

Date

18 AUGUST 2015

Mr Gary Clive Cowley and Mr Miles Peter Jennings

UNILATERAL UNDERTAKING

Made under Section 106 of the Town & Country Planning Act
1990 (as amended) relating to:-

Land at 83 Salterton Road, Exmouth, EX8 2EW

IN FAVOUR OF EAST DEVON DISTRICT COUNCIL

CHECKED BY.....	EAST/WEST
DATE.....	17/8/15

EAST DEVON DISTRICT COUNCIL ECONOMY			
17 AUG 2015			
ACK	CIRC	SEEN	FILE

This **UNDERTAKING** is made on the 18 day of AUGUST two thousand and fifteen by:-

- 1.0 Mr Gary Clive Cowley and Mr Miles Peter Jennings of Flat 2, 83 Salterton Road, Exmouth, EX8 2EW and of The Barn, Western Fields, Ebford, Exeter, EX3 OPA ("the Owners")

TO

- 2.0 EAST DEVON DISTRICT COUNCIL of Knowle, Sidmouth, Devon, EX10 8HL ("the Council")

3.0 RECITALS

- 3.1 This UNILATERAL UNDERTAKING relates to land at 83 Salterton Road, Exmouth, EX8 2EW in the County of Devon edged red on the attached Plan A ("the Land")
- 3.2 The Owner is the freehold owner of the Land registered with the title absolute under title number(s) DN 287779 and DN 563087
- 3.3 The Council is the Local Planning Authority by whom the obligations contained in this Deed are enforceable
- 3.4 The Owner has made the Planning Application to the Council
- 3.5 The Council has not yet determined the Planning Application and the Owner enters into this UNDERTAKING the obligations of which are only enforceable following a grant of the Planning Permission (see Definitions) for the Development

4.0 DEFINITIONS

the Act	Means the Town and Country Planning Act 1990 as amended
Development	Means the development of the Land as described in the Planning Application and in accordance with the Planning Permission
Commencement of Development	Means the carrying out of any material operation as defined by Section 56(4) of the Act in connection with Development and "Commence" and "Commenced" shall be construed accordingly
Commencement Notice	Means written notice of the date that Commencement of the Development is to take place in the form at Appendix 1
Dwelling	Means a building or part of a building designed for residential occupation by a single household and "Dwellings" shall be construed accordingly
Habitat Mitigation Contribution	Means the sum of £5,992.00 (being the total of £749.00 per dwelling) (Index Linked) to be paid by the Owner to the Council as a contribution towards non-infrastructure projects to mitigate the impacts of the Development on the Exe

	Estuary and Pebblebed Heath Special Protection Area
Index	Means the Retail Price Index
Index Linked	Means an increase to the sum to be paid which is calculated by applying to that sum the percentage increase (if any) in the Index between the date of this Undertaking and the date of payment
Interest Rate	Means the Law Society's Interest Rate calculated on a day to day basis
Land	Means land situated at 83 Salterton Road, Exmouth, EX8 2EW in shown edged red on Plan A
Open Market Dwellings	Means the Dwellings to be constructed on the Land other than any Dwellings provided in accordance with an affordable housing requirement imposed by the Council
Planning Application	Means the application for planning permission submitted to the Council for the Development and given reference number 15/1938/
Planning Permission	Means planning permission to be granted by the Council pursuant to the planning application or by the Secretary of State on appeal.

5.0 INTERPRETATION

- 5.1 Nothing in this Undertaking shall be or shall be construed to be a fetter or restriction on the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation the Land or otherwise
- 5.2 Words imposing an obligation on a party to do any act whatsoever include an obligation to procure that act and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that restriction
- 5.3 Words imparting the singular meaning shall unless the context otherwise requires include the plural and vice versa and where there is more than one covenantor all obligations of such covenantors shall be joint and several
- 5.4 The masculine feminine and neuter genders include each of the other genders and words denoting persons shall include corporations and vice versa
- 5.5 A reference to any Clause or Schedule (or any part of them) is unless the context otherwise requires a reference to a Clause or Schedule (or any part of them) contained in this Undertaking
- 5.6 A reference to an Act of Parliament or Statutory Instrument refers to the Act or Statutory Instrument as it applies at the date of this Undertaking SAVE THAT in the event any such Act or Statutory Instrument is consolidated amended or re-enacted then any reference to such Act or Statutory Instrument refers to that Act or Statutory Instrument as consolidated amended or re-enacted from time to time

