

Unilateral Undertaking

Under Section 106 of the Town and Country Planning Act 1990 in relation to land on North West Side of Capel Street, Capel le Ferne, Folkestone, CT18 7HB.

(1) H W Odlin

and

(2) G M Odlin

and

(3) M R Odlin

and

(4) T A Odlin.

Lee May
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Maidstone
Kent ME16 8JH

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Ref: 409.ODL6001-

THIS UNDERTAKING is made as a DEED the day of 2019

By:

1.1 HENRY WILLIAM ODLIN and GILLIAN MARY ODLIN of The Old Ship, High Street, Wingham, Kent, CT3 1BJ:

1.2 MICHAEL ROBERT ODLIN of The Paddocks, Llangolman, Clyndermen, Pembrokeshire, SA66 7XJ; and

1.3 TIMOTHY ANDREW ODLIN of Little Orchard, 94 High Street, Wingham, Kent, CT3 1DE

(together known as “the Owner”)

In favour of:

DOVER DISTRICT COUNCIL of Dover Council Offices, White Cliffs Business Park, Dover, Kent, CT16 3PJ (“the Council”)

2. DEFINITIONS

In this Undertaking (except where the context otherwise requires:

“the Act”	Means the Town and Country Planning Act 1990 (as amended)
“Affordable Housing”	Has the meaning given to it in Annex 2 of the National Planning Policy Framework provided to persons whose needs are not met by the market which for the avoidance of doubt shall include any new forms of affordable supply and low cost home ownership housing introduced pursuant to any amendment to the NPPF or statute.
“Affordable Housing Scheme”	Means a scheme for the provision of on site Affordable Housing comprising 30% of the Dwellings which shall include the (i) quantum, (ii) location, (iii) tenure, (iv) mix and (v) size of the Affordable Housing Units.
“Affordable Housing Units”	Means those Dwellings to be provided as Affordable Housing pursuant to Paragraph 2 of the Schedule to this Deed
“Application”	Means the application for outline planning permission for 34 dwellings with associated landscaping access and parking submitted to the Council and

	allocated local planning authority reference DOV/19/00669
“Bank Base Rate”	Means the Bank of England official dealing rate as set by the Monetary Policy Committee
“Commencement of Development”	<p>Means the earliest date upon which a material operation is begun in accordance with the provisions of section 56 (4) of the Act save for the purposes of this Undertaking none of the following operations shall constitute a material operation:</p> <ul style="list-style-type: none"> • Site preparation works; • Archaeological investigations; • Site investigation works (including environmental investigations); and • Works of demolition <p>and “Commence the Development” shall be construed accordingly</p>
“Community Learning Contribution”	Means the sum of £871.70 being £25.64 per Dwelling towards the adult education element of the new Dover Discovery Centre
“Development”	Means the development authorised by the Planning Permission
“Dwelling”	Means the dwelling houses to be constructed on the Land pursuant to the Planning Permission
“Head of Planning, Regeneration and Development”	Means the person the Council shall appoint as Head of Department responsible for planning services for the time being
“The Index”	Means the All Item Group (item reference CHAW) of the Retail Prices Index published by H M Government 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 (which shall be agreed by the parties or, in default of agreement, fixed by the President for the time being of the Law Society on the application of any party) shall be used

“Index Linked”	Means increased (if applicable) in proportion to movements in the Index between the date of this Undertaking and the date the particular payment is made
“Land”	Means land comprising land between no’s 107-127 Capel Street, Capel le Ferne, Folkestone, CT18 7HB and being land on North West Side of Capel Street, Capel le Ferne, Folkestone, registered at HM Land Registry under Title Number K59030
“Library Contribution”	Means the sum of £1632.54 (One Thousand Six Hundred and Thirty Two Pounds and Fifty Four Pence as contribution towards book stock for the mobile library at Capel at £48.02 per Dwelling
“Plan”	Means the plan attached hereto
“Planning Permission”	Means the outline planning permission to be granted by the Council pursuant to the Application
“Public Open Space Contribution”	Means the sum of £21,260 (Twenty One Thousand Two Hundred and Sixty Pounds as contribution towards upgrading the existing play facilities at the recreation ground on Lancaster Avenue, Capel Le Ferne
“Registered Provider”	Means a registered provider of social housing within the meaning of Section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with Homes England or any other body including the District Council who may provide or fund affordable housing from time to time;
“S278 Agreement”	Means a legal agreement between the Owner and Kent County Council under Section 278 of the Highways Act with regard to access and improvements outside of the Application Site
“Secondary Education Contribution”	Means the sum of £139,910 being £4,115.00 per Dwelling towards the Phase 1 expansion of Dover Grammar

