

**DATED** \_\_\_\_\_ **2019**

**(1) NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL**

**(2) EP SHB LIMITED**

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**PLANNING OBLIGATION BY DEED OF  
AGREEMENT UNDER SECTION 106 OF THE  
TOWN AND COUNTRY  
PLANNING ACT 1990**  
relating to the development of land off South  
Marsh Road, Stallingborough, Grimsby, North  
East Lincolnshire

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THIS AGREEMENT is dated

2019

## PARTIES

- (1) **NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL** of Town Hall Square, Grimsby, DN31 1HU (the "**Council**"); and
- (2) **EP SHB LIMITED** (Company Registration Number 02571241) of Berger House, 36-38 Berkeley Square, London W1J 5AE (the "**Owner**")

together the "**Parties**"

## INTRODUCTION

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The Owner is the registered proprietor of the freehold interest of that part of the Site registered at the Land Registry with Title Absolute under Title Number HS239444.
- (C) The Proprietorship Register for Title Number HS239444 notes that the registered proprietor is Centrica SHB Limited, the previous registered company name of EP SHB Limited.
- (D) The Owner has submitted the Application and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- (E) The Council is satisfied that the restrictions and provisions in this Deed are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development.

## NOW THIS DEED WITNESSES AS FOLLOWS:-

### OPERATIVE PART

#### 1. DEFINITIONS

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

"Act"	means the Town and Country Planning Act 1990 as amended
"Application"	means the application for planning permission submitted to the Council for the Development on <input checked="" type="checkbox"/> November 2018] and allocated reference number <input checked="" type="checkbox"/>
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for 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 " <b>Commence Development</b> " shall be construed accordingly
"Condition"	means a condition of the Planning Permission or any S73 Permission
"Deed"	means this agreement

"Development"	means the development of the Site as set out in the Planning Permission
"Director"	means the Director for Economy and Growth for the time being or such other proper officer of the Council responsible for planning functions
"Habitat Contribution"	means the sum of [£XX (XX pounds)]  <b><i>[DRAFTING NOTE: TO BE CALCULATED IN ACCORDANCE WITH THE COUNCIL'S FORMULA:- HABITAT CONTRIBUTION (£) = SITE AREA (HECTARES) X £11,580. "SITE AREA" TO BE DISCUSSED FURTHER WITH LPA FOLLOWING SUBMISSION OF THE APPLICATION]</i></b>
"Occupy"	means occupation of the Site for the purposes authorised by the Planning Permission and excludes occupation for the purposes of construction, commissioning, internal and external refurbishment, decoration, fitting out, marketing, security or any other activity preparatory to the use of a building for the purposes authorised by the Planning Permission, and the word "Occupation" shall be construed accordingly
"Owner"	means EP SHB Limited and all successors in title to its interest (or any part thereof) in the Site
"Plan"	means the plan attached to this Deed at Schedule 4
"Planning Permission"	means the planning permission to be granted pursuant to the Application materially in the form of the draft attached at Schedule 1
"S73 Application"	means an application made under section 73 of the Act seeking to achieve the effect of modification deletion or replacement of any Condition
"S73 Permission"	means planning permission subject to conditions granted by the Council pursuant to any S73 Application
"Site"	means the land against which this Deed may be enforced as shown edged red on the Plan
"Working Days"	means Mondays to Fridays (inclusive) but excluding days which are public holidays

## 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.

- 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 against each individually 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 the successors to its statutory functions.
3. **LEGAL BASIS**
- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed on 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.
4. **CONDITIONALITY**
- 4.1 Clause 5 is conditional upon and shall not come into effect until Planning Permission has been granted and Commencement of Development has occurred.
- 4.2 All other clauses come into effect immediately upon completion of this Deed.
5. **COVENANTS**
- 5.1 Subject to clauses 6.10 and 6.11 the Owner covenants with the Council as set out in Schedule 2 and Schedule 3 to this Deed.
- 5.2 The Council covenants with the Owner as set out in Schedule 2 and Schedule 3 to this Deed.
6. **MISCELLANEOUS**
- 6.1 The 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 not exceeding £750.
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.3 This Deed shall be registerable as a local land charge by the Council.
- 6.4 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Deed, such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Director.
- 6.5 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 6.6 Where any approval or consent required by the Council is not provided within 15 Working Days of the Owner requesting such approval or consent (as the case may be) it shall have been deemed to have been provided.

- 6.7 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 6.8 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.
- 6.9 This Deed 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 it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.10 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 and relating to that part of the Site of which such person was the registered proprietor at the time of the breach.
- 6.11 For the avoidance of doubt each party shall only be liable under the terms of this Deed insofar as the relevant obligation or restriction relates to that part of the Site of which the relevant party is the registered proprietor.
- 6.12 The obligations and restrictions in this Deed shall not be enforceable against:
- 6.12.1 any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity (other than an electricity undertaker who is to operate the Development), gas, water, drainage, telecommunication services or public transport services; or
- 6.12.2 any mortgagee will only be liable for a breach of the provisions of this Deed:-
- (a) to the extent that such breach affects a part of the Site in which the mortgagee or chargee has an extant legal interest; and
- (b) arising during such period as it is a mortgagee or chargee in possession of the whole or any part of the Site.
- 6.13 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) before or after the date of this Deed.

