

DATED 12 August 2020

UNILATERAL UNDERTAKING
by
READING BOROUGH COUNCIL

Under Section 106 Town & Country
Planning Act 1990

constituting a Planning Obligation
relating to

Land at 11&3 Waylen Street, Reading, RG1 7UP



(Appl. No. 191227)

Michael Graham LLB(Hons);
MBA
Assistant Director of Legal
& Democratic Services
Reading Borough Council
Civic Offices Civic Centre
Reading RG1 7AE

DX 40124 Reading (Castle
Street)

IKEN 14584

NOW THIS DEED WITNESSES as follows:-

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this deed the following expressions shall have the meanings ascribed to them as follows:-

“the Act”

means the Town and Country Planning Act 1990 as amended

“Affordable Housing”

means housing provided with some degree of financial subsidy enabling the sale price to be lower than the prevailing Open Market Value prices for similar housing in the Borough of Reading and let by a Housing Association or RP at an Affordable Rent to persons or households in housing need and unable to afford to rent at a Market Rent or buy housing on the open market at prevailing Open Market Value and including those on moderate incomes whose earnings are insufficient to enable them to afford market price housing

“Affordable Housing Dwellings”

means the provision of 1 unit as 100% affordable housing at a social rented level to be provided as an Affordable Rented Unit in perpetuity comprising of a 5 bedroomed house

“Affordable Housing Contribution Obligation”

Means the sum of 10% of the Gross Development Value calculated at TWENTY THREE THOUSAND SEVEN HUNDRED AND FIFTY POUNDS (£23,750) for the provision of Affordable Housing within the Borough of Reading if both units are disposed of at Open Market Value as a Private Housing Unit

“Affordable Rent”

means the rent payable by a tenant (which includes any sum payable by way of service charge) which does not exceed:

fifty per cent (50%) of the Market Rent; PROVIDED THAT where the LHA no longer exists at the time the Market Rent is being calculated the Affordable Rent shall be no less than fifty per cent (50%) of the Market Rent

“the Application”

means the planning application referred to in Recital (B) of this Unilateral Undertaking

“the Application Land”

means the land at 11&13 Waylen Street Reading RG1 7UP the subject of the Application as set out in the First Schedule

“Approval”

means the written approval on behalf of the Council from the Head of Planning Development and Regulatory Services to the Owner or such other officer of the Council who is from time to time is responsible for dealing with and/or approving matters set out in this Agreement and “Approved” and “Approve” shall be construed accordingly

“develop” and development”

shall be construed in accordance with Section 55 of the Act

“the Development”

means the change of use of 11&13 Waylen Street Reading RG1 7UP from a house in multiple occupation to two separate dwelling houses each having 5 bedrooms as permitted or to be permitted by the Planning Permission

“dispose”

means where the context so admits

- (a) a contract for sale transfer mortgage charge lease or other disposal whether such sale transfer mortgage charge lease or other disposal gives rise to a capital sum or otherwise or whether such contract for sale transfer mortgage

charge lease or other disposal is by way of valuable consideration or otherwise or

- (b) a sale transfer mortgage charge lease or other disposal whether such sale transfer mortgage charge lease or other disposal gives rise to a capital sum or otherwise or whether such sale transfer mortgage charge lease or other disposal is by way of valuable consideration or otherwise

and “transfer” “transferred” “disposal” “disposed” and “disposed of” shall be construed accordingly

“the Effective Date”

means the date of this Agreement

“Implementation”

means the carrying out of any material operation as defined in Section 56 (4) of the Act

“Implementation Notice”

means the notice to be served by the Owner upon the Council stating the proposed date of Implementation of the Development

“Index”

means the All Items Index of Retail Prices issued by the Office for National Statistics

“Housing Association”

means a housing association within the meaning of Section 1 of the Housing Associations Act 1985

“Market Rent”

means the rent based on a residential lettings estimate for a property of the appropriate size and condition in the Borough of Reading to that of the Affordable Housing Unit and calculated in accordance with the principles for valuation set out in the Royal Institution of Chartered Surveyors recognised method (the Red Book)

“Obligations”

means the covenants on behalf of the Owner set out at Clause 5 and the Second Schedule (Affordable Housing Obligations) and the covenants by the Council set out in Clause 6 and the Third Schedule (Council Obligations) to this Agreement