- 5.7 References to any party in this Undertaking shall include the successors in title and assigns of that party and in the case of the Council includes any successor local planning authority exercising planning powers under the Act
- 5.8 The provisions of the Schedule shall be deemed imported into the operative parts of this Undertaking
- 6.0 **THE OWNER UNDERTAKES AS FOLLOWS:-**
- 6.1 This UNDERTAKING is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers and any enactments replacing or superseding the same with the intent to bind the Owner's interests in the Land and with the intent that the obligations herein contained shall be planning obligations
- 6.2 The planning obligations contained in the Schedule to this Undertaking are enforceable by the Council
- 6.3 Nothing in this Undertaking is or amounts to or shall be construed as a Planning Permission or approval
- 6.4 The Owner hereby covenants with the Council to observe and perform the restrictions stipulations and requirements specified in this Undertaking and the Schedule thereto
- 6.5 The Owner recognises that this planning obligation is a Local Land Charge and registerable as such in the Register of Local Land Charges maintained by the Council
- 6.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in this Undertaking shall confer on any third party (other than the Council) any right to enforce or any benefit of any term of this Undertaking
- 6.7 If the Planning Permission should expire (without being renewed or extended) before the Commencement of Development or shall at any time be revoked quashed or is otherwise withdrawn this Undertaking shall forthwith determine and cease to have effect
- 6.8 Where in this Undertaking the Owner is required to comply with any requirement prior to First Occupation the Owner shall not First Occupy nor permit any other person to occupy any of the Open Market Dwellings before the said requirement has been satisfied
- 6.9 The Owner shall be deemed to have Commenced the Development pursuant to the Planning Permission if they commence works referable to the Development amounting to a material operation as defined in Section 56(4) of the Act (not being works for which planning permission is not required) on the Land whether or not:-
- (i) The Planning Permission has been issued;
 - (ii) The Owner has satisfied all conditions set out in the Planning Permission; or
 - (iii) Those works are in accordance with the Planning Permission
- 6.11 It is acknowledged that:-
- (i) The obligations contained in this Undertaking shall take effect upon
 - (a) the issue of the Planning Permission by the Council; and
 - (b) the Commencement of the Development

- (ii) The County Court in whose district the Land is situate shall have full jurisdiction to hear and determine proceedings arising from or relating to this Undertaking or for the enforcement of its terms or an one of them
- (iii) No person shall be liable for breach of an obligation or covenant contained in this Undertaking after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of an obligation or covenant prior to parting with such interest

7.0 NOTICES

- 7.1 The Owner hereby covenant not to Commence the Development unless and until the Commencement Notice has been served on the Council such Commencement Notice to be served a minimum of 14 days prior to the Commencement of Development
- 7.2 The Owner shall serve all notices and written communication to be served under this Agreement by registered or recorded delivery or by hand as specified below
- 7.3 The address for service for any notice or written communication to be served on the Council is:

Section 106 Officer
East Devon District Council
Knowle
Sidmouth
Devon
EX10 8HL
- 7.4 A notice approval consent or written communication under this Agreement shall be deemed to have been served as follows:
 - (i) if personally delivered at the time of delivery
 - (ii) if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority
- 7.5 It will be sufficient to prove service pursuant to this Clause 7 if it is proved that personal delivery was made or that the envelope containing the notice approval consent or written communication was properly addressed and delivered into the custody of the postal authority in a registered or recorded delivery envelope

THE SCHEDULE

SCHEDULE 1

HABITATS MITIGATION CONTRIBUTION

The Owner for themselves and their successors in title to the Land covenant as follows:-

- 1.0 To pay the Habitats Mitigation Contribution upon the Commencement of Development
- 2.0 In the event of the Owner failing to settle any account or accounts that may be properly and duly rendered to the Owner within fourteen days of despatch to the Owner the sum due shall accrue interest at the Interest Rate.

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APPENDIX 1

COMMENCEMENT NOTICE

TO: Section 106 Officer
East Devon District Council
Knowle
Sidmouth
Devon
EX10 8HL

FROM: (Owner)

DEVELOPMENT:(description of development and site name): 83 Salterton Road, Exmouth, EX8
2EW

RELEVANT PLANNING PERMISSION (reference number):

RELEVANT SECTION 106 PLANNING OBLIGATION (date and parties):

("the Section 106 Planning Obligation")

The Owners hereby put the Council on notice that it intends to commence development on

This notice is the Commencement Notice served pursuant to clause ____ of the Section 106 Planning
Obligation.

DATED this day of 20

.....