	School for Girls
“Social Care Contribution”	Means the sum of £2639.42 being £77.63 per Dwelling toward the Dover Social Care Hub
“SPA Contribution”	Means the sum of £1,454.64 as a contribution towards the Thanet Coast SPA Mitigation Strategy based on 8 x 2, 16 x 3 and 10 x 4 bedroom dwellings

3. INTERPRETATION

In this Undertaking (except where the context otherwise requires):

- 3.1 Reference to the masculine feminine and neuter genders shall include other genders
- 3.2 Reference to the singular include the plural and vice versa unless the contrary intention is expressed
- 3.3 Reference to natural persons are to include corporations and vice versa
- 3.4 Headings in this Undertaking are for reference purposes only and shall not be taken into account in its construction or interpretation
- 3.5 The expression “the Owner” shall include their respective successors in title and assigns and the expression “the Council” shall include their successor in statutory function
- 3.6 A reference to a clause paragraph or schedule is (unless the context otherwise requires) a reference to a clause paragraph or schedule of this Undertaking
- 3.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of such restrictions
- 3.8 Where in this Undertaking a party includes more than one person any obligation of that party shall be joint and several
- 3.9 Any reference in this Undertaking to any statute or to any section of a statute includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force

4 INFORMATION

- 4.1 The Owner owns the freehold interest in the Land and is registered as a proprietor of it with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number K59030 at the date of this Undertaking
- 4.2 The Council is the local planning authority for the purposes of the Act for the Land

4.3 The Council is satisfied that the Development is such as may be approved by the Council under the Act and Planning Permission granted (subject to conditions) subject to the Owner covenanting in the terms of this Undertaking

5. **STATUTORY AUTHORITY AND LEGAL EFFECT**

5.1 The Undertaking is made pursuant to:

Section 106 of the Act; and

Section 111 of the Local Government Act 1972

and all other enabling powers and enactments which may be relevant for the purposes of giving validity to this Undertaking

5.2 The obligations of the Owner in this Undertaking are planning obligations for the purpose of section 106 of the Act and are enforceable by the Council as local planning authority

5.3 Subject to clause 5.4 the Owner covenants with the Council to the intent that this Undertaking shall be enforceable without limit of time (other than as expressly mentioned in this Undertaking) against the Owner and any person deriving title through or under them to the Land or any part or parts of it as if that person has also been an original covenanting party in respect of the interest or estate for the time being held by that person

5.4 No person shall be bound by any obligations rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligations contained in this Undertaking after they shall have parted with all interest in the Land or the part in respect of which such obligations relate or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest

5.5 No statutory undertaker shall be bound by any obligations rights and duties contained in this Undertaking and/or be liable for any breach of covenant and/or obligation contained in this Undertaking in respect of any site used only as an electricity substation gas governor or pumping station

5.6 Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop any apart of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking

5.7 Nothing in this Undertaking shall be construed as restricting the exercise by the Council of any powers exercisable by them under the Act or under any other act or any statutory instrument order or bylaw in the exercise of their function as a local authority

5.8 If the Council agrees pursuant to an application by the Owner under Section 73 or 73A of the Act to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal by the Owner under Section 78 of the Planning Act this Agreement shall also apply to any development carried out pursuant to such varied planning permission granted pursuant to Section 73 or 73A or 78 of the Act and the covenants or provisions in this Agreement shall be deemed to be accordingly modified to correspond to any such varied permission

