

THE COUNCIL OF THE
BOROUGH OF TORBAY

- and -

PETER JAMES KIMBER and
BARBARA ELIZABETH KIMBER

- and -

ABBEY NATIONAL PLC

A G R E E M E N T

under Section 106 of the
Town & Country Planning Act 1990
relating to
29 Walnut Road
Chelston
Torquay
in the Borough of Torbay

ELIZABETH RAIKES
CHIEF EXECUTIVE
Torbay Council
Town Hall
TORQUAY

BETWEEN:

THE COUNCIL OF THE BOROUGH OF TORBAY of Town Hall Castle Circus Torquay Devon TQ1 3DR ("the Council") (1) **PETER JAMES KIMBER** and **BARBARA ELIZABETH KIMBER** both of Belton Lodge Bistern Close Burley Hampshire BH24 4AY ("the Owner") (2) and ("the Mortgagee") (3)

WHEREAS:-

1. The Council is the Local Planning Authority for the purposes of the 1990 Act for the area which includes the Site
2. The Owner has by the Application applied to the Council for Planning Permission for the Development
3. The Owner is the registered proprietor with Title Absolute under Title Numbers DN438063 and DN228561 of the Site subject to the entries disclosed on the Charges Register of the said Title but otherwise free from incumbrances
4. The Mortgagee is Mortgagee of the Land under Legal Charge/Mortgage by demand dated and made between the Owner and the Mortgagee
5. The Council in exercise of its powers under the 1990 Act has resolved to grant Planning Permission for the Development subject to the conditions contained in the draft Planning Permission attached hereto and subject to completion of this Agreement which the Council considers is necessary for the satisfactory development of the Site
6. This Agreement is conditional upon the matters hereinafter referred to

NOW THIS DEED WITNESSETH as follows:

1. In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-
 - 1.1 **"the 1990 Act"** means the Town & Country Planning Act 1990
 - 1.2 **"the Application"** means an application made by the Owner for the Development and registered by the Council on 17th September 2011 with number P/2011/0991
 - 1.3 **"Commencement of Development"** means the carrying out on the Site of any material operation pursuant to the Planning Permission and "material operation" shall have the meaning given to it under Section 56 subsection 4(a) to (e) of the 1990 Act PROVIDED THAT for the avoidance of doubt the Development shall not be deemed to have been commenced by the carrying out of any survey sampling inspections or remediation works or archaeological works or demolition or site clearances or site preparation or

work involving the diversion of services on site or soil investigations or the erection of any boundary fences or hoardings as a preliminary to the commencement of works on the Development and "Commencement of the Development" shall be construed accordingly

- 1.4 **"The Council"** and **"the Owner"** respectively includes their successors and assigns
- 1.5 **"the Development"** means change of use to create a single unit to provide sheltered housing accommodation with warden services for vulnerable adults
- 1.6 **"Eligible Person"** means either
- 1.6.1 A person referred by Torbay Council Adult Services
- (a) being over the age of 18
 - (b) with a learning disability and/or mental health support needs, in need of support in the community to meet their everyday living needs. This includes disabled people who have physical or sensory impairments, learning difficulties who experience mental illness or distress, frail older people, or people who for any other reason are unable to care for or protect themselves; and
 - (c) who have a Local Connection with Torbay.
- For the avoidance of doubt 'Eligible Person' will not include persons referred on the basis of substance dependency and/or criminal offending alone
- 1.6.2 A Warden/Supervisor
- 1.7 **"Local Connection"** means a person who is considered to have a local connection with Torbay in accordance with the criteria set out in section 5 of the "Torbay Supporting People Local Connection and Reconnections Guidelines"
- 1.8 **"the Planning Permission"** means the planning permission in the form of the draft annexed hereto granted by the Council pursuant to the Application and the expression Planning Permission shall include all approvals granted thereunder
- 1.9 **"the Site"** means the land at 27 & 29 Walnut Road Torquay shown edged red on the attached plan
- 1.10 **"Warden/Supervisor"** means a person employed by the Owner whose job it is inter alia to supervise the activities and ensure the safety of residents of the Site

2. Construction of this Agreement

- 2.1 Where in this Agreement reference is made to clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 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.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 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.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successor(s) to its statutory functions.

3. Legal Basis

- 3.1 This Agreement is made pursuant to Section 106 of the 1990 Act
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

4. Conditionality

- 4.1 The Covenants contained in this Agreement are conditional and shall take effect only upon the grant of the Planning Permission save for the provisions of Clause 6.1 (Legal Costs) and paragraph 1 of Schedule 1 which shall come into effect immediately on completion of this Agreement
- 4.2 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by statutory procedure or expires before the Commencement of Development

5. Owner's Covenants

The Owner hereby covenants with the Council to observe and perform the following

- 5.1 To ensure that a Warden/Supervisor is available to assist the residents of the Site at all times and if not resident on-site is not more than 15 minutes travelling time away while on duty.
- 5.2 To ensure that the Site is occupied only by Eligible Persons
- 5.3 Other than assured shorthold tenancies to Eligible Persons not to sell lease or otherwise dispose of either 27 or 29 Walnut Road or any part thereof separately from the remainder of the Site and to maintain ownership and management of the Site as one facility at all times

6. General

- 6.1 Upon the completion of this Agreement the Owner shall pay the Council's reasonable legal costs incurred in the negotiation, preparation and execution of this Agreement
- 6.2 Neither the Owner nor his successors in title shall be liable for any breach of this Agreement unless they hold an interest in the Site in respect of which such breach occurs or held such an interest at the date of such breach
- 6.3 A person who is not a party to this Agreement shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms other than the parties to it under that Act
- 6.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than as specified in the Planning Permission) granted (whether or not on appeal) after the date of this Agreement
- 6.5 This Agreement is a Local Land Charge and shall be registered as such
- 6.6 The Council will upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges
- 6.7 Nothing in this Agreement is or amounts to or shall be construed as a Planning Permission or approval
- 6.8 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement

7. Waiver

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8. Mortgagee's Consent

The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as if it were the person deriving title from the Owner

IN WITNESS whereof the parties hereto have executed this document as a deed the day and year first before written

EXECUTED AS A DEED by affixing)
THE COMMON SEAL OF)
THE COUNCIL OF THE BOROUGH OF TORBAY)
in the presence of :-)

Proper Officer
and Authorised Signatory

SIGNED AS A DEED by the said)
PETER JAMES KIMBER in the presence of:-)

Witness signature

Witness name (BLOCK CAPITALS)

SIGNED AS A DEED by the said)
BARBARA ELIZABETH KIMBER in the presence of:-)

Witness signature

Witness name (BLOCK CAPITALS)

THE COMMON SEAL of **ABBEY NATIONAL PLC**)

was hereunto affixed in the presence of:-)

DRAFT

DRAFT