

DATED

20 May 2022

2022

(1) GAVIN TOM VARNHAM and EMMA LOUISE VARNHAM

to

(2) CHARNWOOD BOROUGH COUNCIL

## S 106 UNILATERAL UNDERTAKING

RELATING TO LAND ADJACENT TO 171 SWITHLAND LANE, ROTHLEY, LEICESTER LE7 7SJ

**NELSONS**

Business Law | Personal Law | Investment

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## Unilateral Undertaking

given under section 106 of the Town and Country Planning Act 1990

relating to

development at land adjacent to 171 Swithland Lane, Rothley, Leicester LE7 7SJ

**THIS UNDERTAKING** is given on 20 day of May 2022

**BY :**

- (A) GAVIN TOM VARNHAM and EMMA LOUISE VARNHAM of 171 Swithland Lane, Rothley, Leicester LE7 7SJ (the Owner);

TO

- (B) CHARNWOOD BOROUGH COUNCIL of Council Offices, Southfield Road, Loughborough LE11 2TX (the Council)

### **RECITALS:**

- (1) The Council is the local planning authority for the purposes of s 106 of the 1990 Act for the area in which the Land is situated and is the authority by whom the obligations given in this Undertaking are enforceable.
- (2) The Owner is legal owner of the Land pursuant to a transfer dated 20 April 2022 made between Bardon Hill Limited (Incorporated in Jersey) of 12 Castle Street, St Helier, Jersey, JE2 3R and the Owner ("the Transfer"). The Owner has applied to the Land Registry for the registration of its interest in the Land pursuant to the Transfer.
- (3) The Owner submitted the Application to the Council and the Council has resolved to grant the Permission subject to completion of this Undertaking.
- (4) The Owner has agreed that the Development shall be carried out only in accordance with the obligations set out in this Undertaking

### **THE PARTIES AGREE:**

#### **1. Interpretation**

- 1.1 In this Undertaking unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

**the 1990 Act** means the Town and Country Planning Act 1990 (as amended);

**Application** means the application for planning permission for the Development submitted by or on behalf of the Owner to the Council to which the Council has

	allocated reference number P/21/1221/2;
<b>Biodiversity Off-Setting Contribution</b>	means an offsite contribution of £9,283.00 (Index Linked) payable to the Council towards a specific project (to be identified by the Council) for offsite biodiversity offsetting by habitat creation, improving and enhancing biodiversity within the Council's administrative area.
<b>CIL Regulations</b>	means the Community Infrastructure Levy Regulations 2010 (as amended);
<b>Development</b>	means the development of the Land for the erection of a 2.5 storey detached house and triple garage. Formation of vehicular access and associated driveway and landscaping works, in accordance with the Permission;
<b>Implementation</b>	means commencement of Development pursuant to the Permission by the carrying out of a 'material operation' (as defined in s 56(4) of the 1990 Act) save that for the purposes of this Agreement the term (and 'Implement' and 'Implemented' shall be construed accordingly) save that for the purposes of this Agreement the term shall not include surveys, works of ground investigation or remediation, the erection of fencing or hoardings, the provision of security measures or lighting, the erection of temporary buildings or structures associated with the Development, the provision of construction compounds, or the temporary display of site notices or advertisements or piling works (and 'Implement' and 'Implemented' shall be construed accordingly);
<b>Index Linked</b>	means adjusted in accordance with any increase or decrease in the Retail Prices Index from the date of this Undertaking to the date of actual payment;
<b>Land</b>	means the freehold land edged red on the Plan being land registered at the Land Registry with title absolute under title number LT450594;
<b>Monitoring Fee</b>	means the sum of £409.00 payable to the Council for the costs of monitoring progress of the Development
<b>Permission</b>	means full planning permission (subject to conditions) to be granted by the Council for the Development;
<b>Plan</b>	means the plan attached to this Agreement;
<b>Planning Obligations</b>	means those planning obligations listed at Schedule 2 being planning obligations for the purposes of section 106 of the Act;
<b>Working Day</b>	means any day which is not a Saturday, Sunday, Christmas Day, Good Friday or a statutory bank

holiday

**2. Interpretation**

- 2.1 Words importing one gender shall be construed as meaning any other gender;
- 2.2 Words in the singular include the plural and vice versa;
- 2.3 References to clauses and schedules are reference to clauses and schedules within this Undertaking only;
- 2.4 A reference to a person includes a company or any legal entity.

