

AGREEMENT

Under Section 106 of the Town and Country Planning Act 1990 as amended

BETWEEN

OLWEN NASH (1)

and

WELWYN HATFIELD BOROUGH COUNCIL (2)

RE

Planning Obligation relating to use of the property known as 125 Ridgeway, Cuffley,
Potters Bar, Herts EN6 4BG.

P M Thomson
County Solicitor
Essex Legal Services
New Bridge House
60-68 New London Road
Chelmsford
Essex
CM2 0PD
(Ref: JPC/WHBC/3)

DATE 12 November

2013

PARTIES

- (1) OLWEN NASH of 125 The Ridgeway, Cuffley, Potters Bar, Herts EN6 4BG, ("the Owner") and
- (2) WELWYN HATFIELD BOROUGH COUNCIL of The Campus, Welwyn Garden City Hertfordshire AL8 6AE ("the Council")

WHEREAS

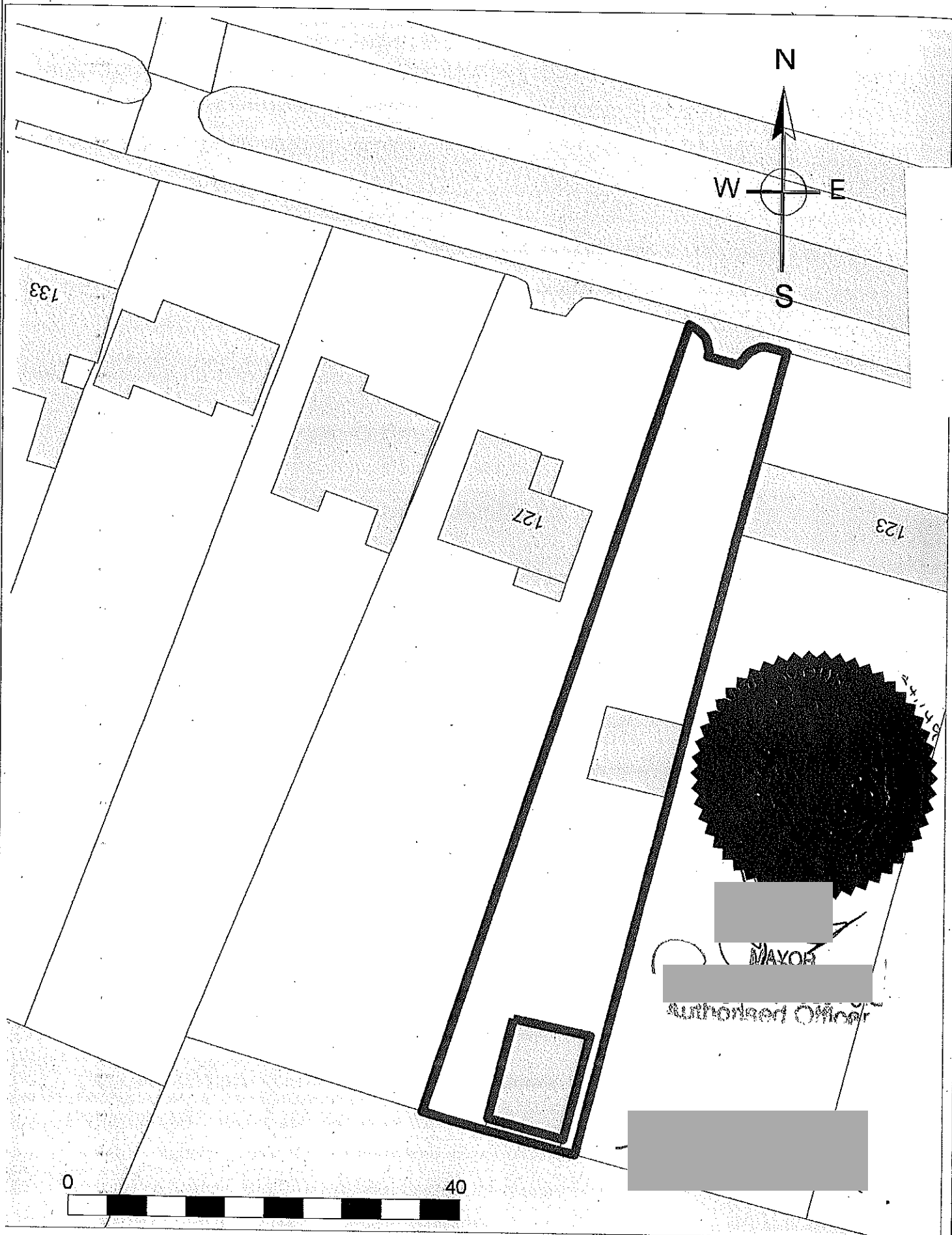
- (1) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Property is situated
- (2) The Owner is the owner of the Property which forms the land registered at HM Land Registry with Freehold Title Absolute under Title Number HD398927 and has an interest in the Property within the meaning of Section 106 (9) (b) of the 1990 Act
- (3) The Council considers it expedient that provision should be made for regulating or facilitating the development or use of the Property in the manner hereinafter appearing and the Council consider that entering into this Agreement will be of benefit to the public
- (4) The Owner has agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and its successors in title
- (5) In entering into this Agreement with the Owner it is the intention of the Council to relax the terms of the Notice in accordance with the Schedule to this Agreement

