

DATED 4th December 2013

WELWYN HATFIELD BOROUGH COUNCIL
(The Council)

IN FAVOUR OF HERTFORDSHIRE COUNTY COUNCIL
(The County)

UNILATERAL UNDERTAKING

Pursuant to
Section 106 Town and Country Planning Act 1990
(as amended)

Relating to
Land at Council Offices, Campus East,
Welwyn Garden City
Hertfordshire
AL8 6AE

Legal Services,
Welwyn Hatfield Borough Council,
Council Offices,
The Campus,
Welwyn Garden City
Herts AL8 6AE

THIS UNILATERAL UNDERTAKING is made by deed on the 4th day of December 2013

PARTIES

(1) **WELWYN HATFIELD BOROUGH COUNCIL** of Council Offices, The Campus, Welwyn Garden City AL8 6AE (The Council)

In favour of:

(2) **HERTFORDSHIRE COUNTY COUNCIL** of County Hall, Pegs Lane, Hertford, Herts SG13 8DE (The County)

WHEREAS:-

- (1) The Council is the freehold owner of the whole of the Land and is also a local planning authority for the purposes of the Act for the area within which the Land is situate
- (2) The County is also a local planning authority for the purposes of the Act for the area within which the Land is situate and for the purposes of this Deed shall be the local planning authority entitled to enforce the planning obligations hereinafter recited
- (3) The County is the highway authority for Hertfordshire
- (4) The Council has submitted the Planning Application to the Council (in its capacity as local planning authority)
- (5) This Deed is entered into by the Council to secure the matters hereinafter referred to which are required in order to enable the Development to go ahead

NOW THIS DEED WITNESSES as follows:-

OPERATIVE PART

1. DEFINITIONS

1.1 In this Deed the following expressions shall have the following meanings:-

"the Act" means the Town and Country Planning Act 1990 (as amended)

"Commencement Date" means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the expressions "Commence" "Commences" "Commencement" and "Commenced" shall be construed accordingly

"Development" means the development on the Land of a three (3) storey infill extension to the rear elevation to provide a new Council chamber and offices; and single storey side extension to the Council Offices to accommodate relocated departments

"Director" means the County's Chief Executive and Director of Environment for the time being and his agents and officers;

"Land" means the freehold property situate at The Campus, Welwyn Garden City, Hertfordshire AL8 6AE consisting of registered title numbers HD121167 and HD281356 and unregistered titles by a Conveyance dated 21st January 1936 made

between Welwyn Garden City Limited (1) and The Urban District Council of Welwyn Garden City (2) AND a Conveyance dated 14th December 1962 made between Welwyn Garden City Development Corporation (1) and the Urban District Council of Welwyn Garden City (2) which land is shown for identification purposes edged red on the Plan

"Plan" means the plan annexed to this deed

"Planning Application" means the application for full Planning Permission bearing the Council's reference number N6/2013/1938/MA

"Planning Permission" means the permission to be granted by way of approval of the Planning Application.

"Sustainable Transport Contribution" means the sum of fifteen thousand pounds £15,000 index linked as hereinafter provided as a contribution towards the design and construction of highway improvement works traffic management schemes traffic studies improvements to public transport or such other measures as will encourage users of the Development to travel to and from the Development by means of transport other than the private car which the Director in his absolute discretion determines will contribute to the improvement of highway conditions on parts of the network affected by traffic associated with the Development;

"Working Day" means any day other than a Saturday or Sunday or a Public Holiday

1.2 In this Deed:

1.2.1 The Clause Headings do not affect its interpretation;

1.2.2 Words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa;

1.2.3 reference to any statute or section of a statute includes 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;

1.2.4 Any reference to a clause a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any reference to a sub-clause is a reference to a sub-clause of the clause in which the reference appears;

1.25 References to the Land include any part of it;

1.26 Where two or more people may form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually;

1.27 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 the County the successors to their respective functions;

1.2.8 Any covenant by the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act and or thing and words denoting an obligation on the Council to do any act matter or thing include an obligation to procure that it be done;

2. EFFECT OF THIS DEED

2.1 This Deed is entered into 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 Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the County.

2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972, Section 1 Localism Act 2011 and all other enabling powers.

2.3 The Council enters into the obligations for itself and its successors in title with the County to the intent that the obligations hereunder shall be enforceable not only against the Council but also against the successors in title of the Council and any person claiming through or under them an interest or estate in the Land or any part thereof.