Signed by the Owner / Developer
or an authorised signatory of the
Owner / Developer

H.M. LAND REGISTRY		TITLE NUMBER	
		DN287779	
ORDNANCE SURVEY PLAN REFERENCE ①	SY 0181	SECTION E	Scale 1/1250
COUNTY DEVON	DISTRICT EAST DEVON		© Crown copyright 1978

EXMOUTH



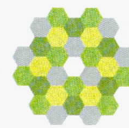
This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 03 June 2015 at 11:34:53. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by Land Registry, Plymouth Office.

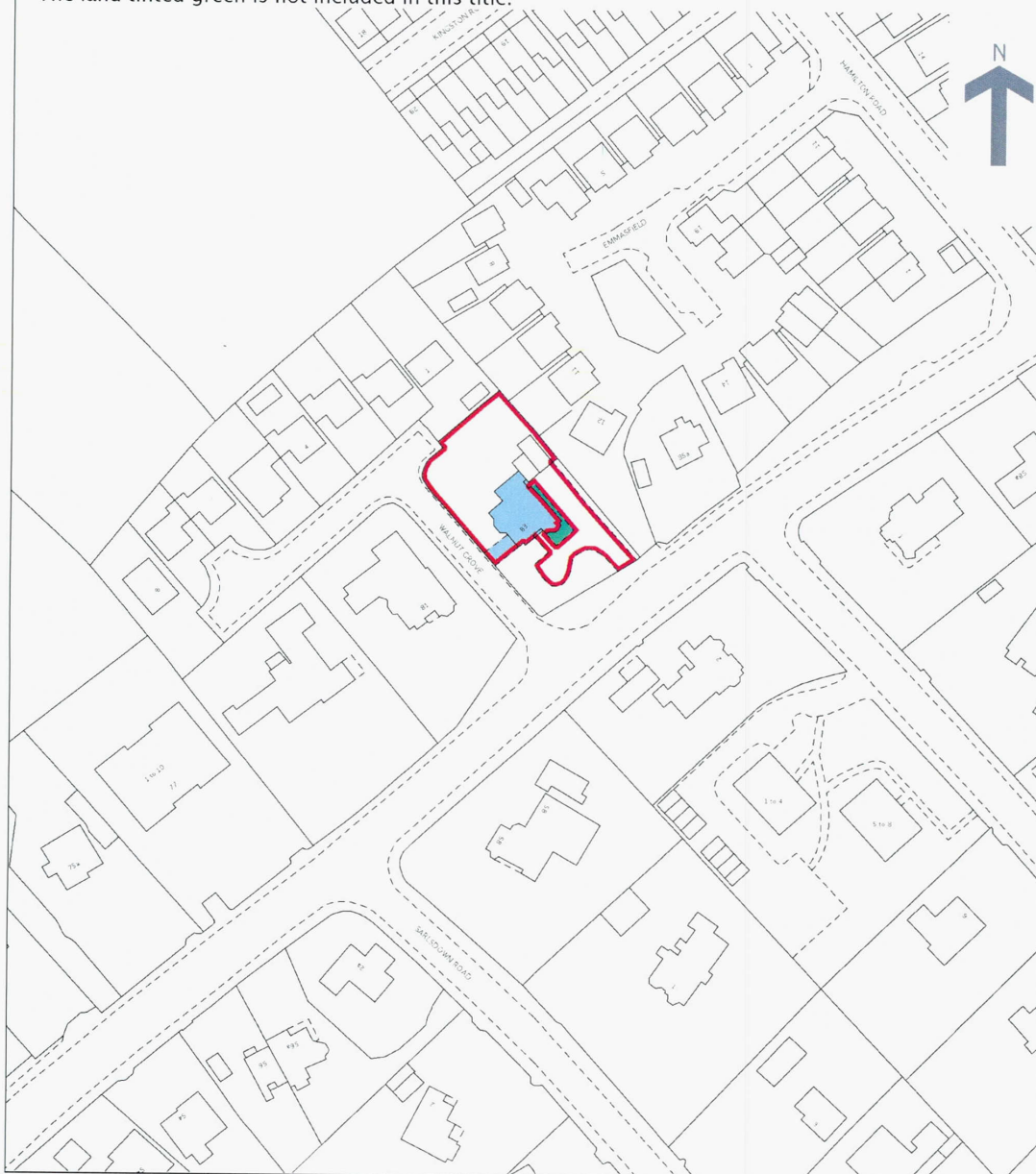
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Land Registry
Current title plan

Title number **DN563087**
Ordnance Survey map reference **SY0181SW**
Scale **1:1250**
Administrative area **Devon : East Devon**



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The land tinted green is not included in this title.



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 26 June 2015 at 15:06:34. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by Land Registry, Plymouth Office.