

Date

10 December 2015

Paul Vernon Gardner and Jacqueline Anne Gardner

UNILATERAL UNDERTAKING

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

**Land at West Hayes, West Hill Road, West Hill, Ottery St Mary,
EX11 1UZ**

IN FAVOUR OF EAST DEVON DISTRICT COUNCIL

This **UNDERTAKING** is made on the 10 day of December two thousand and fifteen by:-

- 1.0 Paul Vernon Gardner and Jacqueline Anne Gardner of Westhayes, West Hill Road, West Hill, Ottery St Mary, EX11 1UZ ("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 Westhayes, West Hill Road, West Hill, Ottery St Mary, EX11 1UZ 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 452627
- 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 £1,878.00 (being the total of £626.00 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 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 Westhayes, West Hill Road, West Hill, Ottery St Mary, EX11 1UZ 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 15/2090/OUT
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



- (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.

IN WITNESS of which this Planning Obligation has been duly executed as a Deed on the date and year first before written

EXECUTED as a DEED by

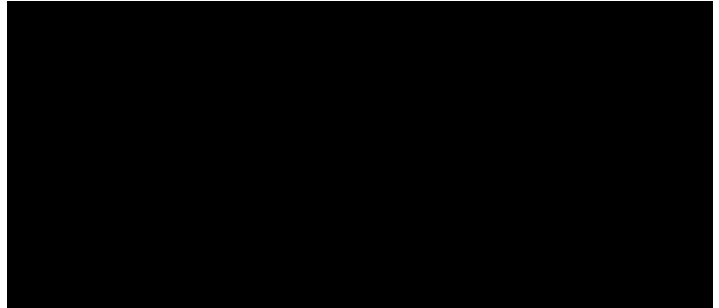
Paul Vernon Gardner

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

Address



.....
AMBEK BORRIE

.....
11 Hamilton Rd, Exmouth, Devon

EXECUTED as a DEED by

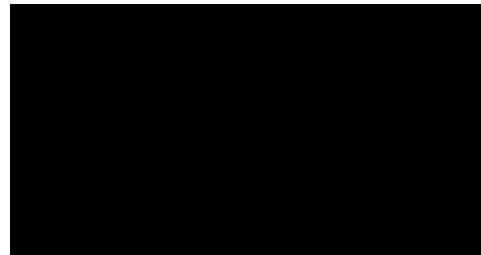
Jacqueline Anne Gardner

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

Address



.....
AMBEK BORRIE

.....
11 Hamilton Rd, Exmouth, Devon

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)
EXECUTED as a DEED by

Paul Vernon Gardner

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

Address

AMBER BOKKIE
11 Hamilton RD, Exmouth, Devon

RELEVANT PLANNING PERMISSION (reference number): 15/0923/OUT

RELEVANT SECTION 106 PLANNING OBLIGATION (date and parties):

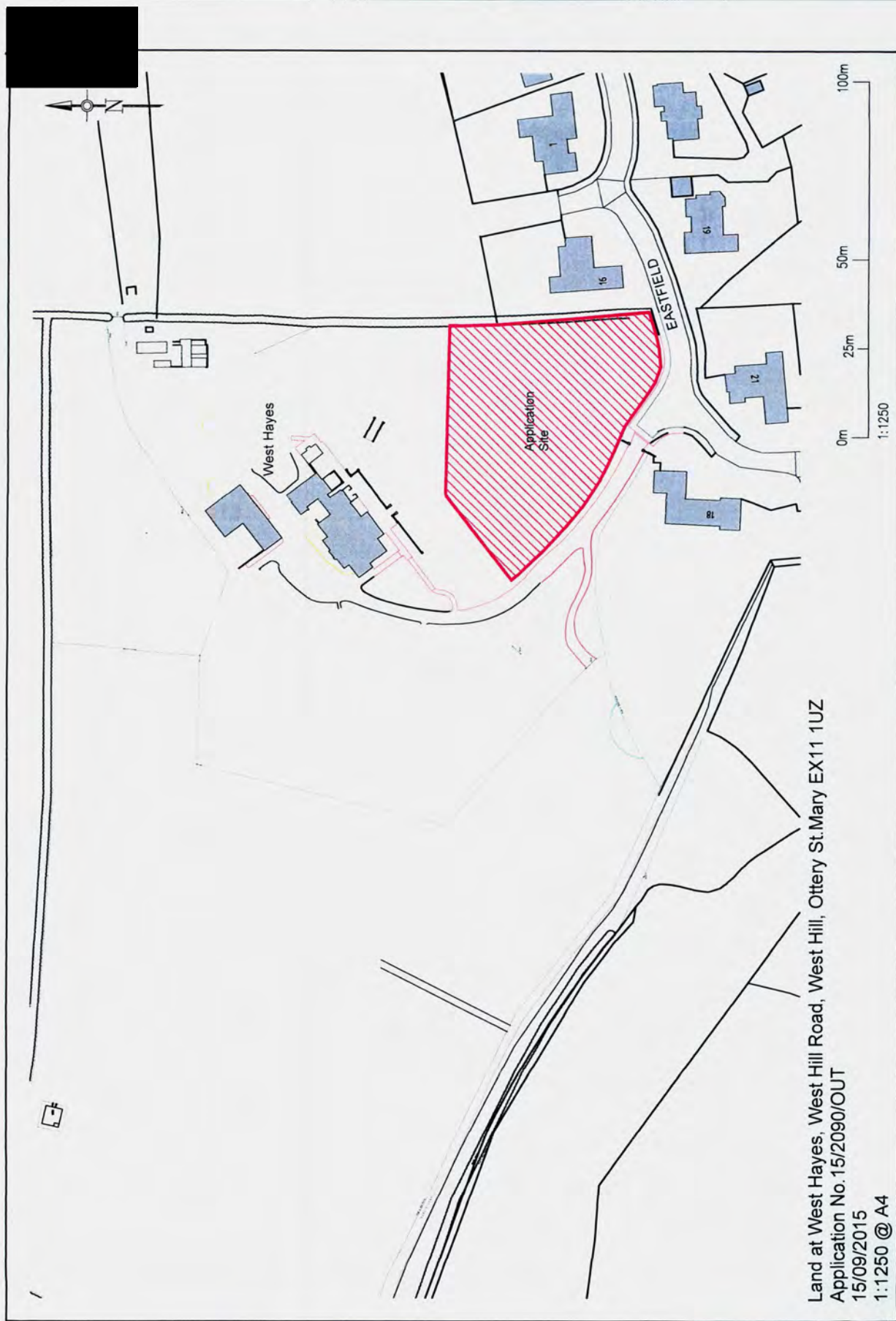
("the Section 106 Planning Obligation")