1. OPERATIVE POWERS

1.1 THIS AGREEMENT is made pursuant to Section 106 of the 1990 Act as amended by the 1991 Act and 2004 Act and 2008 Act and 2011 Act to the intent that it shall bind the Owner and its successors in title and assigns and the persons claiming under or through it

1.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

1.3 Nothing in this Agreement is intended to confer any benefit on any party other than the parties executing this Agreement



Council Offices, The Campus,
Welwyn Garden City, Herts. AL8 8AE

Title: 125 The Ridgeway, Cuffley, Herts, EN6 4BG

Project:

Drawing Number: CA/1

Scale: 1:500 @ A4

Date: 17th June 2013

Drawn: Charles Allingham

1.4 To the extent that if any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in Section 111 of the 1972 Act and Section 1 of the Localism Act 2011 all other enabling powers

2. INTERPRETATION

2.1 In this Agreement the following expressions shall have the following meanings:-

"the 1972 Act" shall mean the Local Government Act 1972

"the 1990 Act" shall mean the Town and Country Planning Act 1990

"the 1991 Act" shall mean the Planning and Compensation Act 1991

"the 2004 Act" shall mean the Planning and Compulsory Purchase Act 2004

"the 2008 Act" shall mean the Planning Act 2008

"the 2011 Act" shall mean the Localism Act 2011

"the Building" shall mean the building within the curtilage of the Property as shown edged blue on the attached plan

"the Notice" shall mean an extant planning enforcement notice served by the Council on the Owner on 28 June 2012 to restrict the use of the Building and to require the following matters to be complied with in respect of the Building:

- a) Remove all fixtures and fittings from the bathroom and ensuite shower room;
- b) Remove all facilities for the provision of hot food and drinks, including but not limited to, microwaves, kettle, fridge and toaster;
- c) Remove all residential fixtures and fittings, including furniture, carpets, satellite dish and TV aerial;
- d) Return the Building to its approved use as a garage and workshop

"the Property" shall mean the residential dwelling house and all associated buildings and gardens within the boundary as shown edged red on the attached plan

2.2 Where in this Agreement reference is made to a Clause Paragraph Schedule Plan or Recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule plan or recital of or (in the case of a plan) attached to this Agreement

2.3 Where in any Schedule or Part of a Schedule reference is made to a Paragraph such reference shall (unless the context otherwise requires) be to a paragraph of that Schedule or (if relevant) Part of a Schedule

2.4 References in this Agreement to the Owner and the Council or any one or more of them shall include reference to their respective successors in title and to persons claiming through or under them

2.5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

2.6 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner

2.7 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of the restriction

2.8 Any reference to a statute a provision thereof a statutory instrument or such Specification Code of Practice or General Direction as is issued under statutory authority or by a Secretary of State shall include any modification extension consolidation or re-enactment thereof 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 thereunder or deriving validity therefrom

2.9 Clause headings and table of contents contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the parts of this Agreement to which they relate

2.10 The word "including" shall mean "including without limitation or prejudice to the generality of any description defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly

3. OBLIGATIONS OF THE PARTIES

3.1 The Owner so as to bind the Property covenants with the Council to comply with the obligations set out in the Schedule to this Agreement

3.2 The Council covenants with the Owner to comply with the obligations set out in the Schedule to this Agreement

3.3 The Council covenants with the Owner to act reasonably, properly and diligently in exercising its discretion and discharging its functions under this Agreement and FURTHERMORE where any notice or consent or approval or authorisation or agreement or other similar affirmation is required under the terms of the Agreement then under those circumstances the Council will not unreasonably withhold or delay such notice or consent or approval or authorisation or agreement or other similar affirmation

4. TRANSFER OF INTERESTS

4.1 The Owner shall upon parting with its interest in the Property be released from all obligations rights and duties (save for liability in respect of any antecedent breach) under the terms of this Agreement Provided That if the Owner shall retain an interest in any part of the Property the Owner shall remain liable insofar as such liability relates to such retained interest

4.2 The Owner shall give to the Council within one month of the Owner disposing of any part of the land comprised in the Property written notice of the name and address of the person to whom the land has been transferred

4.3 the provisions of Clauses 4.1 and 4.2 shall apply in relation to any successor in title of the Owner as the owner of the Property or any part thereof mutatis mutandis