“Occupation”

means the first beneficial occupation of the educational facility **PROVIDED THAT** (and it is agreed between the parties hereto that) for the avoidance of doubt occupation for the purposes of construction completion and fitting out or in relation to security operations shall not constitute Occupation and “Occupy” and “Occupied” shall be construed accordingly

“Occupation Notice”

means the notice to be served by the Owner upon the Council that the Development has been brought into use and is being Occupied

“Open Market Value”

means the estimated amount for which under the terms of this Agreement the freehold or leasehold estate in a Private Housing Unit should exchange (unconditionally for cash consideration) by private treaty on the date of valuation of the Open Market Value between a willing buyer and a willing seller in an arm's length transaction (after proper marketing) in which the parties had each acted knowledgeably prudently without compulsion

“the Plan”

means the plan annexed to this Unilateral Undertaking

“the Planning Permission”

means planning permission for the Development granted or to be granted pursuant to the Application

“Private Housing Unit”

means the housing unit that is not Affordable Housing of a similar in size and condition to the Affordable Housing Dwelling

“RP”

means a social landlord registered with the Homes and Communities Agency under the Housing and Regeneration Act 2008

“Standards”

means standards in relation to the internal environment sustainability and external environment of Affordable Housing Dwelling as set out in the Housing Corporation's document entitled 'Design & Quality Standards 2007' or such other replacement design standards as may be issued from time to time

“Statutory Right to Acquire”

means the right to acquire an Affordable Housing Dwelling granted to a tenant of the Owner pursuant to the Housing Act 1985

“Training Output”

means in respect of the Construction ESP the relevant outputs for the Construction ESP listed in Appendix 1 to the Employment Skills and Training SPD as set out in Annexure 3

“Working Days”

means days (other than Saturdays Sundays of public holidays in England) when banks in London are open for business

“this Unilateral Undertaking”

means this planning obligation

2. INTERPRETATION

In this Agreement unless the context otherwise requires

2.1 any word importing an individual includes a company and vice versa

- 2.2 Clause headings shall not affect the interpretation of this Agreement
- 2.3 A person includes a natural person corporate or unincorporated body (whether or not having separate legal personality)
- 2.4 A reference to a company shall include any company corporation or other body corporate wherever and however incorporated or established
- 2.5 Unless the context otherwise requires words in the singular shall include the plural and in the plural shall include the singular
- 2.6 Unless the context otherwise requires a reference to one gender shall include a reference to the other genders
- 2.7 A reference to any party shall include that party's personal representatives successors or permitted assigns and in the case of the Council the successors to its respective statutory functions
- 2.8 An Obligation in this Agreement on a person not to do something includes an Obligation not to agree or allow that thing to be done
- 2.9 Where an Obligation falls to be performed by more than one person the Obligation can be enforced against every person so bound jointly and against each of them individually
- 2.10 Any phrase introduced by the terms "including" "include" "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- 2.11 Any reference to Act of Parliament whether general or specific shall include any modification or re-enactment thereof for the time being in force and shall also include all instruments orders plans regulations by-laws and directions for the time being made issued or given thereunder or deriving validity therefrom
- 2.12 A reference to writing or written does not include faxes or e-mail
- 2.13 A reference to "this Agreement" or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other document or deed as varied or novated (in each case other than in breach of the provisions of this Agreement) from time to time

- 2.14 References to Clauses Plans Schedules Paragraphs and Annexures are to the Clauses Plans Schedules Paragraphs and Annexures of this Agreement

3. LEGAL EFFECT

- 3.1 This Agreement is made pursuant to Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 and all other enabling powers to the intent that it shall bind the Owner and their successors in title to each and every part of their interest in the Application Land and their assigns
- 3.2 This Agreement shall be enforceable by the Council
- 3.3 If the Planning Permission expires within the meaning of Sections 91 92 or 93 of the 1990 Act or is quashed or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner this Agreement shall cease to have effect (but not so as to avoid any Obligation in this Agreement on the part of the Owner having already been implemented or performed)
- 3.4 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission) granted by the Council or by the Secretary of State on appeal or by reference to him after the date of this Agreement
- 3.5 If any provision of this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired
- 3.6 The Owner shall in parting with its entire interest in the Application Land be released from all liability under the terms of this Agreement except in respect of any breach subsisting prior to parting with the Application Land or that part of the Application Land to which the breach relates
- 3.7 This Agreement is without prejudice to and shall not be construed as derogating from any of the rights powers and duties of the Council pursuant to any of its statutory functions nor in any other capacity

4. CONDITIONALITY

- 4.1 Subject to clauses 4.2 and 4.3, the Obligations in this Agreement shall come into force on the grant of the Planning Permission and the Implementation of the Development
- 4.2 The Owner's obligations in clauses 5.1 (a) and 5.2 shall come into force on the Effective Date.
- 4.3 The Council's obligations in the Third Schedule shall come into force on the Effective Date.

