

3C Legal Practice Ref: SCD-S106 – [SDV0222248]
SCDC Planning Ref No: [] app/W0530/W/330790

DATED _____ **2022**

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL (1)

and

KYN CAMBRIDGE LTD (2)

PLANNING OBLIGATION AGREEMENT

Section 106 Town and Country Planning Act 1990 (as amended)

Development of Land at the former Hotel Felix, Whitehouse Lane, Huntingdon Road,
Cambridge, CB3 0LX

3C Legal Practice
South Cambridgeshire Hall
Cambourne Business Park
Cambourne
Cambridge
CB23 6EA

THIS DEED OF AGREEMENT is made the day of 2022

BETWEEN:-

- (1) **SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** of South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA ("**the Council**"); and
- (2) **KYN CAMBRIDGE LTD** of First Names House, Victoria Road, Douglas, Isle of Man, IM2 4DF (company registration number 018710V) ("**the Owner**"),

WHEREAS:-

- (1) The Owner is the freehold owner of the Property subject only to the encumbrances set out in the register for title number CB235912.
- (2) The Owner acquired the Property from the Previous Owner pursuant to a transfer dated 29 June 2022 and such transfer awaits registration at the Land Registry.
- (3) The Property is not subject to any financial charge or mortgage.
- (4) The Previous Owner made the Application to the Council in respect of development at the Property.
- (5) The Application was refused pursuant to a decision notice dated 22 July 2022.
- (6) This agreement has been prepared in support of the Appeal.
- (7) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Property is situated.
- (8) For the purposes of Section 106 of the 1990 Act
 - (a) the obligations on the part of the Owner hereinafter contained in Clause 5 and in the First schedule hereto ("**the Obligations**") are planning obligations;
 - (b) the land the subject of the Obligations is the Property; and

(c) the Council is the local planning authority by whom the Obligations are enforceable as hereinafter provided.

(9) The Council is satisfied that the proposed development disclosed by the Application is such as may be approved by the Council under the 1990 Act.

NOW THIS DEED WITNESSETH as follows:-

1. DEFINITIONS

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

"1990 Act"	means the Town and Country Planning Act 1990 as amended
"the Appeal"	means the appeal lodged by the Previous Owner against the refusal of planning permission pursuant to the Application, such appeal having a PINS reference of APP/W0530/W/22/3307903
"the Application"	means an application received on 1 March 2021 for the <i>"demolition of existing buildings and erection of a care home (Use Class C2) with external amenity space, access, parking, landscaping and other associated works"</i> at the Property under reference number 21/00953/FUL
"Burial Contribution"	means a contribution in relation to burial spaces and the additional provision of such spaces in the sum of £16,800 <u>means a contribution to provide additional burial spaces in the Parish of Girton serving the Development in the sum of £16,800</u>
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the 1990 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 temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
"Development"	means the development of a research and development building and associated decked car park, landscaping and associated infrastructure as permitted by the Planning Permission
"Expert"	means a person of relevant technical expertise appointed by the parties or by the President for the time being of the Royal Institution of Chartered Surveyors pursuant to clause 124 ³ (Dispute Resolution)
"Interest"	means interest at 4% per annum above the base rate for the time being of the Bank of England
"Monitoring Contribution"	means the sum of £500 being a contribution towards the Council's costs of monitoring the proper and timely performance of the Owner's covenants under the terms of this Deed
"the Obligations"	means the obligations on the part of the Owner in clause 5 and in the First schedule to this Deed
"Occupation" and "Occupy" and "Occupied"	means 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
"Planning Permission"	means the planning permission subject to conditions granted pursuant to the Appeal

“Previous Owner”	means Cassel Hotels (Cambridge) Limited (Company Number 04011656) whose registered office at Registered office address is at 73 Cornhill, London, England, EC3V 3QQ
“Property”	means the land described by the Land Registry as being Hotel Felix, Whitehouse Lane, Huntingdon Road, Cambridge (CB3 0LX) as shown edged red on the Location Plan annexed at the Third schedule
“Location Plan”	means the plan annexed to this Deed at the Third schedule
“Working Days”	means any day other than a Saturday or Sunday or a public holiday in England or a day falling in the period from 25 December to 1 January of the consecutive year inclusive

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any 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 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.
- 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 Reference 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 the successors to their statutory functions.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority.

