Care dated \_\_\_\_\_ 2020 to apply the remaining 18.82kg/TN/year from the Nitrate Mitigation Land to the credit bank detailed in the Council's Interim Nutrient Neutrality Strategy.
5. In accordance with the covenants in paragraphs 3 and 4 of this Schedule, the Owner covenants not to develop or use the Nitrate Mitigation Land for use (whether solely, mixed, composite or otherwise) within use classes C1, C2, C2a, C3, or C4 of the Town and Country Planning (Use Classes) Order 1987, *sui generis* use as a house in multiple occupation for any number of residents, or any other use entailing overnight stays of a residential or tourist nature that could lead to an increase in nitrogen and phosphorous as described in the Interim Nutrient Neutrality Strategy unless it can reasonably be demonstrated that the development will not have a likely significant effect upon special protection areas as described in the Interim Nutrient Neutrality Strategy or the prevailing policy of the Council at the time having regard to its legal obligations.
6. The Owner covenants not to develop the Property other than in accordance with the terms of this deed.