

DATED

2020

DAVID ELIE HAZAN

and

RAPHAEL LEVY and PAULA LEVY

and

GAVACAN HOMES LIMITED

to

THE LONDON BOROUGH OF HILLINGDON

UNILATERAL UNDERTAKING
PURSUANT TO SECTION 106 OF THE
TOWN AND COUNTRY PLANNING ACT 1990

Relating to the development of land at

5 & 6 FIRS WALK NORTHWOOD HA6 2BZ

LPA reference number: 30837/APP/2020/1723

Planning Appeal reference number: APP/[TBC]



planning
clarity legal

THIS DEED OF UNILATERAL UNDERTAKING is made the day of 2020

BY THE FOLLOWING PARTIES:

- (1) **DAVID ELIE HAZAN** of 5 Firs Walk, Northwood, HA6 2BZ ("**the First Owner**"); and
- (2) **RAPHAEL LEVY and PAULA LEVY** of 6 Firs Walk, Northwood, HA6 2BZ ("**the Second Owner**"); and
- (3) **GAVACAN HOMES LIMITED** (Company Registration Number [08605561](#)) of Cardinal Point, Park Road, Rickmansworth, WD3 1RE ("**the Developer**")

TO:

- (4) **THE LONDON BOROUGH OF HILLINGDON** of the Civic Centre, High Street, (“the Council”)

WHEREAS:

- (1) The Council is the local planning authority for the purposes of the Planning Act for the area in which the Land is situated and by whom the obligations contained in this Deed are enforceable. The Council is also the local highway authority for the purposes of the Highways Act.
- (2) The First Owner has a freehold interest in that part of the Land registered under Title Number MX423594 at the Land Registry.
- (3) The Second Owner has a freehold interest in that part of the Land registered under Title Number MX415456 at the Land Registry.
- (4) The Developer has entered into an Option to Purchase Agreement dated 29 September 2017 with the First Owner and an Option to Purchase Agreement dated 29 September 2017 with the Second Owner which grant the Developer the option to purchase the First Owner's and Second Owner's freehold interests in the Land. This Option to Purchase Agreement is recorded in the Charges Registers of Title Numbers MX423594 and MX415456.
- (5) The Developer submitted to the Council the Planning Application for the Development of the Land which was refused by the Council in its decision notice issued on 1 September 2020.
- (6) The Developer has submitted the Appeal against the Council's decision to the Planning Inspectorate.
- (7) The First Owner, the Second Owner and the Developer are entering into this Deed to secure the planning obligations herein which are conditional on the appointed Inspector for

the Appeal granting the Planning Permission as part of the Appeal and determining that the planning obligations provided for under this Deed are necessary to grant the Planning Permission and satisfy the legal tests for imposing such obligations under Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

NOW THIS DEED WITNESSETH as follows:

1. OPERATIVE PART

1.1. In this Deed the following words and expressions shall unless the context otherwise permits or requires have the following meanings:

Words and Expressions	Meanings
“Appeal”	Means the appeal against the Council’s refusal of the Planning Application submitted by the Developer to the Planning Inspectorate to be determined by the appointed Inspector and which has been given reference APP/[TBC]
“Commencement of Development”	Means (for the purposes of this Deed and for no other purpose) the date on which any material operation (as defined in Section 56(4) of the Planning Act) begins to be carried out on any part of the Land PROVIDED ALWAYS THAT the following operations shall not be treated as material operations for the purposes of this Deed only: (i) operations consisting of site inspection, site surveys, site clearance, soil investigations and trial holes, testing and sampling, archaeological investigations, and any other investigations for the purpose of assessing ground conditions, (ii) remedial work in respect of any contamination or other adverse ground conditions, (iii) the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly
“the Development”	Means the erection of 3 dwellings with associated access, parking, amenity space and installation of vehicular crossover to be permitted by the Planning Permission
“Highways Act”	Means the Highways Act 1980 as amended
“Highways Agreement”	Means an agreement to be entered into pursuant to Section 278 of the Highways Act (and/or pursuant to any other Sections of the Highways Act as considered appropriate by the Council acting as local highway authority) necessary to

secure the provision of the Highway Works to be carried out at the Owners' and Developer's cost and to be constructed to an appropriate standard to the Council's satisfaction

