WB/08/1014

DATED 15 December 2008

UNILATERAL UNDERTAKING

BY MARK RICHARD WHIBLEY (1)

AND

KIM YVONNE JEAN WHIBLEY (2)

TO

WORTHING BOROUGH COUNCIL

(3)

---

relating to

Spells Buildings
Grafton Place
Worthing
West Sussex
BN11 1QX

Jeremy Cook
Executive Head of Legal and
Democratic Services
Town Hall
Chapel Road
Worthing
West Sussex BN11 1HA
Ref: ST/1652/Spells Buildings

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THIS AGREEMENT is made the 15 day of December Two thousand and eight

BETWEEN

1) MARK RICHARD WHIBLEY care of 1 The Steyne, Worthing, West Sussex, BN11 3DS

AND

2) KIM YVONNE JEAN WHIBLEY OF care of 1 The Steyne, Worthing, West Sussex, BN11 3DS

jointly referred to as "the Owners"

IN FAVOUR OF

3) The Worthing Borough Council of The Town Hall Chapel Road Worthing West Sussex BN11 1HA (the "Council")

WHEREAS:

(1) The Owners are the registered Proprietors of the freehold interest of the site registered under Title Numbers WSX248940, WSX32323, WSX248873 at H M Land Registry and more particularly edged red on the attached plan

(2) The Council is the local planning authority for the purposes of the Act and for the area in which the Property is located

(3) The Owner with their Agents have submitted the Application to the Council and the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

(4) The Council resolved on 2 December 2008 to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990
"Application"	the application for outline full planning permission Conservation Area Consent, and Listed Building Consent dated 10 October 2008 submitted to the Council for the Development and allocated reference numberWB/08/1014/FULL,WB/08/1015/CAC and WB/08/1016/LBC
"Commencement of Development"	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 other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.
"Development"	the Development of the Site with demolition of existing non Listed Buildings on the site and erection of mixed use development comprising at ground floor 288m² of (Class B1) office space, refuse and recycling point, bicycle storage, 9 car parking spaces, new pedestrian twitten and a lift and stair lobby to first floor level. Provision of 8 Duplex residential as set out in the Application
"Executive Head of Planning Regeneration & Wellbeing"	The Executive Head cf Planning Regeneration & Wellbeing for the time being or such other proper officer of the Council responsible for planning functions.

"First Occupation"	means the first occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
"Index"	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation.
"Interest"	interest at 4 per cent above the base lending rate of the Bank of England from time to time.
"Party"	means the Owners or the Council, parties shall be construed accordingly
"Plan"	the plan attached to this Deed
"Planning Permission"	the full planning permission conservation area consent and listed building consent subject to conditions to be granted by the Council pursuant to the Application.
"Site"	the land against which this Deed may be enforced as shown edged red on the Plan and is registered under Title Numbers WSX248940, WSX32323, WSX248873 at the HM Land Registry.
"Transport Contribution"	means the sum of £4,560 (four thousand, five hundred and sixty pounds to be paid to the Council towards the transport infrastructure.

2 CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph cr schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

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.

Land Registry
Current title plan

Title number WSX248940
Ordnance Survey map reference TQ1402NE
Scale 1:1250
Administrative area WEST SUSSEX: WORTHING