3. The Covenants in this Unilateral Undertaking shall come into effect on the date of this Unilateral Undertaking.

4. COUNCIL'S COVENANTS

4.1 The Council covenants with the County:-

- (i) To observe and perform the covenants restrictions stipulations and obligations contained in Schedule 1 hereto
- (ii) To give the County no less than five (5) Working Days notice of the Commencement Date such notice to be given prior to the Commencement Date in writing using the pro-forma set out in Schedule 2 hereto.
- (iii) To give the County no less than five (5) Working Days notice of the Occupation of the Development and Completion of the Development such notice to be in writing using the pro-forma set out in Schedule 2 hereto.
- (iv) Upon completion of this Deed pay to the County its costs in connection with the preparation negotiation and completion of this Deed

4.2 The Council further covenants that:-

- (i) it is the freehold owner of the Land
- (ii) the Land is free from all encumbrances material to this Deed and
- (iii) no other party has a legal interest in the site

5. INDEXATION

- 5.1 The Sustainable Transport Contribution shall be index-linked to movements in the SPONS Index from July 2006 to the date on which the Sustainable Transport Contribution is paid

6. MISCELLANEOUS

- 5.1 This Deed shall be registered as a local land charge by the Council.

- 6.2 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto.

- 6.3 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 Council at:

The Director (Finance and Operations)

Council Offices

The Campus

Welwyn Garden City

WL8 6AE

In respect of the County at:

The Chief Legal Officer
Hertfordshire County Council
County Hall, Pegs Lane
Hertford
Herts SG13 8DE

- 6.4 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 provision of this Deed.
- 6.5 Nothing in this Deed shall be construed as imposing any obligation upon the Council in its capacity as a local planning authority as to the issue of the Planning Permission or as restricting the exercise by the County or any powers exercisable by it under the Act or under any other Act or authority.
- 6.6 No waiver whether express or implied by the County of any breach or default by the Council in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the County from enforcing the relevant obligations or from acting upon any subsequent breach or default.
- 6.7 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or if the Commencement Date has not been initiated in accordance with Section 56 of the Act before the expiration of the period specific in the Planning Permission.
- 6.8 Without prejudice to the County's statutory rights the Council hereby grants to the County or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter the such parts of the Land to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in

carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed.

7. VALUE ADDED TAX

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

8. JURISDICTION

This Deed governed by and interpreted in accordance with the law of England and Wales.

IN WITNESS whereof the Council has executed this Deed but the same remains undelivered until the day and year first before written

SCHEDULE 1

The Council's Covenants Restrictions Stipulations and Obligations

Sustainable Transport Contribution

- 1 To pay the Sustainable Transport Contribution to the County prior to the Commencement Date as a contribution to be applied by the County in its absolute discretion towards the design and construction of highway improvement works traffic management schemes traffic studies improvements to public transport or such other measures that will promote accessibility by sustainable means including bus cycling and walking to mitigate the impact of the Development which the Director in his absolute discretion shall determine
- 1.2 Not to Commence nor cause nor permit Commencement until such time as the Sustainable Transport Contribution shall have been paid to the County in accordance with paragraph 1.1 of this Schedule

SCHEDULE 2

Proforma Event Notification and Payment

Pursuant to Section 106 Agreement/Unilateral Undertaking

DATED

MADE BETWEEN

PLANNING PERMISSION REFERENCE

HCC DU REFERENCE [.....].....

SITE ADDRESS

SITE OWNER DETAILS:

Name:

Contact Name :

Address:

Telephone No: Mobile:

Email:

EVENTS BEING NOTIFIED

Commencement Date – date:

Occupation of Development (Number if relevant) – date:

Completion of Development – date:

COMPLIANCE WITH OBLIGATION(S)

Schedule Paragraph

Details of obligation and compliance

PAYMENT OF S106 CONTRIBUTIONS

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example Education (primary)	X £	Y £	Z £	X+Y £	Herts County Council

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

- a) The Chief Legal Officer
Hertfordshire County Council
County Hall,
Pegs Lane
Hertford
Hertfordshire
SG13 8DE

Ref: []

- Ref: []

WELWYN HATFIELD BOROUGH COUNCIL

in the presence of:

Mayor

Robert B. Borch

Duly Authorised Officer

