



Dated 4 JANUARY 2012

2011

TAYLOR WIMPEY UK LIMITED

UNILATERAL UNDERTAKING

under Section 106 Town and Country Planning Act 1990 relating to land at Junction of Main Avenue and Hambledon Road, Dukes Meadow Development Site Waterlooville

- This document to incorporate the provision of the TR0 [TO BE DRAFTED BY LAWYER]
- This document to incorporate the link to the 6 parking spaces on the care home site.

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THIS UNDERTAKING is given on 4 January 2012.
~~2011~~

BY TAYLOR WIMPEY UK LIMITED (company number 01392762) whose registered office is at Gatehouse, Turnpike Road, High Wickham, Buckinghamshire HP12 3NR (**"the Landowner"**)

TO

- (1) WINCHESTER CITY COUNCIL of Colebrook Street, Winchester, Hampshire SO23 9LJ (**"the City Council"**);
- (2) COUNCIL OF THE BOROUGH OF HAVANT of Civic Centre Road, Havant, Hampshire PO9 2AX (**"the Borough Council"**); and

BACKGROUND

- (A) The City Council is the local planning authority for the purposes of Part 3 of the 1990 Act for the area within which part of the Extra Care Facility Site is located.
- (B) The Borough Council is the local planning authority for the purposes of Part 3 of the 1990 Act for the area within which part of the Extra Care Facility Site is located.
- (C) The Landowner is the freehold owner of the whole of both the Extra Care Facility Site and the Nursing Care Home Site free from encumbrances that would prevent the Landowner entering into this Undertaking.
- (D) Pursuant to the Extra Care Facility Application the Landowner has applied to each of the City Council and to the Borough Council for outline planning permission for the Extra Care Facility. AMEND TO FULL DETAILED
- (E) Pursuant to the Nursing Care Home Application the Landowner has applied to the City Council for outline planning permission for the Nursing Care Home Development and submitted the Nursing Care Home Section 106 Undertaking. AMEND TO FULL DETAILED
- (F) On 13 June 2011 at a joint meeting the City Council and the Borough Council resolved to grant the Extra Care Facility Planning Permission subject, among other things, to the completion of a planning obligation securing the matters contained herein.
- (G) At the joint meeting on 13 June 2011 the City Council resolved to grant the Nursing Care Home Planning Permission and the Nursing Care Home Planning Permission was issued on 7 September 2011.

- (H) The Landowner has given this Undertaking with the intention that the obligations contained herein may be enforced by the City Council and the Borough Council against the Landowner and its successors in title

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Undertaking, the following words and expressions have the following meanings:

"1990 Act" the Town and Country Planning Act 1990 as amended

"Accommodation Units" the individual units of accommodation to be provided as part of the Extra Care Facility Development

"Care" care as defined in the Town and Country Planning (Use Classes) Order 1987

"Commence" the carrying out on the Extra Care Facility Site pursuant to the Extra Care Planning Permission of a material operation as specified in section 56(4) of the 1990 Act (other than an operation set out in **clause 3.2**)

"Commencement Date" the date specified in **clause 3.1**

"Extra Care Facility" the extra care facility to be constructed pursuant to the Extra Care Facility Development

"Extra Care Facility Application" the application for outline planning permission for the carrying out of the Extra Care Facility Development made by the Landowner to both the City Council and the Borough Council and allocated references 10/03253/OUT and APP/11/00015 respectively

"Extra Care Facility Development" the development of the Extra Care Facility Site to provide extra care accommodation comprising approximately 37 Accommodation Units *[48] accommodation units & communal spaces*