6. **CONDITION PRECEDENT**

This Undertaking shall come into effect upon the grant of the Planning Permission

7. **OBLIGATIONS**

The Owner covenants agrees and declares in respect of the Land as set out in the Schedule

8. **INVALIDITY**

It is agreed and declared that if a clause or sub-clause of this Undertaking shall be deemed to be unenforceable or ultra vires the remainder of this Undertaking shall remain in full force and effect provided severance from this Undertaking is possible

9. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Nothing contained in this Undertaking shall give or be construed as giving any rights privileges powers or enforceability other than to the Council and to the specific persons executing this Undertaking as the Owner and their successors (if any) as defined in this Undertaking and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that act shall have any rights of enforcement in respect of any matter contained in this Undertaking

10. **COSTS AND INTEREST**

10.1 The Owner agrees to pay to the Council on the signing of the Undertaking their reasonable costs for the negotiation and preparation of this Undertaking

10.2 The Owner shall pay interest at one per cent above the Bank Base Rate on any monies due under the provisions of this Undertaking in the event of late payment for the period from the date the monies should have been paid to the date the money is received by the Council

11 **OTHER MATTERS**

11.1 The Owner shall indemnify the Council for any expenses or liability arising to them in respect of breach by the Owner of any obligations contained in this Undertaking

11.2 This Undertaking shall be registered as a Local Land Charge

12 **JURISDICITON**

The Undertaking 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

IN WITNESS whereof the Owner duly executed this instrument as a DEED the day and year first before written

SCHEDULE

The Owner covenants with the Council with the intent that these are planning obligations for the purpose of section 106 of the Act:-

1. Notification of Commencement

- 1.1 to permit the Head of Planning Regeneration and Development and any person or persons authorised by him access to the Land or any part of it at all reasonable times, on reasonable notice and in compliance with the Owner's reasonable requirements, and to permit him or them to inspect the Development and all materials intended for use in it
- 1.2 to give the Council notice in writing no later than 7 days prior to the anticipated Commencement of the Development
- 1.3 to give the Council notice in writing no later than 7 days following Commencement of the Development

2. Affordable Housing

- 2.1 Prior to the Commencement of Development the Owner shall submit a draft Affordable Housing Scheme to the Council for approval.
- 2.2 The Owners shall not Commence Development until the Affordable Housing Scheme has been approved in writing by the Council.
- 2.3 The Owner shall not amend the Affordable Housing Scheme without the further written approval of the Council.
- 2.4 The Owner shall provide the Affordable Housing in accordance with the approved Affordable Housing Scheme
- 2.5 One of the Affordable Housing Units shall be a Wheelchair Adaptable Home
- 2.6 Not less than 30% of the Dwellings shall be Affordable Housing Units
- 2.7 The Affordable Housing Units shall not be occupied other than as Affordable Housing PROVIDED THAT this restriction shall not be binding upon any person acquiring an Affordable Housing Units pursuant to a statutory right to buy or acquire or any person acquiring such percentage that will take their ownership to one hundred percent (100%) of an Affordable Housing Unit subject to a shared ownership lease or any mortgagee or chargee or person deriving title from the same.

