

DATED

3 SEPTEMBER 2014

between

WILTSHIRE COUNCIL (1)

and

**BRIAN MICHAEL PICKERING, ANN DOLORES PICKERING, AJ BELL
TRUSTEES LIMITED (2)**

**Deed under Section 106 of the Town and Country Planning Act 1990
and all other enabling powers**

**relating to Land at 23 Calne Road, Lyneham, Chippenham
Wiltshire SN15 4PT**

**Head of Legal Services
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN
IKEN Ref: 102594**

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THIS DEED is dated 3 SEPTEMBER

2014

- (1) **WILTSHIRE COUNCIL** of County Hall Bythesea Road Trowbridge Wiltshire BA14 8JN (**Council**).
- (2) **BRIAN MICHAEL PICKERING** and **ANN DOLORES PICKERING** of 23 Calne Road, Lyneham, Chippenham Wiltshire SN15 4PT and **AJ BELL TRUSTEES LIMITED** incorporated and registered in England and Wales with company number 3213118 whose registered office is at Trafford House Chester Road Manchester M32 0RS as trustees of the Pickering Family SSAS (**Owners**).

BACKGROUND

- (A) The Owners are the freehold owners of the Land registered at the Land Registry under title number WT287388 shown for the purposes of identification only edged red on the Plan
- (B) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated
- (C) The Owners have submitted the Planning Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed without which the Planning Permission would not be granted
- (D) The Council is minded to grant planning permission for the Development subject to conditions and the prior completion of this Deed to ensure in the interests of the proper planning of the area.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. Definitions

The definitions and rules of interpretation in this clause apply in this deed:

"the Act"	the Town and Country Planning Act 1990
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"Commencement of Development"	the date on which any material operation as defined in section 56(4) of
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the Act forming part of the Development begins to be carried out and Commence Commencement and Commenced shall be construed accordingly

"Development"

any development permitted by the Planning Permission

"Director"

the Director of Development or his appointed representative for the time being of the Council

"Index"

- a. the All Items Index of Retail Prices issued by the Office for National Statistics in relation to the Leisure Contribution and the Open Space Contribution

and in the event that such indices shall have changed the Council shall select a reasonable alternative index

"Index Linked"

Increased in accordance with the following formula:

Amount payable = the Leisure Contribution or the Open Space Contribution (as applicable) x (A/B)
where:

A = the figure for the Index that applied immediately preceding the date of actual payment

B = the figure for the Index that applied when the Index was last published prior to the date of this Deed

"Interest"

Interest at the rate of 4% above the base lending rate of the HSBC Bank Plc from time to time

"Land"

the land at 23 Calne Road, Lyneham, Chippenham, Wiltshire SN15 4PT shown edged red on the Plan

"Leisure Contribution"

the sum of three thousand, four hundred and thirty-three pounds (£3,433.00) towards the cost of upgrading the pool changing and spectator seating at Lime Kiln

"Monitoring Sum"

means a sum equivalent to 6% of the total financial contributions payable under this Deed to be used by the Council at its discretion but only in relation to its costs incurred in administering, monitoring, reviewing and implementing the relevant obligations in this Deed;

"Occupation"

in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include daytime occupation by workmen involved in the said construction or the storage of plant and materials and "Occupy" and "Occupied" shall be constructed accordingly.

"Open Space Contribution"

the sum of forty thousand, seven hundred and forty pounds (£40,740.00) towards the cost of providing improving and/or maintaining adult or children's sport play or recreation facilities or

installing and/or maintaining equipment in connection with such facilities on land certified by the Director as being directly relevant to Development.

"Plan"

the plan or drawing attached to this Deed and referenced WT287388 which plan is for the purposes of identification only

"Planning Application"

means the planning application for full planning permission submitted to the Council for the Development and allocated reference number 13/02365

"Planning Permission"

the planning permission for the conversion of an existing office building to 6 flats and the erection of 4 new flats parking and access the Development that may be granted pursuant to the Planning Application

"Working Day(s)"

days on which clearing banks in the City of London are open to the public and for the avoidance of doubt such days shall not include any Saturday or Sunday New Year's Day Good Friday Easter Monday May Day Christmas Day and Boxing Day

2. Construction of this Deed

2.1. Words importing the masculine include the feminine and neuter gender and vice versa

2.2. Words importing the singular include the plural and vice versa

- 2.3. Words importing persons include companies corporations and vice versa and all such words shall be construed interchangeable in that manner
- 2.4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation (including by becoming a successor in title) all their obligations can be enforced against all of them jointly and against each individually
- 2.5. Insofar as different parts of or interests in the Land are owned by different persons each person covenants with the Council and with one another to co-operate insofar as they are able to ensure that the Covenants herein on behalf of the Owners are fulfilled as expeditiously as possible
- 2.6. The headings throughout this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed
- 2.7. Any reference to a clause paragraph schedule or plan is to one in to or attached to this Deed and any reference to this Deed includes any schedule, plan, annexure or other attachment to this Deed
- 2.8. In the absence of contrary provision any reference to a statute or statutory instrument includes any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference to a statute includes any statutory instrument direction or specification made or issued under the statute or deriving validity from it
- 2.9. 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 and successors to any statutory functions of the Council
- 2.10. Covenants to do or not to do an action shall include respectively a covenant to permit or not to permit that action to be done

3. Statutory provisions

- 3.1. This Deed is made pursuant to the following:

Section 106 of the Act

Section 111 of the Local Government Act 1972

Section 1 of the Localism Act 2011

and all other enabling powers

and has been entered into by the Council pursuant to those powers

- 3.2. The covenants restrictions and requirements created by this Deed are planning obligations for the purposes of Section 106 of the Act to the intent that it shall bind the parties and their respective successors in title to each and every part of the Land and are enforceable by the Council as local planning authority