4. CONDITIONALITY

The provisions of this Deed are conditional upon the Commencement of Development save for the provisions of this clause and clauses 7.1, 9, 12, 13, 14 which shall come into effect immediately upon completion of this Deed.

5. THE OWNER'S COVENANTS

The Owner covenants with the Council as set out in the First schedule.

6. THE COUNCILS' COVENANTS

The Council covenants with the Owner as set out in the Second schedule.

7. MISCELLANEOUS

- 7.1 The Owner shall pay on completion of this Deed the reasonable and proper legal costs of the Council incurred in the negotiation and execution of this Deed.
- 7.2 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person (other than the Council) who is not a party hereto or a successor in title or a statutory successor to a party hereto.
- 7.3 This Deed shall be registerable as a local land charge by the Council.

- 7.4 Any notice to the Owner shall be sent to the Owner at the address set out above or to such address and/or for the attention of such person as the Owner may notify to the Council in writing.
- 7.5 Where the agreement, approval, consent or expression of satisfaction is required from the Owner by the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 7.6 (a) The Council will upon the written request of the Owner at any time after the obligations hereunder have been performed or otherwise discharged provide the Owner with written confirmation of such performance or discharge as soon as reasonably practicable.
- (b) Following the performance and satisfaction of all the obligations contained in this Deed and subject to a written request made by or on behalf of the Owner the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.7 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.
- 7.8 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 and the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.9 No person shall subject as hereinafter provided be liable to observe or perform the Owner's obligations under this Deed or 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 Property PROVIDED always that this shall be without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 7.10 This Deed shall not be binding or enforceable against:
- 7.10.1 any statutory undertaker or other person who acquires any part of the Property or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport service; or
 - 7.10.2 any person benefitting only from an easement or licence in relation to the Property; or
 - 7.10.3 any individual occupiers or tenants of any component of the Development.
- 7.11 Subject to Clause 7.12 nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.12 If the Council at any time commence the provision or provide in whole or in part any of the facilities for which a financial contribution is to be made under the terms of this Deed then in such case the Owner shall pay the relevant contribution in accordance with the provisions of this Deed so as to reimburse the Council as appropriate the cost incurred in respect of each provision as referred to in this Deed PROVIDED THAT:
- 7.12.1 the Owner shall not be required to pay the relevant contribution earlier than the date on which it is due (or at all if the relevant date is not reached); and
 - 7.12.2 the Owner shall not be required to pay any greater contribution than is referred to in this Deed.
- 7.13 In the event that any new planning permission(s) are granted by the Council in relation to the Development pursuant to Section 73 of the 1990 Act and unless otherwise agreed between the parties to this Deed, with effect from the date that any new planning permission is granted pursuant to Section 73 of the 1990 Act:

7.13.1 the obligations in this Agreement shall (in addition to continuing to bind that part of the Property bound by the terms of this Agreement in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Property granted pursuant to Section 73 of the Act and the Property itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the Act;

7.13.2 the definitions of Application, Development and Planning Permission in this Agreement shall be construed to include references to any applications under Section 73 of the Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s); and

7.13.3 this Agreement shall be endorsed with the following words in respect of any future Section 73 application:

“The obligations in this Agreement relate to and bind the Property in respect of which a new planning permission referenced [] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)”

7.13.4 provided that nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are materially different to those contained in this Agreement and required pursuant to a determination under Section 73 of the Act whether by way of a new deed or supplemental deed pursuant to Section 106 of the Act.

8. WAIVER

No waiver (whether expressed or implied) by the Council or the Owner 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 or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council written notice within 28 days of any change in ownership of its interest in the Property 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 that part of the Property or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to any disposal to any of the statutory utilities for their operational purposes or to any mortgage or charge on the Property

10. INTEREST

If any payment due under this Deed is paid late, Interest will be payable on any unpaid amount on a daily basis from the date payment is due to the date of payment in full.