**7. WAIVER**

No waiver (whether expressed or implied) by the Council (or the Owner) 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 (or the Owner) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**8. CHANGE IN OWNERSHIP**

The 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 occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

**9. VAT**

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

10. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law 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.

12. **DISPUTE PROVISIONS**

12.1 In the event of any dispute between the parties to this Deed any party may invite any other party to resolve the dispute by mediation in such manner as the parties may agree.

12.2 Without prejudice to Clause 12.1 in the event of a dispute between the parties to this Deed (other than a dispute relating to a matter of law or in relation to the interpretation of this Deed) the parties agree that the matter in dispute will on the application of either of them be referred to a person acting as an expert (hereinafter referred to as the "**Expert**") being a person with not less than ten years' recent and relevant experience of the matter in dispute whose identity will be agreed between the parties or in default of agreement appointed by or on behalf of the president for the time being of the Royal Town Planning Institute or RCIS or other relevant institute on the application of any party and it is further agreed that:-

12.2.1 the determination of the Expert will be final and binding on the parties save in the case of manifest error;

12.2.2 the parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct; and

12.2.3 the Expert's costs will be borne in such proportions as he may direct failing which each party will bear its own costs of the reference and determination and one half each of the Expert's costs.

13. **COUNTERPARTS**

This Deed may be executed and delivered in counterparts each of which together have the same effect as if the parties had all signed the same document.

14. **FUTURE PLANNING PERMISSIONS**

If the Council agrees pursuant to a S73 Application to vary or release any Condition or if any Condition is varied or released following an appeal under section 78 of the Act, the covenants and provisions of this Deed shall be deemed to bind the S73 Permission and to apply in equal terms to the S73 Permission, save where in the determination of such an application or appeal it is determined that consequential amendments are required to this Deed to reflect the impact of the S73 Permission and in such circumstances a separate Deed pursuant to section 106 of the Act will be required to secure the planning obligations relevant to the anticipated S73 Permission.

**IN WITNESS WHEREOF** the parties have executed this Deed on the day and year written at the start of this Deed

**SCHEDULE 1**  
**FORM OF DRAFT PLANNING PERMISSION**



## **SCHEDULE 2**

### **HABITAT CONTRIBUTION**

#### **1. PAYMENT OF HABITAT CONTRIBUTION**

The Owner covenants with the Council to pay the Habitat Contribution to the Council prior to the first Occupation of the Development.

#### **2. APPLICATION OF HABITAT CONTRIBUTION**

##### **2.1 The Council covenants with the Owner:**

2.1.1 upon receipt of the Habitat Contribution to deposit the funds in an interest bearing account and all interest (less tax if payable) shall be credited to that account;

2.1.2 to apply the Habitat Contribution and any accumulated interest solely towards the centralised off-site mitigation project in the South Humber Bank Mitigation Zone to mitigate the Site being used for the Development; and

2.1.3 in the event that the Habitat Contribution or any part of it is not expended within five years of the date of payment the Council must repay the unspent element of Habitat Contribution together with any accrued interest to the person who paid the Habitat Contribution.

## **SCHEDULE 3**

### **GENERAL OBLIGATIONS**

#### **1. THE COUNCIL'S COVENANTS**

1.1 The Council covenants with the Owner:

1.1.1 to issue the Planning Permission within two Working Days of the date of this Deed; and

1.1.2 on the reasonable written request of the Owner at any time after any of the planning obligations under this Deed have been fulfilled, to issue written confirmation thereof and/or at any reasonable time after all of the planning obligations under this Deed have been fulfilled or at any reasonable time after this Deed ceases to have effect, issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.

#### **2. THE OWNER'S COVENANTS**

2.1 The Owner covenants with the Council:

2.1.1 not to Commence Development other than after having given at least fourteen Working Days' prior written notice to the Director; and

2.1.2 to give written notice to the Director upon first Occupation.

**SCHEDULE 4**

**PLAN**

Executed as a Deed (but not delivered until the date of this Deed) by **NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL** acting by

.....  
Signature of Director

.....  
Full Name (Director)

.....  
Full Name (Director/Secretary)

.....  
Signature of Director/Secretary

Executed as a Deed (but not delivered until the date of this Deed) by **EP SHB LIMITED** acting by

.....  
Signature of Director

.....  
Full Name (Director)

.....  
Full Name (Director/Secretary)

.....  
Signature of Director/Secretary