5. GENERAL

5.1 Unless otherwise specified where any agreement certificate consent permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed or imposed (as the case may be) but may only be given in writing and may be validly obtained only prior to the act or event to which it applies and the party giving such agreement certificate consent permission expression of satisfaction or other approval shall at all times act reasonably and the agreement or requirement shall be given or imposed (in the case of the Council) by the Head of Legal and Democratic Services

5.2 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred

5.3 No compensation shall be payable by the Council to the owner or their successors in title arising from the terms of this Agreement and assigns arising from the terms of this Agreement

5.4 Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions in any capacity and the rights powers duties and obligations of the Council under private public or subordinate legislation may be effectively exercised as if it were not a party to this Agreement (and in particular it shall not be precluded from entering into any agreement under the 1990 Act

with any other party and shall not be deemed to be in breach of this Agreement by so
(going)

5.5 Any agreement obligation covenant or undertaking contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or undertaking is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately

5.6 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties

5.7 No variation to this Agreement shall be effective unless made by Deed or pursuant to the determination of an application made under Section 106A of the 1990 Act or an appeal under section 106B of the 1990 Act

5.9 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement

5.8 This Agreement shall be enforceable as a local land charge and shall be registered as such immediately by the Council and the Council covenants with the Owner it will note the local land charges register and the planning register following the occurrence of the compliance performance and satisfaction of all of the said obligations

5.9 This Agreement is governed by the laws of England and Wales and is subject to the exclusive jurisdiction of the English and Welsh Courts

5.10 It is hereby agreed and declared that a person who is not a party to this Agreement shall not be entitled in his own right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999

5.11 This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts and each of those counterparts when executed and delivered shall constitute an original but all the counterparts together shall constitute one and the same instrument

5.12 The provisions of this Agreement shall be of no effect until this Agreement has been dated

13 This Agreement will come to an end if the terms become irrelevant, impractical or unworkable; or if the Council agrees in writing on written request by the Owner to render this Agreement null and void and under such circumstances where the Agreement comes to an end under this clause the Council is, on the written request of the Owner to delete or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Property

DETERMINATION OF DISPUTES

1 Subject to clause 6.7 if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this clause 6. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute

2 For the purposes of this clause 6 a "**Specialist**" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to matters relevant to the subject matter contained in this Agreement

3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause

Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional

institute with expertise in the relevant discipline as agreed between the parties in (dispute)

6.5 The Specialist is to act as an independent expert and:

6.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;

6.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;

6.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

6.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

6.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

6.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.

6.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

6.7 This clause 6 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts of England.

IN WITNESS whereof this document has been executed as a Deed and delivered the day and year first before written

SCHEDULE

1. The Owner covenants with the Council that it shall:

1.1 Ensure that the Building shall not at any time be occupied, or used other than solely as accommodation ancillary to the main dwelling house known as 125 Ridgeway, Cuffley, Potters Bar, Herts EN6 4BG and shall not be let, occupied or sold separately from the remainder of the Property

1.2 (a) As soon as reasonably practicable, but no later than one (1) month following the date of this Agreement, apply to the Land Registry to note the restrictions contained in this Agreement on the register of title to the Property;

1.2 (b) Promptly deal with any requisitions raised by the Land Registry in connection with such application in 1.2 (a) of this Schedule above; and

1.2(c) provide to the Council official copies of title to the Property evidencing that the obligation at paragraph 1.2(a) of this Schedule above has been satisfied within four (4) months following the date of this Agreement.

2. The Council covenants with the Owner that it shall:

2.1 Subject to the Owner complying with the terms of this Schedule exercise its powers under S173(1)(b) of the 1990 Act to relax all the requirements of paragraph 5 of the Notice and to allow the use of all necessary cooking facilities in the Property

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of WELWYN)
HATFIELD BOROUGH COUNCIL)

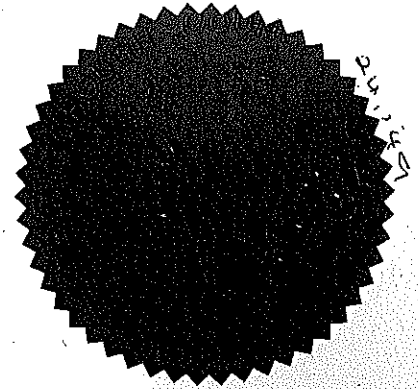
in the presence of:)



Mayor



Authorised Officer



SIGNED as a DEED by)

OLWEN NASH)

in the presence of:-)



Name.....)



Address.....
WELD & BEAVAN
SOLICITORS
92 LITTLE PARK GARDENS
ENFIELD MIDDLESEX EN3 6PF
Telephone: 020 8363 1281

Occupation.....
Solicitor