- 2.8 The restrictions contained in Paragraph 2 of this Schedule shall not be binding upon a mortgagee or chargee of any Registered Provider of the Affordable Housing Units or any receiver appointed by such mortgagee or chargee or on any person deriving title from such mortgagee, chargee or receiver PROVIDED THAT (in the case of a disposal by a mortgagee, chargee or receiver) the following conditions have been satisfied:
- 2.8.1 any power of sale available to any such mortgagee, chargee or receiver arising under their mortgage or charge over any such Affordable Housing Unit shall only be exercised in the event of their being a default of any obligation to such mortgagee, chargee or receiver;
 - 2.8.2 written notice of such default is provided to the Council as soon as reasonably practicable after any notice is served on the Registered Provider;
 - 2.8.3 the mortgagee, chargee or receiver or manager (including an administrative receiver appointed pursuant to the Law of Property Act 1925) appointed by such mortgagee or chargee must not exercise its power of sale for a period of at least three (3) months following the service of the notice on the Council pursuant to Paragraph 2.8.2 above during which time it must use all reasonable endeavours to attempt to complete a transfer of the Affordable Housing Units to an alternative Registered Provider so as to enable the Affordable Housing Unit to remain as Affordable Housing PROVIDED THAT the consideration of any such transfer will discharge all liabilities and indebtedness including without limitation all amounts of principle, interest, costs, breakage costs, default interest and enforcement costs owed to and/or incurred by the mortgagee, chargee or receiver (as appropriate); and
 - 2.8.4 if within the three (3) month period referred to at Paragraph 2.8.3 above the Council serves written notice upon the mortgagee, chargee, receiver or manager indicating that either the Council or a Registered Provider nominated by the Council is prepared to accept a transfer of the Affordable Housing Units (on such terms that ensure that such transfer will discharge all liabilities and indebtedness including without limitation all amounts of principle, interest, costs, breakage costs, default interest and enforcement costs owed to and/or incurred by the mortgagee, chargee, receiver or manager (as appropriate)) then the mortgagee, chargee, receiver or manager shall use all reasonable endeavours to conclude said transfer as soon as reasonably practicable thereafter.

2.8.5 if either:

- a) the Council does not serve a written notice pursuant to Paragraph 2.8.2 above and the mortgagee, chargee receiver or manager is unable to dispose of any of the Affordable Housing Units to an alternative Registered Provider within the period of three (3) months referred to at Paragraph 2.8.3; or
- b) the Council does serve a written notice pursuant to Paragraph 2.8.4 above but despite using all reasonable endeavours the mortgagee, chargee, receiver or manager is unable to complete or enter into a binding contract for the transfer of the Affordable Housing Units to the Council or nominated Registered Provider within a further period of two (2) months from the date of receipt of the Council's written notice;

then the mortgagee, chargee receiver or manager shall be entitled to dispose of the Affordable Housing Units free of the provisions of Paragraph 2 of this Schedule for the full open market value or as it sees fit.

3. Contributions

- 3.1 to pay the Library Contribution to the Council on or before the Commencement of the Development
- 3.2 not to Commence Development prior to the payment of the Library Contribution.
- 3.3 to pay the Community Learning Contribution to the Council on or before the Commencement of Development
- 3.4 not to Commence Development prior to the payment of the Community Learning Contribution.
- 3.5 to pay the Social Care Contribution to the Council on or before the Commencement of Development
- 3.6 not to Commence Development prior to the payment of the Social Care Contribution.

- 3.7 to pay the Secondary Education Contribution to the Council on or before the Commencement of Development
- 3.8 not to Commence Development prior to the payment of the Secondary Education Contribution
- 3.9 to pay the "SPA Contribution" to the Council on or before the Commencement of Development
- 3.10 not to Commence Development prior to the payment of the SPA Contribution
- 3.11 To pay the Public Open Space Contribution to the Council on or before the Commencement of Development
- 3.12 not to Commence Development prior to the payment of the Public Open Space Contribution

4. **Section 278 Agreement**

- 4.1 The Owner shall enter into a legal agreement between with the Kent County Council under Section 278 of the Highways Act with regard to access and improvements outside of the Application Site.

EXECUTED as a DEED by HENRY WILLIAM ODLIN
in the presence of:-

Signature of witness.....

Name (in BLOCK CAPITALS).....

Address.....

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EXECUTED as a DEED by GILLIAN MARY ODLIN
in the presence of:-

Signature of witness.....

Name (in BLOCK CAPITALS).....

Address.....

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EXECUTED as a DEED by MICHAEL ROBERT ODLIN
in the presence of:-

Signature of witness.....

Name (in BLOCK CAPITALS).....

Address.....

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EXECUTED as a DEED by TIMOTHY ANDREW ODLIN
in the presence of:-

Signature of witness.....

Name (in BLOCK CAPITALS).....

Address.....

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