5. THE OWNER'S COVENANTS

The Owner COVENANTS AND UNDERTAKES with the Council as follows:-

- 5.1 to observe and perform the obligations contained in Part 1 (Affordable Housing) and Part 2 (Payment of a Contribution) of the Second Schedule
- 5.2 to pay on the date of this Unilateral Undertaking (a) the Council's reasonable and proper legal costs and expenses reasonably and properly incurred in the preparation and completion of this Agreement limited to One Thousand Five Hundred Pounds (£1,500.00) and (b) the sum of Four Hundred Pounds (£400.00) as a contribution towards the costs incurred in the administration and monitoring of the provisions of this Unilateral Undertaking

6 COUNCIL'S OBLIGATIONS

- 6.1 The Council covenants with the Owner to grant the Planning Permission within five (5) Working Days of the Effective Date substantially in the form as set out in Annexure 2
- 6.2 The Council covenants with the Owner to observe and perform the obligations on its part contained in the Third Schedule (Council's Obligations)

7. NOTICES

- 7.1 Any notice or other written communication to be served by one party upon another pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid registered or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for the purpose by notice in writing and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by a duly authorised signatory

8. REVOCATION

In the event that the Planning Permission expires or is quashed before Implementation or is without the consent of the Owner revoked by any statutory enactment then in that event the provisions of this Unilateral Undertaking shall lapse and determine and in that event the Owner will thereafter procure the cancellation of all entries made in the Register of Local Land Charges in respect of this Unilateral Undertaking

9. CESSER OF LIABILITIES

The liabilities of the person who is for the time being the Owner under this Agreement in relation to the Application Land shall cease (subject to and without prejudice to the Council's rights in relation to any antecedent breach of the obligations contained in this Agreement) after those persons have parted with all their interest in the Application Land

10. NO WAIVER

No waiver (whether express or implied) by the Council of any breach of or default by the Owner in performing or observing any of the terms of or covenants obligations or restrictions in this Unilateral Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms covenants obligations or restrictions or from acting upon any subsequent breach or default in respect thereof by the Owner

11. LOCAL LAND CHARGE

This Unilateral Undertaking is and shall be registered as a Local Land Charge

12. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is not intended that any of the provisions of this Unilateral Undertaking be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than the Council

13. INDEXATION

13.1 The amount of any contribution payable under the provisions of Clause 5 of this Agreement shall be increased by an amount equivalent to the increase in the Index from the Effective Date until the date on which the respective contribution is payable

14. NO COMPENSATION PAYABLE

14.1 No compensation shall be payable by the Council as a result of the obligations contained in this deed

15. AGREEMENT AND DECLARATION

It is agreed by the Owner that should the Development the subject of the Planning Permission be varied under a new planning permission ("the VARIAT planning permission") granted by the Council under Section 73 of the 1990 Act the planning obligations in this Unilateral Undertaking shall apply to the VARIAT planning permission

EXECUTED as a deed by the Owner and delivered on the date written at the start of this deed

THE FIRST SCHEDULE

(“the Application Land”)

The freehold land known as land at 11&13 Waylen Street Reading RG1 7UP the subject of the Application registered at the Land Registry under Title Number BK247829 and BK234090 shown for identification purposes only edged red on the Plan annexed hereto

THE SECOND SCHEDULE

Part 1

(“the Affordable Housing Provisions”)

Provision of Affordable Housing Dwellings

The Owner shall at its own cost and expense provide in compliance with the Standards the Affordable Housing Dwellings within the Development to be let at an Affordable Rent

Use

The Affordable Housing Dwelling shall not be used except for the provision of Affordable Housing to be let at an Affordable Rent in accordance with the Planning Permission and the obligations stipulations and other matters set out in this Unilateral Undertaking

Disposal

Subject to the Statutory Right to Acquire the Owner shall not dispose of at any time the Affordable Housing Dwelling to any person or corporate body

Part 2

(“the Affordable Housing Contribution Obligation”)

The Owner covenants and agrees follows:-

To pay 10% of the Gross Development Value in the sum of TWENTY THREE THOUSAND SEVEN HUNDRED AND FIFTY POUNDS (£23,750) Contribution to the Council prior to first Occupation of the Development if any one unit is not used for affordable housing on the Application Land.

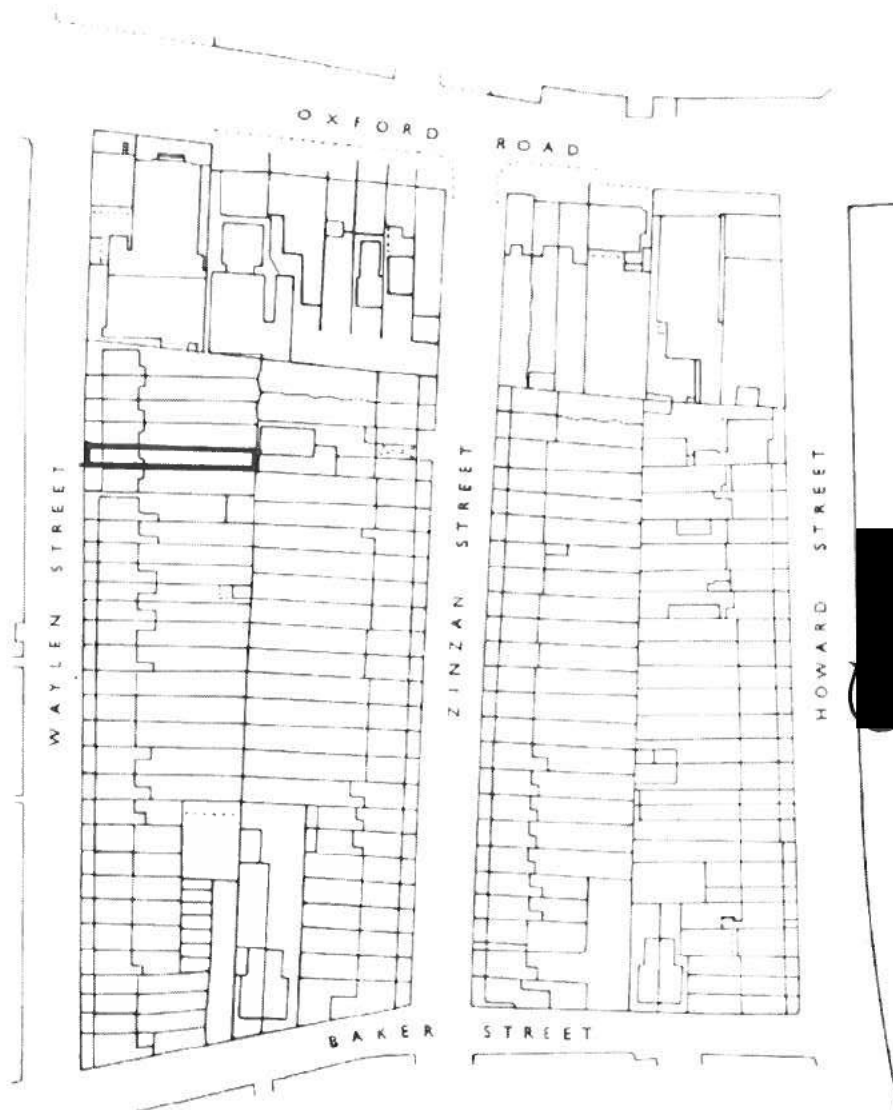
THE THIRD SCHEDULE

(“the Council’s Obligations”)

1. Not later than five (5) Working Days after the Effective Date the Council will issue the Planning Permission
2. In this Agreement where the agreement approval consent or any other expression of satisfaction is required from the Council that agreement approval consent or any other expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed

ANNEXURE 1

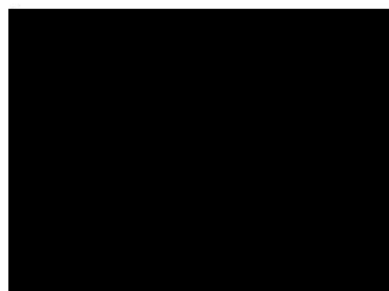
("the Plan")





EXECUTED (BUT NOT DELIVERED)
UNTIL THE DATE HEREOF) by)
the affixing of THE COMMON)
SEAL of **READING BOROUGH)**
COUNCIL in the presence of:-)

Minute	HPRS 23/7/2014, Min 12
Originator	WB
Seal No.	213/20
Checked	SB



DATED

2020

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