**3. Obligations and statutory powers**

- 3.1 This Undertaking is entered into by unilateral undertaking and is a planning obligation for the purposes of s 106 of the 1990 Act and it is acknowledged by the parties that the obligations contained within it are binding on the Land and are enforceable by the Council as local planning authority against the Owner as owner of the Land and against their successors in title and assigns in respect of their interests in each and every part of the Land.
- 3.2 The Owner hereby covenants to observe and perform the Planning Obligations.

**4. Land Bound**

- 4.1 The Land is bound by the Planning Obligations.

**5. Conditionality**

- 5.1 The obligations in this Undertaking (save for the covenant in paragraph 2 of Schedule 2) are unless otherwise specified conditional upon the grant of the Permission by the Council.

**6. Liability**

- 6.1 Upon parting with all or any interest in the Land no party shall have liability for the breach of any covenant or Planning Obligation in this Undertaking other than in respect of any breach by it at the time when it held such an interest.
- 6.2 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Undertaking.

**7. Indexation and interest**

- 7.1 The Biodiversity Contribution and Monitoring Fee shall be Index Linked.
- 7.2 In the event of late payment of any of the Biodiversity Contribution or Monitoring Fee by the Owner to the Council such payment shall be subject to a charge of 2% above the base rate of the Bank of England from time to time in force and such charge shall apply from the date that the sum becomes due to the date of actual payment.

**8. Miscellaneous**

- 8.1 This Undertaking may be registered as a local land charge by the Council;

- 8.2 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Undertaking confers or purports to confer any right to enforce any of the terms of this Undertaking on any person who is not a party hereto;
- 8.3 Any notice served pursuant to this Undertaking shall be deemed to be served correctly if served to the above addresses by registered post.
- 8.4 This Undertaking is governed by the laws of England.

This Undertaking has been executed as a deed and delivered on the date stated at the beginning of this Undertaking.

## SCHEDULE 1 PLAN

## **SCHEDULE 2**

1. The Owner hereby undertakes to pay to the Council the Biodiversity Offsetting Contribution and Monitoring Fee prior to Implementation of the Permission and not to Implement the Permission and not to permit Implementation until:
  - 1.1 it has given the Council 10 Working Days prior written notice of the proposed Implementation date; and
  - 1.2 it has paid to the Council the Biodiversity Offsetting Contribution in full including any sum due under clause 7 for Indexation or interest; and
  - 1.3 it has paid to the Council the Monitoring Fee in full including any sum due under clause 7 for Indexation or interest.
2. The Owner shall on the date hereof pay to the Council the Council's legal costs of £550 for the review of this Undertaking



SITE LOCATION PLAN  
AREA 5 HA  
SCALE: 1:1250 on A4  
CENTRE COORDINATES: 457071 , 313775



GREY ROSE  
ARCHITECTS

Supplied by Streetwise Maps Ltd  
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Licence No: 100047474  
12:44:27 06/01/2021

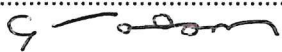
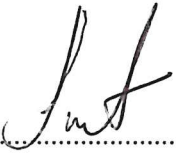
status:	PLANNING	RIBA Stage: 3
client:	Mr & Mrs Varnham	
job:	173 Swithland Lane, Rothley	
title:	Location Plan	
drawn:	AV	date: May 21
checked:	SW	scale @ a4: 1:1250
job no:	2008P068	drw no: 100

Grey Rose Architects 293 Bradgate Road / Anstey LE7 7FX  
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www.greyrosearchitects.com



0 10 20 30 40 50 60 70 80 90 100  
scale 1:1250 metres



3.

Signed as a deed by GAVIN TOM VARNHAM	) 
In the presence of:	
Signature of witness	) 
Name of witness	Simon WATERHOUSE
Address	57 THE GROVE WHEATLEY HILLS DONCASTER DN2 5SB

Signed as a deed by EMMA LOUISE VARNHAM	) 
In the presence of:	
Signature of witness	) 
Name of witness	Simon WATERHOUSE
Address	57 THE GROVE WHEATLEY HILLS DONCASTER DN2 5SB