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

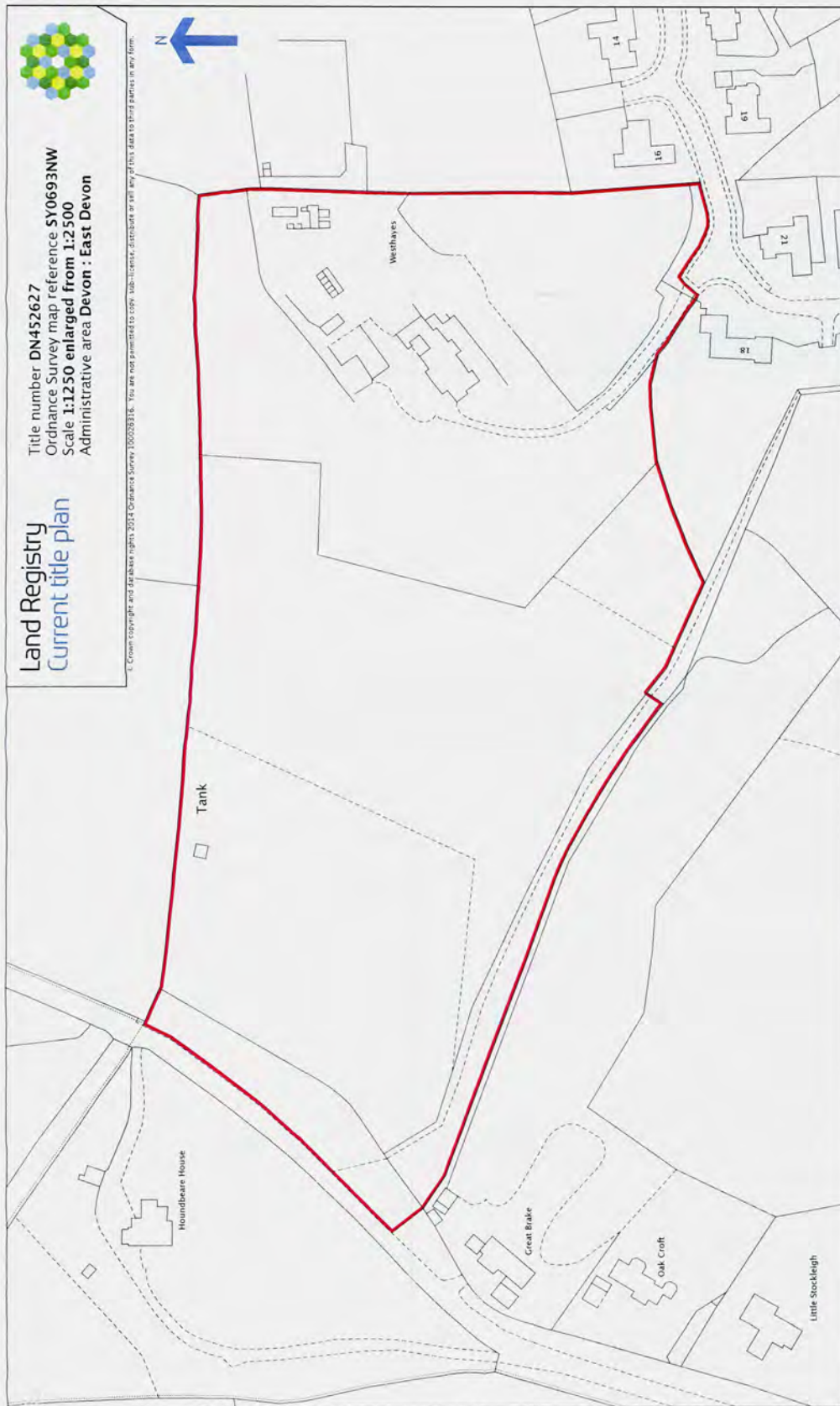




Title number DN452627
Ordnance Survey map reference SY0693NW
Scale 1:1250 enlarged from 1:2500
Administrative area Devon : East Devon

Land Registry
Current title plan

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This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 31 July 2015 at 09:48:30. 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.