4. Commencement

- 4.1. This Deed takes effect on the grant of the Planning Permission
- 4.2. The Owners shall notify the Council of the Occupation of any Residential Unit and the Owners agree that no time shall run to the detriment of the Council if and so long as the Owners have failed to serve notice
- 4.3. If the Owners have not provided the information referred to in clause 4.2 above within 20 Working Days of its becoming available the Council shall have the right to obtain this information by other reasonable means and to charge the Owners its costs in obtaining this information subject to a maximum of one thousand pounds (£1,000) per time **PROVIDED THAT** the information is in fact obtained as aforesaid and reasonable evidence of this is provided by the Council to the Owners

5. The Owners' Covenants

The Owners will observe and perform the obligations set out in this Deed and Schedule 1

6. The Council's Covenants

The Council covenants with the Owners as set out in Schedule 2

7. General

The parties agree that:

- 7.1. Nothing in this Deed constitutes an obligation to grant planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function and nothing in this Deed constitutes and such approval, consent or permission.
- 7.2. This Deed does not and is not intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999 (other than any replacement body of the Council)
- 7.3. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 7.4. Insofar as any clause or clauses or any part thereof of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.5. If before Commencement of Development the Planning Permission:
- a) expires within the meaning of Sections 91 92 or 93 of the Act; or
 - b) is revoked, ~~quashed~~ or ~~modified~~ without the consent of the ~~Developer~~ ^{OWNER}
- this Deed shall cease to have effect
- 7.6. The Owners shall pay to the Council:
- a) its proper and reasonable legal costs incurred in negotiating preparing and entering into this Deed upon completion of this Deed
 - b) the Monitoring Sum prior to the Commencement of Development. For the avoidance of doubt the Monitoring Sum shall be in addition to the costs referred to in sub-clause 7.6 (a) above and Development shall not be Commencement until the Monitoring Sum has been paid to the Council.

- c) any legal or other professional costs incurred by the Council in monitoring and/or enforcing the performance of the Owner's/~~Developer's~~ obligations under this Deed.

- 7.7. This Deed shall be registerable as a local land charge by the Council
- 7.8. If required by the Council the Owners shall secure registration of this Deed in the Charges Register of the Registered Title to the Land at the Land Registry
- 7.9. Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with any other planning permission granted (whether or not on appeal) after the date of this Deed
- 7.10. Nothing contained or implied in this Deed shall prejudice affect fetter or restrict the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority or any other statutory function rights duties powers and obligations under all public and private statutes byelaws and regulations
- 7.11. This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the Courts of England and Wales.

8. Notices

Any notice or other communication given or made under this Deed shall be in writing and (unless otherwise herein provided) shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the address of the party specified in this Deed or to such other address (in substitution thereof) as may be notified in writing by that party from time to time for this purpose and in the case of the Council shall be addressed to the Head of Legal Services and quote reference IKEN 102594

9. Waiver

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall

prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

10. Change in Ownership

The Owners agree with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged. Such notice to give details of the transferee's name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation transferred by reference to a plan PROVIDED THAT this clause shall not apply to the disposal of an individual Residential Unit on this Development

11. Indexation

All financial contributions payable to the Council shall be Index Linked

12. Interest

If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of actual payment compounded annually.

13. VAT

13.1. All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable in respect thereof

13.2. If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

14. Delivery

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

Schedule 1 Covenants to the Council

The Owners covenant with the Council:

1. To pay the Leisure Contribution and Open Space Contribution prior to the first Occupation of the any of the units on the Development and not to allow Occupation of any of the units on the Development to take place until the Leisure Contribution and the Open Space Contribution shall have been paid to and such payment acknowledged in writing by the Council

Schedule 2 Covenants by the Council

The Council covenants with the Owners:

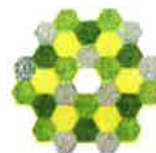
1. To use all sums received from the Owners under the terms of this Deed for the purposes specified in this Deed for which they are to be paid

2. To pay to the paying party such amount of the Leisure Contribution or Open Space Contribution made by the Owner to the Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within five (5) years of the date of receipt by the Council of such payment on receipt of a written request from the Owners to do so

Annex A. : Plan

Land Registry
Official copy of
title plan

Title number **WT287388**
Ordnance Survey map reference **SU0278NW**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Wiltshire**



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This official copy is incomplete without the preceding notes page.

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 **WILTSHIRE COUNCIL**

was affixed to this document in the presence of:

Senior Solicitor



Authorised/signatory

Signed as a deed by **BRIAN MICHAEL PICKERING** in the presence of

[SIGNATURE OF OWNER]

[SIGNATURE OF WITNESS]

[NAME, ADDRESS (AND
OCCUPATION) OF WITNESS]
**ROGER CHADWICK
SOLICITOR**

**AWDRY BAILEY & DOUGLAS
33 ST. JOHN'S STREET
DEVIZES
WILTSHIRE SN10 1BW**

Signed as a deed by **ANN DOLORES PICKERING** in the presence of:

[SIGNATURE OF OWNER]

[SIGNATURE OF WITNESS]

[NAME, ADDRESS (AND
OCCUPATION) OF WITNESS]
**ROGER CHADWICK
SOLICITOR**

**AWDRY BAILEY & DOUGLAS
33 ST. JOHN'S STREET
DEVIZES
WILTSHIRE SN10 1BW**

Executed as a deed by **AJ BELL TRUSTEES LIMITED** acting by two Directors

.....
[SIGNATURE OF DIRECTOR]
Director

[SIGNATURE OF DIRECTOR]
Director