"Highway Works"	Means the highway works to be carried out in the indicative location shown on the Highway Works Plan and which shall comprise all necessary works to provide for a new vehicular and pedestrian access to the Development from the end of the existing publicly adopted highway known as Foxdell
"Highway Works Plan"	Means the plan being drawing reference number 19-2752-03 Revision A attached to this Deed showing indicatively the location of the "Highway Works" at the end of the existing publicly adopted highway known as Foxdell
"Index"	The All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation and if the All In Tender Price Index ceases to be published the Council shall in its absolute discretion use an alternative index
"Index Linked"	Means increased by the amount (if any) equal to the rise in the Index from the date of this Deed to the date of payment and "Index Linking" shall be construed accordingly
"Interest"	Interest at 4% above the base lending rate of the Bank of England from time to time
"Land"	All that land and buildings situate at and known as 5 & 6 Firs Walk Northwood HA6 2BZ as shown for identification only edged red on the Plan hereto
"Monitoring Fee"	Means the sum of £750 (seven hundred and fifty pounds) to be paid to the Council towards its costs of monitoring the obligations under this Deed
"Occupation"	The occupation of the Development or any part thereof solely for residential 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, and "Occupy" and "Occupied" shall be construed accordingly
"Operative Acts"	Section 106 of the Planning Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011,

together with all other statutory powers and acts pursuant to which the parties shall be empowered to enter into this Deed

“Owners”	Means together the First Owner and the Second Owner
"Plan"	Means the plan being drawing reference number 19-2752-LP attached to this Deed showing the Land edged red thereon
“Planning Act”	The Town and Country Planning Act 1990 as amended
“Planning Application”	The application for outline planning permission for the Development in relation to the Land which has been registered by the Council under reference number 30837/APP/2020/1723
“Planning Permission”	Any planning permission subject to any conditions imposed to be granted by the Inspector pursuant to the Appeal

2. CONSTRUCTION OF THIS DEED

In this Deed unless the context indicates or requires otherwise:

- 2.1. References in this Deed to Clauses, Recitals, Paragraphs and Schedules are to Clauses, Recitals, Paragraphs and Schedules in this Deed.
- 2.2. Singular words shall include the plural and vice versa.
- 2.3. Words of 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 interchangeably 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 covenant restriction or requirement all their obligations covenants restrictions or requirements 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 subordinate 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 or any other body the successors to its statutory functions.

- 2.7. The headings are for reference only and shall not affect the construction of this Deed.
- 2.8. Any covenant by the Owners and the Developer not to do any act or thing shall be deemed to include an obligation not to cause, permit or suffer such act or thing to be done by another person or body.

3. STATUTORY AUTHORITY

- 3.1. To the extent that this Deed contains obligations on the part of the Owners and the Developer as appropriate those obligations are (insofar as they are capable of being so) planning obligations pursuant to Section 106 of the Planning Act and the said obligations shall:
- 3.1.1. bind the Land;
 - 3.1.2. be enforceable by the Council;
 - 3.1.3. be enforceable against the Owners and the Developer their successors in title to the Land or any part thereof and all persons deriving title to the Land or any part thereof through or under it them or any of them.

4. LEGAL EFFECT

- 4.1. This Deed is made pursuant to the Operative Acts and is a planning obligation for the purpose of Section 106 of the Planning Act.
- 4.2. The provisions of this Deed shall come into effect on the date hereof.
- 4.3. This Deed shall operate as a local land charge on the Land and pursuant to the Local Land Charges Act 1975, as amended shall be registered in the register of Local Land Charges by the Council.
- 4.4. Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise by it of its statutory functions and the rights powers duties and obligations of the Council under private or public statutes bye-laws orders and regulations may be fully and effectively exercised.
- 4.5. No provisions of this Deed shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.
- 4.6. This Deed shall be determined and have no further effect if before the Commencement of Development the Planning Permission:
- (a) expires;
 - (b) is varied or revoked other than at the request of the Owners or Developer; or
 - (c) is quashed following a successful legal challenge.

- 4.7 This Deed shall cease to have effect if the Appeal is dismissed or if in determining the Appeal, the Inspector expressly states in his decision letter that this Deed does not comply with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).
- 4.8 If in determining the Appeal the Inspector expressly states in his decision letter that any individual obligation within this Deed does not comply with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) that/those obligation(s) will cease to have effect.

5. THE OWNERS' AND DEVELOPER'S OBLIGATIONS

- 5.1. The Owners and the Developer covenant with the Council to observe and perform the obligations, covenants, restrictions and requirements set out in the body of this Deed and in the Schedule hereto.
- 5.2. The Developer hereby consents to the completion of this Deed and agrees that any interest it has in the Land is subject to this Deed and for the avoidance of doubt that it shall be bound by the obligations in the Schedule of this Deed in the event that it becomes an owner of the Land or part of the Land.

6. MISCELLANEOUS

- 6.1. The Owners and the Developer expressly agree and declare that:
- 6.1.1. Insofar as any clause or clauses of this Deed in whole or in part 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.
- 6.1.2. No person shall be liable for a breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.1.3. The covenants contained in this Deed shall not be enforceable against:
- (i) a statutory undertaker holding an interest in the Land solely for the purposes of its undertaking; or
 - (ii) any mortgagee of the Land unless it takes possession of the Land as a mortgagee in possession in which case the mortgagee will be bound by the obligations in this Deed as if it were a person deriving title from the Owners and the Developer.
- 6.1.4. The Owners and the Developer shall permit the Council and its authorised employees and agents to enter the Land at all reasonable times for the purpose of verifying whether or not any obligation arising under this Deed has been performed or observed.

6.1.5. This Deed is not to be interpreted as the granting of any consent or approval under any legislation whatsoever.

7. CHANGE IN OWNERSHIP

7.1. The Owners and the Developer agree to give the Council immediate written notice of any change in ownership of any interest in the Land which occurs prior to the obligations under this Deed having been discharged.

7.2. The notice referred to in Clause 7.1 shall be sent by signed for post and provide details of the date of the change in ownership, details of the new owner's and developer's full name and usual address or registered office address (if a company), the Planning Application reference number 30837/APP/2020/1723 and a plan outlining the area of land which is subject to the change in ownership.

8. LATE PAYMENTS

8.1. Where any payment to the Council falls due hereunder Interest shall be payable on the amount of such payment from the due date of payment until the date of actual payment.

9. WAIVER

9.1. The parties to this Deed agree that no waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the obligations covenants restrictions requirements 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 from acting upon any subsequent breach or default.

10. JURISDICTION

10.1. The Owners and the Developer agree that this Deed is governed by and interpreted in accordance with the laws of England.

THE SCHEDULE

The Owners and the Developer covenant with the Council as follows:

Notice of Commencement of Development

1. At least ten (10) working days prior to Commencement of Development to give the Council written notice confirming the date of Commencement of Development (at the Council's address at the head of this Deed) which notice shall be sent by signed for post and include the proposed date for such Commencement of Development together with details of the person or body who or which shall constitute the owners of the Land at the time of Commencement of Development and quoting the Planning Application reference number 30837/APP/2020/1723.
2. Not to Commence Development unless and until the written notice referred to in paragraph 1 above has been given to the Council.

Highways Agreement and the Highway Works

3. Prior to the Commencement of Development to enter into the Highways Agreement with the Council to provide for the carrying out of the Highway Works.
4. To carry out the Highway Works at its cost in accordance with the provisions of the Highways Agreement.

Monitoring Fee

5. Prior to the Commencement of Development to pay to the Council the Monitoring Fee and not to Commence Development until this is paid.

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

SIGNED AS A DEED BY
DAVID ELIE HAZAN

Signature

in the presence of:

Witness Signature

Name

Address
.....

Occupation

SIGNED AS A DEED BY
RAPHAEL LEVY

Signature

in the presence of:

Witness Signature

Name

Address
.....

Occupation

SIGNED AS A DEED BY
PAULA LEVY

Signature

in the presence of:

Witness Signature

Name

.....

Address

.....

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Occupation

.....

EXECUTED AS A DEED BY
GAVACAN HOMES LIMITED
acting by a Director

Signature (Director)

in the presence of:

Witness Signature

Name

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Address

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Occupation

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