

Dated 23 March 2018

**UNILATERAL UNDERTAKING**

Pursuant to Section 106 of the Town and Country Planning Act  
1990

Given by:

**SAMUEL SMITH (1)**

**TO**

**SOUTH DERBYSHIRE DISTRICT COUNCIL (2)**

**RELATING TO**

**Land on the south side of 2 Pine Walk, Castle Gresley,  
Swadlincote DE11 9JW**

**THIS UNILATERAL UNDERTAKING** is given the 23 day of march 2018

**BY**

- (1) **SAMUEL SMITH** of Apartment 101, River Crescent, Waterside Way, Nottingham NG2 4RE ("the Owner");

**TO**

- (2) **SOUTH DERBYSHIRE DISTRICT COUNCIL** of Civic Offices, Civic Way, Swadlincote, Derbyshire DE11 0AH ("the Council").

## **1. Background**

- 1.1 The Owner is the freehold owner of the Application Site which is registered at HM Land Registry under title number DY514422.
- 1.2 The Council is the local planning authority for the purposes of the Act by whom the obligations undertaken by the Owner in this Deed are enforceable.
- 1.3 The Owner has submitted the Application to the Council and is proposing to carry out the Development in accordance with the Planning Permission.
- 1.4 The Owner has agreed to enter into this Undertaking in order secure the planning obligations contained in this Undertaking.

## **2. Interpretation**

In this Undertaking:

- 2.1 'the Act' means the Town and Country Planning Act 1990 (as amended).
- 2.2 'the Application' means planning application number 9/2017/0915 made by the Owner to develop the Application Site by the erection of a dwelling and a garage.
- 2.3 'the Application Site' means the land identified in the Application and shown edged red on the plan attached to this Deed and against which this Undertaking may be enforced.
- 2.4 '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 and 'Commence Development' shall be construed accordingly.
- 2.5 'the Development' means the development of the Application Site in accordance with the Planning Permission.

- 2.6 'the Index' means the All Items Index of Retail Prices published by the Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto shall be applicable.
- 2.7 'the Dwelling' means the dwelling to be constructed on the Application Site pursuant to the Application.
- 2.8 'Interest' means interest at 2% per annum above the base lending rate of Barclays Bank Plc from time to time.
- 2.9 'Open Space Contribution' means the sum of £3,324.00 (three thousand three hundred and twenty four pounds) to be paid by the Owner to the Council in accordance with clause 5 and used towards the erection of four benches at the existing open space at Arthur Street.
- 2.10 'Planning Permission' means the outline planning permission subject to conditions to be granted by the Council pursuant to the Application.
- 2.11 'Working Day(s)' means Mondays to Fridays (excluding days that in England and Wales are public holidays) inclusive.
- 2.12 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.
- 2.13 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 respective functions as local planning authority.
- 2.14 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 severally.
- 2.15 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.
- 2.16 Words in the singular include the plural and vice versa and words importing individual shall be treated as importing corporations.

### **3. Statutory Provisions**

- 3.1 This Undertaking is given pursuant to Section 106 of the Act, Section 1 of the Localism Act 2011, Section 111 of the Local Government Act 1972

and all other enabling powers.

- 3.2 The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are entered into by the Owner with the intention that they are binding on, and may be enforced by the Council against the Owner and their successors in title
- 3.3 It is acknowledged that the obligations contained in this Undertaking are:
- (a) necessary to make the Development acceptable in planning terms;
  - (b) directly related to the Development; and
  - (c) fairly and reasonably related in scale and kind to the Development.

#### **4. Commencement**

The provisions of this Deed shall become effective only on the grant of Planning Permission pursuant to the Application SAVE FOR the provisions of clauses 4, 6, 7, 9, 11 and 12 which shall take effect immediately upon completion of this Undertaking.

#### **5. Open Space Contribution**

The Owner undertakes not to Commence Development or permit the Commencement of Development until the Open Space Contribution has been paid to the Council in full.

6. **Determination** This Undertaking shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed other than at the request of the Owner.

#### **7. Local Land Charge**

It is intended that this Undertaking shall be a local land charge and registered as such by the Council.

#### **8. Interest**

If any payment due under this deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

#### **9. Legal Costs**

The Owner undertakes to pay to the Council on completion of this

Undertaking the legal costs incurred by the Council in the drafting and negotiation of this Undertaking.

**10. Indexation**

Any sum referred to in this Undertaking shall be increased by an amount equivalent to the increase in the Index from the date of this Undertaking until the date on which such sum is payable.

**11. Legal effect**

In so far as any clause or clauses of this Undertaking are found to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Undertaking.

**12. Jurisdiction**

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

IN WITNESS whereof the Owner has executed this deed as a Deed the day and year first before mentioned

