

DATED

10th APRIL 2013

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990**

relating to

**ANCILLARY RESIDENTIAL ACCOMMODATION AT WOODFIELD LANE, HATFIELD,
HERTFORDSHIRE**

between

WELWYN HATFIELD BOROUGH COUNCIL

and

THOMAS HENRY WALDUCK, DAVID ALFRED HOWGEGO & SYBIL GWYNETH HOWGEGO



DAVITT JONES BOULD

15 The Crescent Taunton Somerset TA1 4EB

10808.0015/RDW

DATE:

2013

PARTIES

- (1) **WELWYN HATFIELD BOROUGH COUNCIL** of The Campus, Welwyn Garden City Hertfordshire AL8 6AE ("**Council**")
- (2) **THOMAS HENRY WALDUCK** of Woodfield Farm, Kentish Lane, Hatfield, Hertfordshire AL9 6JL ("**First Owner**")
- (3) **DAVID ALFRED WILLIAM HOWGEGO** and **SYBIL GWYNETH HOWGEGO** of Woodfield, Woodfield Lane, Hatfield, Hertfordshire AL9 6JJ ("**Second Owner**")

RECITALS

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 By the Original Planning Permission the Council granted permission for the conversion of a detached garage into the Dwelling subject to the restrictions set out in the Original Section 106 Agreement.
- 3 The Dwelling lies within the Second Owner's Property and the Second Owner has submitted the Application to the Council in respect of the Dwelling and the restrictions set out in the Original Section 106 Agreement.
- 4 The First Owner owns the freehold of the Site and has agreed to purchase the Dwelling from the Second Owner on the basis that the restrictions set out in the Original Section 106 Agreement shall continue to apply to the Dwelling following completion of that purchase.
- 5 The First Owner and the Second Owner have each agreed to enter into this Deed in order to secure the planning obligations contained in this Deed and to ensure that the restrictions set out in the Original Section 106 Agreement remain fully effectual and in force against the Dwelling and the Site but so that they shall no longer apply to the remainder of the Second Owner's Property.
- 6 The Council has resolved to grant the Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"

the Town and Country Planning Act 1990.

“Application”	the application to modify the Original Section 106 Agreement dated 13 th August 2012 submitted to the Council and allocated reference number S6/2012/1747/AM.
“Dwelling”	the land and the residential dwelling constructed thereon pursuant to the Original Planning Permission as is shown shaded green on the Plan.
“Occupied”	occupation for the purposes permitted by the Permission.
“Original Planning Permission”	Planning Permission reference number S6/2001/976/FP dated 27 th May 2002 granting permission for the creation of the Dwelling from an existing detached garage.
“Original Section 106 Agreement”	an agreement dated 27 th May 2002 and made between Welwyn Hatfield Borough Council (1) and David Alfred William Howgego & Sybil Gwyneth Howgego (2).
“Plan”	the plan attached to this Deed.
“Permission”	the full permission subject to conditions to be granted by the Council pursuant to the Application.
“Second Owner’s Property”	the land and property known as Woodfield House, Woodfield Lane, Hatfield, Hertfordshire AL9 6JJ as is shown edged and hatched blue on the Plan and as is comprised within title number HD188944.
“Site”	the land and property known as Woodfield Farm, Kentish Lane, Hatfield, Hertfordshire AL9 6JL as is shown edged red on the Plan and as is comprised within title number HD480155 and against which this Deed may be enforced.

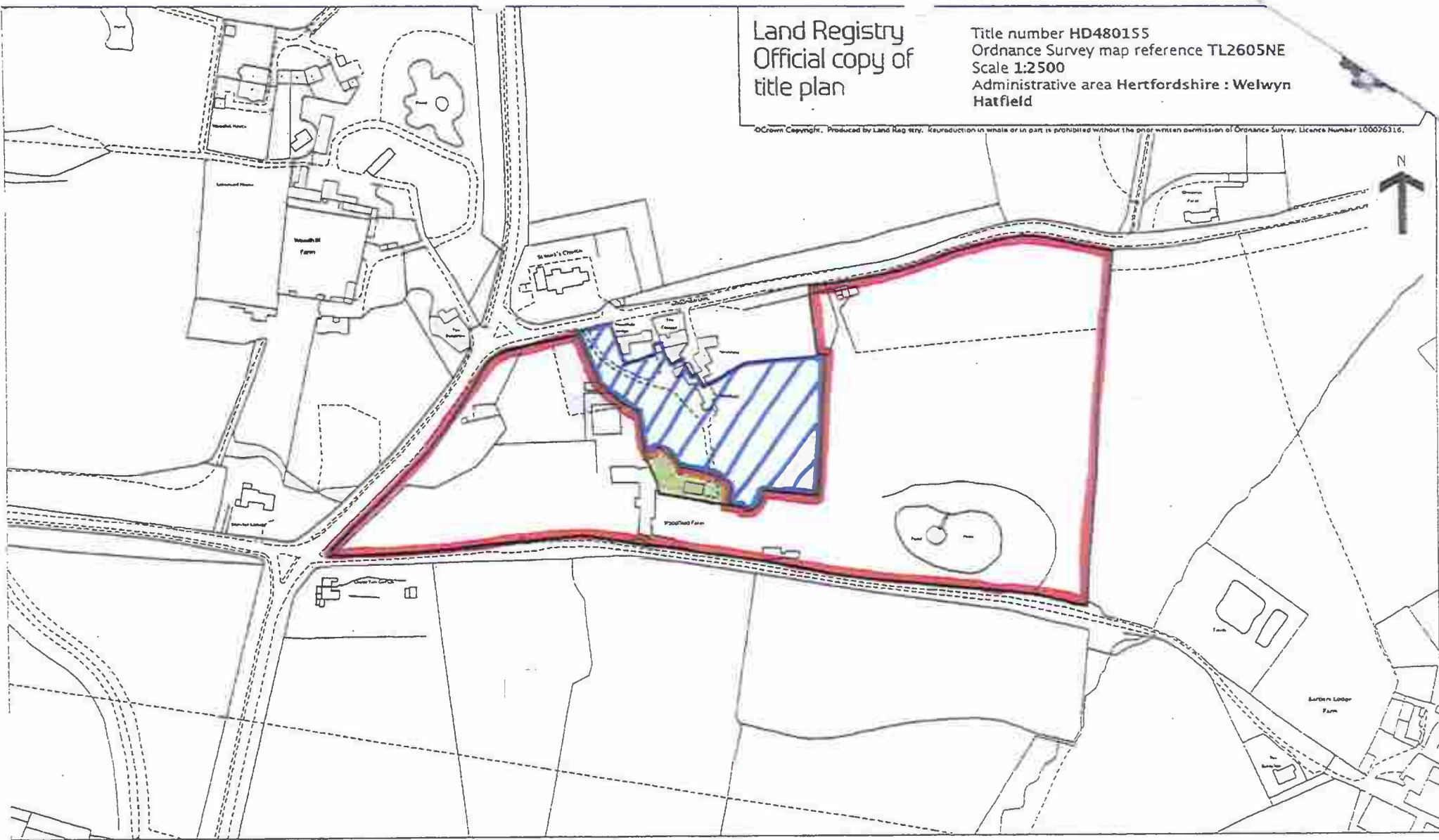
2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

Land Registry
Official copy of
title plan

Title number HD480155
Ordnance Survey map reference TL2605NE
Scale 1:2500
Administrative area Hertfordshire : Welwyn
Hatfield

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2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act 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 under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.

2.7 The headings and contents list are for reference only and shall not affect construction.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act and Section 1 of the Localism Act 2011 and all other relevant enabling legislation.

3.2 The covenants, restrictions and requirements imposed upon the First 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 First Owner.

3.3 The Second Owner is released from the obligations contained within the Original Section 106 Agreement but without prejudice to liability for any subsisting breach arising prior to parting with its interest in the Dwelling.

4 COMMENCEMENT

The provisions of this Deed shall come into full force and effect from and including the date of this Deed.

5 THE FIRST OWNER'S COVENANTS

The First Owner covenants with the Council as set out in the Schedule.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Second Owner that within 14 days of the date of this Deed, it shall remove the Original Section 106 Agreement from the local land charges register (with this Deed being registered in its place) and that it shall not raise any objection in the event that the Second Owner shall apply to remove reference to the Original Section 106 Agreement from the title to the Second Owner's Property.

7 MISCELLANEOUS

7.1 The Second Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.3 This Deed shall be registrable as a local land charge by the Council.

- 7.4 Insofar as any clause or clauses 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 This Deed shall cease to have effect if the Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the First Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.6 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 Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.7 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

8 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.

9 CHANGE IN OWNERSHIP

The First Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site and/or the Dwelling, such notice to give details of the transferee's full name and registered office (if a company or usual address if not).

10 JURISDICTION

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.

11 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.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

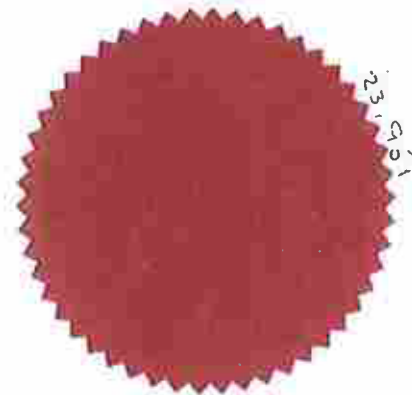
THE SCHEDULE

The First Owner's Covenants with the Council

The First Owner Covenants with the Council that:-

1. the Dwelling shall not at any time be Occupied, or used other than solely as residential accommodation ancillary to the main dwelling house known as Woodfield Farm and shall not be let, Occupied or sold separately from the remainder of the Site.
2. he shall:-
 - (a) as soon as reasonably practicable after the date of this Deed, apply to the Land Registry to note the restrictions contained in this Deed on the register of title to the Site;
 - (b) promptly deal with any requisitions raised by the Land Registry in connection with such application; and
 - (c) provide to the Council official copies of title to the Site evidencing that the obligation at paragraph 2(a) above has been satisfied forthwith upon the completion of the said application.

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of WELWYN)
HATFIELD BOROUGH COUNCIL)
in the presence of:)



Mayor..... [Redacted]
Authorised Officer..... [Redacted]

SIGNED as a DEED by **THOMAS**)
HENRY WALDUCK in the)
presence of:-)

Signature of Witness
Name of Witness
Address of Witness

[Redacted witness information for Thomas Henry Walduck]

SIGNED as a DEED by **DAVID ALFRED**)
WILLIAM HOWGEGO in the)
presence of:-)

Signature of Witness
Name of Witness
Address of Witness

[Redacted witness information for David Alfred William Howgego]

SIGNED as a DEED by **SYBIL GWYNETH**)
HOWGEGO in the presence of:-)

Signature of Witness
Name of Witness
Address of Witness

[Redacted witness information for Sybil Gwyneth Howgego]