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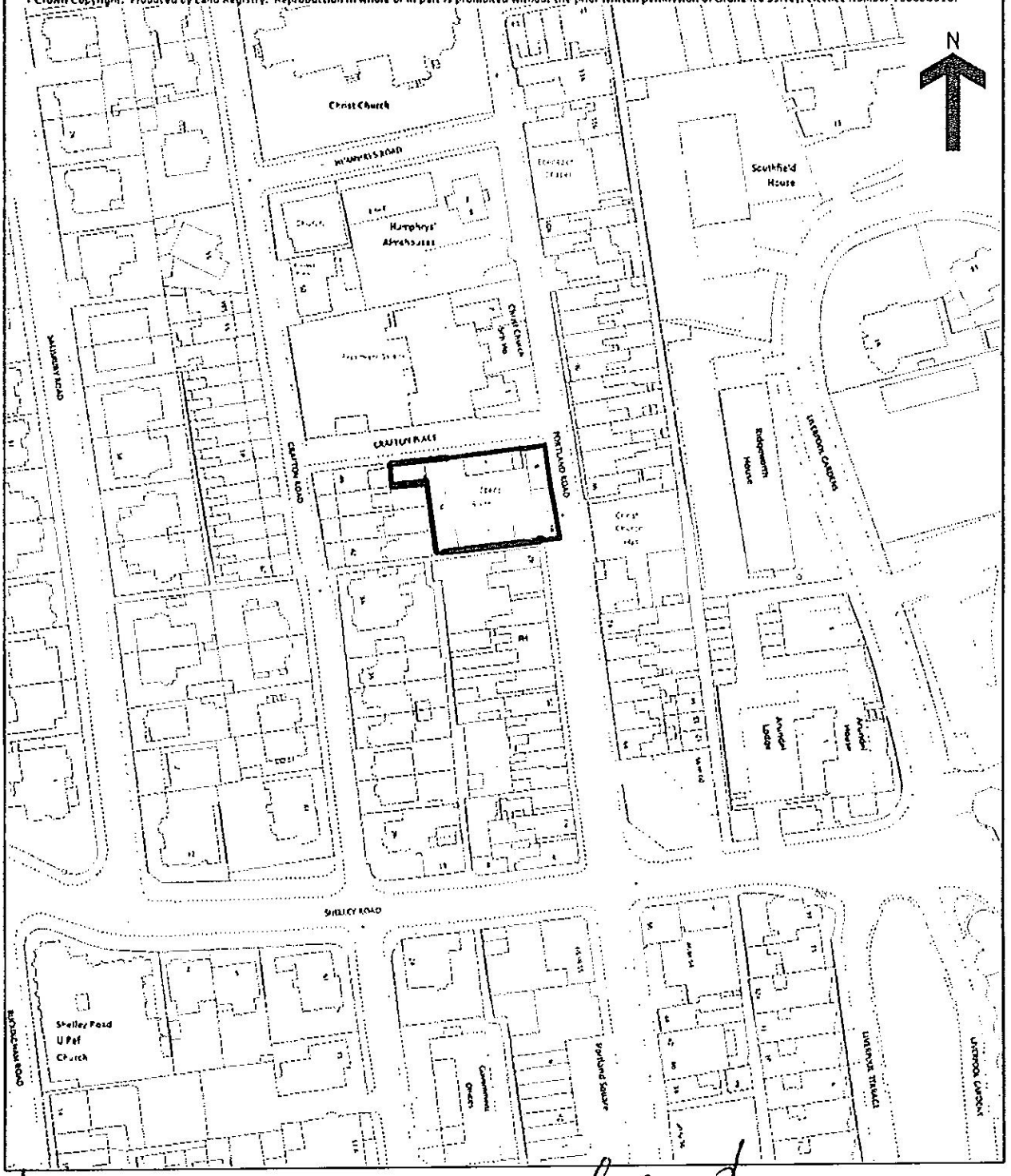

[redacted]

This is a copy of the title plan on 26 OCT 2007 at 12:59:19. This copy does not take account of any application made after that time even if still pending in the Land Registry when this copy was issued.

This copy is not an 'Official Copy' of the title plan. An official copy of the title plan is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he suffers loss by reason of a mistake in an official copy. If you want to obtain an official copy, the Land Registry web site explains how to do this.

The Land Registry endeavours to maintain high quality and scale accuracy of title plan images. The quality and accuracy of any print will depend on your printer, your computer and its print settings. 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. See Land Registry Public Guide 19 - Title Plans and Boundaries.

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

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 Deed 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 and County Council the successors to their respective statutory functions.

3 LEGAL BASIS

3.1 This Deed is made pursuant to section 106 of the Act

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed 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

This Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development

save for the provisions of Clauses 6.1, 12 and 13 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The Owners' covenant with the Council to pay the Council the Transport Contribution upon First Occupation of the Development.

6 MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

6.3 This Deed shall be registerable as a local land charge by the Council.

6.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.5 This Deed 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 any statutory procedure or expires prior to the Commencement of Development.

6.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.7 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

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 Deed 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 CHANGE IN OWNERSHIP

The Owners agree with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

9 INDEXATION

Any sum referred to in the Clause 5 shall be increased by an amount equivalent to the increase in the Index from the date of this Deed until the date on which such sum is payable.

10 INTEREST

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

11 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12 JURISDICTION

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

13 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

[redacted]

Executed as a Deed by MARK RICHARD WHIBLEY [redacted]
in the presence of:-

[redacted]
SIGNATURE OF WITNESS

NAME S. BAKER
ADDRESS c/o 1 The Steyne
Worthing
OCCUPATION Book-keeper

[redacted]

Executed as a Deed by KIM YVONNE JEAN WHIBLE [redacted]
in the presence of:-

[redacted]

NAME S. BAKER
ADDRESS c/o 1 The Steyne
Worthing
OCCUPATION Book-keeper