11. VAT

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

12. DISPUTE RESOLUTION

12.1 If any dispute arises between any or all of the parties with respect to a matter falling for determination under this Deed (other than over an issue of law or interpretation of this Deed), and the dispute persists 6 weeks after it is raised in writing by any party then:

12.1.1 the dispute may at the instance of any disputing party be referred to an Expert; and

12.1.2 in the absence of agreement within 21 days of the notice invoking this clause, then the disputing party(ies) may seek nomination of an Expert by the President for the time being of the Royal Institution of Chartered Surveyors and nomination shall be final.

12.2 An Expert shall:

12.2.1 not be liable in the making of his or her decision save to the extent in law as provided in relation to the decisions of an expert;

12.2.2 give each disputing party the opportunity to comment on the representations of the other;

12.2.3 make a decision that is final and binding on the disputing parties to such dispute (except in regard to matters of law or in the case of manifest error or fraud); and

12.2.4 make his or her decision within 6 weeks of being appointed.

12.3 The costs of appointing an Expert under clause 12.1 shall be shared equally by the parties involved in the dispute except where the Expert takes the view that one party has acted unreasonably in which case the Expert shall have binding discretion as to apportionment of those costs.

13. JURISDICTION

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

14. 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.

15. MORTGAGEE LIABILITY

The Council acknowledges that any mortgagee (and any subsequent mortgagee or chargee of the Property) shall have no liability under this Agreement unless it takes possession of the Property in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

16. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

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

THE FIRST SCHEDULE

The Owner's Obligations

1. The Owner covenants with the Council not to Occupy the Property until the Owner has paid:

1.1 ~~the Monitoring Contribution;~~

~~1.2~~ 1.1 the Burial Contribution in full to the Council;

~~in full to the Council.~~

2. The Owner covenants to pay the Monitoring Contribution on commencement of development

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THE SECOND SCHEDULE

The Council's Covenants

1. The Council covenants with the Owner to:
 - 1.1 apply the Burial Contribution received under the terms of this Agreement for the use specified in the Definition~~for the purposes set out in committee report 21/00953/FUL~~;
 - 1.2 account to the person (or persons) who made the Burial Contribution as to how such funds were applied by the Council and to repay to the person (or persons) who made the Burial Contribution any unused elements of such the Burial Contribution following the expiry of a ten year period commencing on the date of notification of completion of the Development (provided that this shall not apply to any funds which have been contracted to be spent by or on behalf of the Council, or which relate to maintenance or management or similar long-term expenditure).

THE THIRD SCHEDULE

Location Plan



SCHEDULE OF ACCOMMODATION
 SITE AREA 1.39 Ha (3.43 acres)

CARE HOME
 GROUND FLOOR 40 BEDS + SERVICE AREAS
 FIRST FLOOR 40 BEDS + SPA
 ROOF SPACE SERVICE AREAS

TOTAL 80 BEDROOMS

GROSS INTERNAL FLOOR AREA
 GROUND FLOOR 2,275m²
 FIRST FLOOR 2,200m²
 ROOF SPACE 280m²

TOTAL GIFA: 4,655m²

SPACE PER RESIDENT 58.2m²

PARKING 31 BAYS INCL 2 DISABLE BAYS

- KEY
- EXISTING TREES
 - PROPOSED TREES
 - EXISTING TREES WITH TPO ORDER

100% COMPLETE

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CARLESS HOTELS (CAMBRIDGE) LIMITED

HOTEL PELLS, CAMBRIDGE

SITE PLAN

DATE	13.08.20	PROJECT	HOTEL PELLS	SCALE	1:1000
DRAWN BY	CA/A	CHECKED BY	CA/A	DATE	13.08.20

The **COMMON SEAL** of **SOUTH**)
CAMBRIDGESHIRE DISTRICT)
COUNCIL was hereunto affixed)
in the presence of:-)

for Chief Executive

EXECUTED as a DEED by **KYN**)
CAMBRIDGE LIMITED)
acting by a director)
)
)
)

Director

in the presence of a witness:

Witness

Witness signature

Witness print name

Witness Address:

