

Dated

Ninth day of August

2016

(1) LUDGATE PROPERTY DEVELOPMENT LIMITED

(2) WELWYN HATFIELD BOROUGH COUNCIL

PLANNING OBLIGATION BY DEED OF AGREEMENT

PURSUANT TO SECTION 106

OF THE TOWN AND COUNTRY PLANNING ACT 1990

Relating to a planning application

in relation to land adjacent to 37/48 Lambs Close

Cuffley EN6 4HQ

Edward Oliver and Co  
38 Crossbrook Street  
Cheshunt  
Hertfordshire  
EN8 8JQ

REF: AG/NG/Ricotta 339/15

## Contents Page

1. DEFINITIONS AND INTERPRETATION
2. LEGAL BASIS
3. CONDITIONALITY
4. MISCELLANEOUS
5. OBLIGATIONS OF THE DEVELOPER
6. COVENANTS BY THE COUNCIL
7. WAIVER
8. CHANGE IN OWNERSHIP
9. INTEREST
10. VAT
11. DISPUTE PROVISIONS
12. JURISDICTION
13. DELIVERY

Schedule

Appendix 1 The Plan (Drawing No.1139-401-Revision B)

Appendix 2 Drawing No.2

Appendix 3 Form of Notice

THIS AGREEMENT is made this Ninth day of August 2016

BETWEEN

PARTIES:

- (1) LUDGATE PROPERTY DEVELOPMENT LIMITED (company registration Number 05010890) of 19 Carbone Hill Northaw Hertfordshire EN6 4PJ ("the Developer")
- (2) WELWYN HATFIELD BOROUGH COUNCIL of Council Offices, The Campus, Welwyn Garden City, Hertfordshire ("the Council")

RECITALS

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Application Site is situated and as such are the local planning authority entitled to enforce the terms of this Agreement
- (B) The Developer is the freehold owner of the whole of the Application Site
- (C) The Application has been made to the Council for planning permission for the Development on the Application Site
- (D) On ~~2016~~ the Council resolved to grant Planning Permission ~~subject amongst other things the prior completion of this Agreement~~ 9-13
- (E) The Council considers it expedient, in granting the Planning Permission, that provisor should be made for regulating or facilitating the development or use of the Application Site in the manner hereinafter appearing and the Council considers that entering into this Agreement will be of benefit to the public

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purposes of this Deed (including the Recitals) the following expressions shall have the following meanings:-

- 1.1.1 "Act" means the Town and Country Planning Act 1990 (as amended)
- 1.1.2 "Application(s)" means the applications dated 21<sup>st</sup> October 2015, submitted to the Council and allocated reference numbers 6/2015/2173/FULL (for full planning permission) and 6/2015/2174/VAR (for variation of a condition)
- 1.1.3 "Application Site" means the land known as land adjacent to 37/48 Lambs Close, Cuffley, EN6 4HQ as shown edged red on the Plan annexed hereto marked "Site Plan" being the land registered at the Land Registry under title number HD365252
- 1.1.4 "Association" means the Lambs Close Leaseholds Association c/o Hilary Birch, 7 Lambs Close, EN6 4HB, and its successors
- 1.1.5 "Development" means erection two (2) bedroom flats together with associated parking and retention of existing car parking spaces following demolition of existing garages
- 1.1.6 "Drawing No.2" means the drawing attached to this Agreement at Appendix 2, which shows the layout of the existing parking spaces
- 1.1.7 "Dwelling" means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and "Dwellings" shall be mutatis mutandis construed
- 1.1.8 "Head of Planning" means Head of Planning of the Council and shall include their duly authorised agents and representatives or any successor
- 1.1.9 "Interest" means the rate from time to time prescribed under the Land Compensation Act 1961
- 1.1.10 "Plan" means Drawing No. 1139-401-Revision B, attached to this Agreement at Appendix 1, which shows the proposed layout of the parking spaces
- 1.1.11 "Planning Permission" means the planning permission is to be granted by the Council pursuant to the Application or from any reserved matters submissions or resulting from any other planning application covering all or part of the Site for any of the uses comprised in the Planning Application whether granted by variation alteration substitution addition or replacement
- 1.1.12 "Practical Completion" means issue of a certificate of practical completion of the Development by the Developer's architect or in the event that the Development is constructed by a party other than the Developer the issue of a certificate of practical

completion by that other party's architect that the Development has been constructed and is available for Occupation

- 1.1.13 "Pro-forma" means the template notice attached to this Agreement at Appendix 3
- 1.1.14 "Schedule" means Schedule contained in this Agreement
- 1.1.15 "Working Days" means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory Bank Holiday and "Working Day" shall be construed accordingly

## **1.2 Interpretation**

- 1.2.1 Where in this Agreement 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 Agreement
- 1.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1.2.3 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
- 1.2.4 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
- 1.2.5 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
- 1.2.6 References to any party to this Agreement 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 the successors to its statutory functions
- 1.2.7 The headings and contents list are for reference only and shall not affect construction
- 1.2.8 The words "including" and "include" shall be deemed to be followed by the words "without limitation"
- 1.2.9 References in this Agreement to "development" shall have the meaning given to it by Section 55 of the Act

## **2. LEGAL BASIS**

- 2.1 This Agreement is made pursuant to Section 106 of the Act. To the extent that they fall within the terms of Section 106 of the Act, the obligations contained in this Agreement are



planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council against the Developer

2.2 To the extent that 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 Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers

2.3 The Developer enters into the obligations for itself and its successors in title with the Council with the intent that the obligations contained in this Agreement shall be enforceable not only against the Developer but also against the successors in title of the Developer and any person claiming through or under the Developer an interest or estate in the Application Site or any part thereof

### **3. CONDITIONALITY**

3.1 This Agreement shall come into immediate effect save for clause 5 which is conditional upon the grant of the Planning Permission

### **4. MISCELLANEOUS**

4.1 The Developer hereby warrants that it is the owner of the freehold of the Application Site and that no other party has a material interest in the Application Site

4.2 The Developer shall pay to the Council on completion of this Agreement their respective reasonable legal costs and disbursements of and incidental to the negotiation preparation and execution of this Agreement

4.3 No provisions of this Agreement shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 nor does it confer or purport to confer any right to enforce any of the terms and provisions of this Agreement to any person who is not a party or successor in title or statutory successor to a party hereto

4.4 This Agreement shall be registrable as a Local Land Charge by the Council

4.5 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:-

In respect of the Developer at:

19 Carbone Hill  
Northaw  
Hertfordshire  
EN6 4PJ  
(For the attention of G. Ricotta, Esq )

In respect of the Council at:

The Head of Planning  
Council Offices

The Campus  
Welwyn Garden City  
Hertfordshire  
AL8 6AE

In respect of the Association at:

7 Lambs Close  
Cuffley  
Hertfordshire  
EN6 4HB  
(For the attention of: Hilary Birch)  
Telephone: 01992 420 425/ 07980 974 657)

- 4.6 Insofar as any clause or clauses of this Agreement 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 Agreement
- 4.7 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires prior to the Commencement Date
- 4.8 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Application Site except to the extent that they have caused or contributed to that breach save that they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Application Site in any transfer of the Application Site will constitute an interest for the purposes of this clause
- 4.9 Any agreement obligation covenant or undertaking contained herein by the Developer or the Council which comprise more than one person or entity shall be joint and several. Where any agreement obligation covenant or undertaking is made with or undertaken towards any of the parties to this Agreement which comprise more than one person it shall be construed as having been made with or undertaken towards each such person separately
- 4.10 No compensation shall be payable by the Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the successors in title to the Developer and at no cost to the Council
- 4.11 The Developer grants an irrevocable licence to the Council and/or any person duly authorised or instructed by them to enter upon any part of the Application Site at any reasonable time subject to providing written notice to the Developer (and immediately in the event of an emergency) to ascertain whether the terms of this Agreement and/or of the Planning Permission are or have been complied with subject to complying with all health and safety requirements required by the Developer

- 4.12 Nothing in this Agreement shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council of any statutory powers exercisable by them respectively under the Act or under any other act or authority
- 4.13 Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of their 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 neither were a party to this Agreement (and in particular neither shall be precluded from entering into any agreement under the Act and/or under any other act or authority with any other party and shall not be deemed to be in breach of this Agreement by so doing)
- 4.14 The parties hereto acknowledge and agree that the planning obligations imposed in this Agreement satisfy the tests in Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 in that they are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and are reasonably related in scale and kind to the Development

## **5. OBLIGATIONS OF THE DEVELOPER**

- 5.1 The Developer so as to bind the Application Site covenants with the Council
- 5.1.1 To comply with its obligations set out in the Schedule to this Agreement
- 5.1.2 To give the Council no less than five (5) Working Days' notice of the Occupation of the Development such notice to be in writing using the pro-forma set out in Appendix 3 hereto and
- 5.1.3 To give the Council no less than five (5) Working Days' notice of the Practical Completion of the Development such notice to be in writing using the pro-forma set out in Appendix 3 hereto.

## **6. COVENANTS BY THE COUNCIL**

- 6.1 The Council covenants with the Developer:
- 6.1.1 To issue the Planning Permission within five (5) Working Days after the completion of this Agreement
- 6.1.2 To provide written confirmation, at the written request of the Developer, of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed
- 6.1.3 To act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation



6.1.4 To use any sums received from the Developer under the terms of this Agreement for the purpose(s) specified in this Agreement for which they are paid

6.1.5 That it will pay upon written request to the Developer a sum equal to the amount of any payment made by the Developer to the Council under this Agreement which has not been expended in accordance with the provisions of this Agreement within ten (10) years of the date of receipt by the Council of such payment together with any interest accrued on such unexpended sum from the date of receipt to the date of payment PROVIDED THAT such written request shall only be made within one (1) year commencing from the date of the expiry of the aforementioned ten (10) year period and in the event of no written request being made within such period any unexpended sum together with accrued interest shall be released free of any liability and obligations to the Council

## **7. WAIVER**

7.1 No waiver (whether expressed or implied) by the Council (or the Developer) of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council (or the Developer) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

## **8. CHANGE IN OWNERSHIP**

Otherwise than in relation to transfers to the utility companies the Developer shall give to the Council within 1 (one) month of the Developer disposing of any part of the Application Site written notice of the name and address of the person to whom the Application Site or any part has been transferred

## **9. INTEREST**

If any payment by the Developer due under this Agreement is paid late Interest will be payable from the date payment is due to the date of payment.

## **10. VALUE ADDED TAX**

All contributions paid in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable

## **11. DISPUTE PROVISIONS**

11.1 The parties to the Deed and their successors in title will attempt in good faith to negotiate a settlement to any claim or dispute between them arising out of or in connection with this Deed and if the matter is not resolved by negotiation the parties shall refer the dispute to mediation in accordance with the Centre for Effective Dispute Resolution procedures

11.2 Notwithstanding the provisions of Clause 13.1 above the parties to this Deed and their successors in title shall reserve all their respective rights in the event that no agreed resolution shall be reached in the mediation referred to in Clause 13.1 and no party shall be deemed to be precluded from taking such interim formal steps as may be considered

necessary to protect such party's position while the mediations or other procedure is pending or continuing

**12. JURISDICTION**

This Agreement 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

**13. DELIVERY**

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

27/07/16

**The Schedule**

*and free of charge*

On Practical Completion, the Developer is to provide twenty one (21) parking spaces for the parking of non-commercial vehicles and three (3) secure cycle units, within the areas hatched brown on the Plan, in perpetuity for the benefit of the residents of Blocks A, B, C and D of Lambs Close and to grant a pedestrian and vehicular right of way (in connection with accessing those parking spaces) over the land hatched blue on the Plan, in perpetuity for the benefit of the residents of Blocks A, B, C and D of Lambs Close

*and free of charge*

Lambs Close Leasehold Association to be responsible for the allocation of the said parking spaces to the residents of Blocks A, B, C and D

*27/07/16*

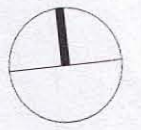
**Appendix 1**

**The Plan**

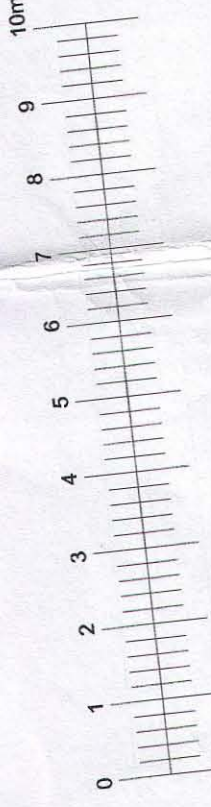
**(Drawing No.1139-401-Revision B)**



37-48 Lambs Close



1:100



G *[Handwritten signature]*



**dpa** ARCHITECTS  
 INTERIOR DESIGNERS  
 PARTY WALL SURVEYORS  
 PLANNING CONSULTANTS

**Hertfordshire Office**  
 25 Tudor Hall  
 Brewery Road  
 Hoddesdon, Herts  
 EN11 8FP

**London Office**  
 9 Devonshire square  
 London  
 EC2M 4YF

**RIBA**

01992 469001  
 info@dpa-architects.co.uk  
 www.dpa-architects.co.uk

Client	Ludgate Property Development Ltd.
Site address	Land Adjacent to Flats at 37-48 Lambs Close, Cuffley, Herts, EN6 4HQ
Project Description	Demolition of Existing Garages and Erection of Two Flats Together with Parking and the Retention of 21 Existing Spaces of the Flats in Lambs Close
Drawing Title	Site Plan
Drawn	KI
Checked by	DP
Issued for	Section 106 agreement
Scale	1:100@A2
Drawing No.	1139 - 401
Date	April 2016
Revision	

1 Proposed Site Plan 1:100

Users should read in conjunction with structural engineer's drawings and information. Any omission to be reported to and clarified with client prior to commencement. Verify dimensions, levels and existing structure, etc. on site prior to commencement. All works to comply with current regulations, British and European Standards. Please note that initial drawings submitted to Building Control are subject to additional information required by Building Control / NHBC, which could have significant cost or additional works to be done onsite. All works commenced on site prior to obtaining full building control approval will be carried out at your own risk.

Revisions



**Appendix 2**

**Drawing No.2**

9

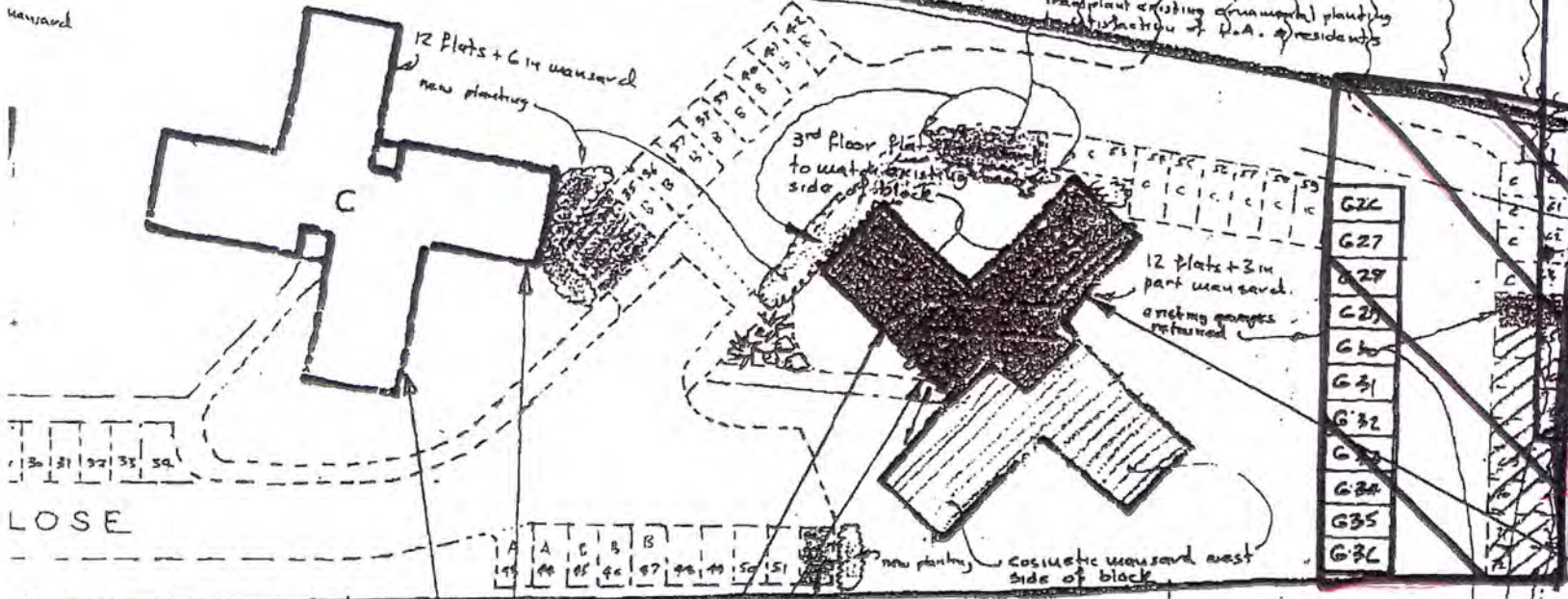
WELWYN HATFIELD COUNCIL

OFFICE COPY

RECEIVED  
6/27/98  
9 MAR 1998

Superseded  
6/2016/194/MAR

Scale 58m



G26
G27
G29
G21
G6
G31
G32
G33
G34
G35
G36

new trees @ 2/m<sup>2</sup>  
 extra Nitida @ 3/m<sup>2</sup>  
 @ 500 cc's  
 existing Rogeriana 2/m<sup>2</sup>

(parking space indicated for block B application 703/94.  
 parking space deleted application 561/95.  
 parking space reinstated for block D this application.  
 parking space indicated for block C application 703/94.  
 parking space deleted application 561/95  
 parking space reinstated for block D this application  
 reinstated disused parking area (work in progress)  
 unallocated parking to be repaired & made available

approx positions of adjacent  
 properties plotted from  
 D.S. enlargement

SCALE 1:500

DRG NO 1

NO 10

**Appendix 3**

**Form of Notice**

**Pro-forma Event Notification**

Pursuant to Section 106 Agreement

DATED .....

MADE BETWEEN .....

PLANNING PERMISSION REFERENCE .....

WHBC REFERENCE.....

SITE ADDRESS .....

SITE OWNER DETAILS:

Name: .....

Contact Name : .....

Address: .....

Telephone No: ..... Mobile: .....

Email: .....

EVENTS BEING NOTIFIED

Completion of Development – date:

Compliance with Obligation(s) in Schedule to the 106 –



**Execution Page**

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

**EXECUTED** as a Deed by GIUSEPPE RICOTTA )

**Ludgate Property Development Limited** )

acting by:- )

Director

In the presence of:-

Witness signature...

Witness name.....ALAN GOLDBERG

Witness address.....38 Crossbrook Street

.....Cheshunt, Herts

Witness occupation.....Solicitor

**EXECUTED** as a Deed by

**WELWYN HATFIELD BOROUGH COUNCIL**

by affixing its common seal in the presence of:-

Authorised signatory.....

MAYOR

**Authorised Officer**