"Extra Care Facility Planning" the planning permission that may be granted in

Permission"	pursuance of the Extra Care Facility Application
"Extra Care Facility Site"	the freehold property at Junction of Main Avenue and Hambledon Road, Dukes Meadow Development Site Waterloooville forming part of the property registered at HM Land Registry under Title Number SH25743 shown for identification purposes only edged with a dashed red line and marked E1 on the Plan
"New Permission"	a planning permission authorising the redevelopment of the Extra Care Facility Site in a manner which would if such redevelopment were completed cause the Landowner to be in breach of any or all of the provisions contained in this Undertaking
"Nursing Care Home"	the nursing care home to be constructed pursuant to the Nursing Care Home Development
"Nursing Care Home Application"	the application for outline planning permission for the carrying out of the Nursing Care Home Development made by the Landowner on 14 January 2011 to the City Council and allocated reference 10/03252/OUT
"Nursing Care Home Development"	development of the Nursing Care Home Site for a nursing care home with approximately 82 beds on the Nursing Care Home Site 80
"Nursing Care Home Site"	the freehold property at Phase 2 (M2) Land at Old Park Farm, Wimpey Site, Part of WWMDA Hambledon Road, Waterloooville forming part of the property registered at HM Land Registry under Title Number SH25743 shown for identification purposes only labelled "Associated Nursing Care Home" and marked M2 on the Plan
"Nursing Care Home Section 106 Undertaking"	The section 106 Undertaking provided by Taylor Wimpey UK Limited dated 15 August 2011 relating to the Nursing Care Home Site a copy of which is attached to this Undertaking.
"Nursing Care Home Planning"	the planning permission issued by the City

"Permission"

Council pursuant to the Nursing Care Home Application

"Occupation"

means takes occupation (including causing permitting or suffering the taking of occupation) for any purposes permitted by the Extra Care Facility 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 and the expressions **Occupy Occupied** and **Occupiers** shall be construed accordingly.

"Operate"

means the functions of:-

day to day management; and

provision of Care services

and the expressions **Operators** and **Operation** shall be construed accordingly

"Plan"

the plan numbered 4729/20.B and attached to this Undertaking

"Specialist"

has the meaning given to it in **clause 10.2**

1.2 In this Undertaking:

1.2.1 the clause headings do not affect its interpretation;

1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Undertaking and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

1.2.3 references to any statute or statutory provision include references to:

1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;

The SITE boundary & surrounding buildings are a superimposition of a prewar plan and a postwar construction by Survey of National Antiquities.

PHASE 2 RESIDENTIAL

N

SITE BLOCK PLAN 1 - 500

M2

ASSOCIATED NURSING CARE HOME

UPDATE WITH CURRENT LAYOUT. INCORPORATE PLAN WITH 6 SPACES.

WATER

ALL DETAILED DESIGN WILL REQUIRE DETERMINATION
OF A RESERVATION MATTER AND CATION

10	08/28/11	Additional landscaping (tree removal and adjacent TPO Lot 179 approved). Signage signs to be installed & maintenance starts in 3-6 months (landscaping).
11	11/01/11	Quadrant performed site visit. Development schedule confirmed.

PROPOSED EXTRA CARE
ACCOMMODATION - Plot E1
Julian's Meadow

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THE UNIVERSITY

[illegible]

10

4729 / 20.8

LOCATION PLAN 1 - 500

1000

- 1.2.4 references to the Extra Care Facility Site includes any part of it;
 - 1.2.5 references to any party in this Undertaking include the successors in title of that party and references to the City Council or Borough Council include any successor local planning authority exercising planning powers under the 1990 Act for their respective administrative areas;
 - 1.2.6 "including" means "including, without limitation";
 - 1.2.7 any covenant by the Landowner not to do anything includes a covenant not to permit or allow the doing of that act or thing;
 - 1.2.8 where two or more people form a party to this Undertaking, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
 - 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Undertaking is to be unaffected.
- 1.3 The parties to this Undertaking do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
2. **EFFECT OF THIS UNDERTAKING**
- 2.1 This Undertaking is given pursuant to Section 106 of the 1990 Act and to the extent that they fall within the terms of Section 106 of the 1990 Act, the obligations contained herein are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable as follows:
- 2.1.1 by the City Council insofar as they relate to development within the administrative boundaries of the City Council;
 - 2.1.2 by the Borough Council insofar as they relate to development within the administrative boundaries of the Borough Council.
- 2.2 This Undertaking may be registered as a local land charge by each of the City Council and the Borough Council.
- 2.3 The obligations in this Undertaking will not be enforceable against a statutory undertaker after the transfer of the statutory operations and any land upon or in which the statutory operations are situated by the Landowner to that statutory undertaker.

- 2.4 Nothing in this Undertaking prohibits or limits the right to develop any part of the Extra Care Facility Site in accordance with planning permissions other than that relating to the Extra Care Facility Development granted after the date of this Undertaking whether or not pursuant to an appeal.

3. **COMMENCEMENT DATE**

- 3.1 The obligations contained in **clauses 4.1 to 4.2** and Schedule 1 referred to therein do not come into effect until the date on which the Extra Care Facility Development Commences (subject to the provisions of **clause 3.2**)
- 3.2 The Commencement Date will not be triggered by any of the following operations:
- 3.2.1 site investigations or surveys;
 - 3.2.2 site decontamination;
 - 3.2.3 construction of access and service roads;
 - 3.2.4 the demolition of any existing buildings or structures;
 - 3.2.5 the clearance or regrading of the Extra Care Facility Site;
 - 3.2.6 works connected with infilling; or
 - 3.2.7 works for the provision of drainage or mains services to prepare the Site for development.

4. **OBLIGATIONS**

- 4.1 The Landowner undertakes to the City Council and the Borough Council to comply with its obligations set out in **Schedule 1** in relation to the Extra Care Facility Development and to bind the Extra Care Facility Site.
- 4.2 No person will be liable for any breach of the terms of this Undertaking occurring after the date on which they part with all their interest in the Extra Care Facility Site or the part thereof in respect of which such breach occurs, but they will remain liable for any breaches of this Undertaking occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Extra Care Facility Site in any transfer of such property will constitute an interest for the purposes of this **clause 4.2**

5. **TERMINATION OF THIS UNDERTAKING**

5.1 This Undertaking will come to an end if:

- 5.1.1 subject to **clause 5.2**, the Extra Care Facility Planning Permission is quashed, revoked or otherwise withdrawn at any time so as to render this Undertaking or any part of it irrelevant, impractical or unviable;
- 5.1.2 the Extra Care Facility Planning Permission and expires before the Commencement Date without having been implemented; or
- 5.1.3 at any time after the date of this Undertaking the City Council the Borough Council or any other competent authority grants a New Permission under which development is implemented for the purposes of section 56 of the 1990 Act.

5.2 **Clause 5.1.1** will not apply in respect of any minor modifications to the Extra Care Facility Planning Permission or the Extra Care Facility Development agreed from time to time between the City Council, the Borough Council and the Landowner prior to the Commencement Date.

6. **NOTICES**

6.1 Any notice, demand or any other communication to be served under this Undertaking will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

6.2 Any notice, demand or any other communication to be served is to be sent to the address of the relevant party set out at the beginning of this Undertaking or to such other address as one party may notify in writing to the others at any time as its address for service.

6.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

- 6.3.1 if delivered by hand, at the time of delivery;
- 6.3.2 if sent by post, on the second working day after posting; or
- 6.3.3 if sent by recorded delivery, at the time delivery was signed for.

6.4 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it will be treated as having been served on the next working day.

7. **EXECUTION**

The Landowner has executed this Undertaking as a deed and it is delivered on the date set out above.

SCHEDULE 1

Obligations

The Landowner undertakes to the City Council and the Borough Council to bind the Extra Care Facility Site as follows:

1. ^{occupy} Not to ~~Commence~~ the development of the Extra Care Facility on the Extra Care Facility Site unless and until a ~~contract has been let for the construction of the Nursing Care Home and confirmation of the same has been submitted in writing to both the City Council and the Borough Council~~ *The 6 parking spaces allocated at the Care Home are complete & available for unfettered use & furthermore the care home is constructed to roof plate.*
 2. Not to Occupy the Extra Care Facility
 - 2.1 prior to the later of:-
 - a) receipt by the Borough Council and City Council in writing of the details of the company to Operate ~~both~~ the Nursing Care Home Facility and Extra Care Home Facility; and
 - b) ~~date when the Nursing Care Home has been completed and is sufficiently staffed to provide care to occupiers of the Extra Care Facility in accordance with this Undertaking~~
 - 2.2 unless the same company is Operating both the Nursing Care Home Facility and Extra Care Home Facility and details of the Operator have been provided in writing to the City Council and the Borough Council
- PROVIDED THAT the Extra Care Facility need not be Operated by the same organisation if
- (i) details of the identity of the proposed Operator of the Extra Care Facility have been submitted in writing to both the City Council and the Borough Council; and
 - (ii) confirmation has been provided as to the arrangements that have been made by the proposed Operator of the Extra Care Facility to secure the compliance with the provisions of paragraphs 4 and 6 of this Schedule 1; and
 - (iii) *Receipt of approval* the City Council and the Borough Council have confirmed in writing their ~~approval~~ *Such confirmation to be issued within 10 working days of the receipt of such details, otherwise condition deemed discharged* to the details submitted pursuant to sub paragraphs (i) and (ii) of this paragraph 2.2
3. To notify in writing the Borough Council and the City Council within ten working days of any proposed changes to the identity of the company operating the Extra Care Facility and to secure the written approval of both the City Council and the Borough Council in accordance with paragraph 2 above if the company proposed

~~to Operate the Extra Care Facility is different to the company Operating the Nursing Care Home~~

4. That Occupation of each of the Accommodation Units comprising the Extra Care Facility shall be restricted to the following:
 - 4.1 a person who is in need of Care and who has entered into binding arrangements to access such Care and other support services to a minimum of 2 hours of such Care per week via the Operation of the Nursing Care Home or an alternative Care provider in the vicinity of the Extra Care Facility ~~which has been approved in writing for this purpose by the City Council and the Borough Council and who is either:-~~
 - 4.1.1 over 60 years of age on the date of taking up residence; or
 - 4.1.2 disabled within the meaning of the Equality Act 2010; or
 - 4.2 persons who are the spouse, co-habitee or dependent of a person within paragraphs 4.1.1 or 4.1.2 for the duration of the life of that person spouse co-habitee or dependent; or
 - 4.3 ~~persons employed or engaged to provide services for any person falling within any of the sub paragraphs of paragraph 4.1 above and living in the same accommodation for such a purpose PROVIDED THAT (save with the written agreement of the Borough Council and the City Council) no more than two Accommodation Units may be so occupied at any one time and PROVIDED ALWAYS THAT respite carers may live in the same Accommodation Unit as their patients on a temporary basis for a maximum period of one month subject to prior notification to the Borough Council and the City Council~~
5. To make available copies of the arrangements referred to in 4.1 above for inspection on giving reasonable notice by the Borough Council and the City Council as often as may reasonably be required
6. To ensure that flexible Care and other support services appropriate to the assessed individual needs of occupiers of the Accommodation Units (so as to allow them to live independently) is available to them 24 hours a day and seven days a week
7. ~~To provide and maintain a linked call system between each Accommodation Unit and the Nursing Care Home allowing the occupiers thereof to summon the provision of Care additional to that to be provided pursuant to paragraph 4.1 above~~

SIGNED as a deed by
TAYLOR WIMPEY UK LIMITED
acting by its attorney
in the presence of:

MICHAEL DORE
ATTORNEY

Witness signature:

Name:

Address: Templars House

Occupation:

