

DATED

7th July

2022

HILLINGDON HOSPITALS NHS FOUNDATION TRUST

and

THE LONDON BOROUGH OF HILLINGDON

THIRD DEED OF VARIATION PURSUANT TO
SECTION 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO THE DEVELOPMENT OF LAND AT

HILLINGDON HOSPITAL, FIELD HEATH ROAD, UXBRIDGE

4058/APP/2021/3691

Planning and Corporate Team
Legal Services
London Borough of Hillingdon
Civic Centre
High Street
Uxbridge
Middlesex UB8 1UW
Ref: 3E/04/19447

THIS DEED IS MADE ON THE 7th DAY OF July

2022

BETWEEN

- (1) **HILLINGDON HOSPITALS NHS FOUNDATION TRUST** whose principal office is at Hillingdon Hospital, Pield Heath Road, Uxbridge UB8 3NN ("the Owner").
- (2) **THE LONDON BOROUGH OF HILLINGDON** of the Civic Centre, High Street, Uxbridge, Middlesex, UB8 1UW ("the Council")

WHEREAS

- (A) The Council is the local planning authority for the purposes of the Act in respect of the Land and by whom the obligations in this Deed are enforceable.
- (B) The Owner has the freehold interest in the Land registered under Title Nos. MX68687 and AGL30168 at Land Registry.
- (C) The Original Planning Permission was granted pursuant to the completion of the Original Deed which was entered into on 14th August 2013 between the Owner and the Council pursuant to Section 106 of the Town and Country Planning Act 1990 ("the Original Deed").
- (D) On 8th October 2019 the Owner submitted the Second Planning Application to the Council and on 4th March 2020 the Council resolved at its Central South Planning Committee that delegated powers be given to the Council's Head of Planning Transportation and Regeneration to grant the Second Planning Permission subject to the completion of the First Deed of Variation. The Second Planning Permission was granted on 15 April 2020, following the completion of the First Deed of Variation on 14 April 2020.
- (E) On 23rd March 2020 the Owner submitted the Third Planning Application to the Council and on 7th May 2020 the Council resolved at its Majors Planning Committee that delegated powers be given to the Council's Head of Planning Transportation and Regeneration to grant the Third Planning Permission subject to completion of the Second Deed of Variation.
- (F) Pursuant to Section 73 of the 1990 Act the Owner submitted a new planning application with reference 4058/APP/2021/3691 ("the Fourth Planning Application").

- (G) This Deed is supplemental to the Original Deed (as already varied by the First Deed of Variation and the Second Deed of Variation).
- (H) For the purpose of securing satisfactory arrangements for the development of the Land and without prejudice to the terms of the other covenants contained in the Original Deed (as varied by the First Deed of Variation and the Second Deed of Variation) the Parties hereto have agreed to vary the terms of the Original Deed as hereinafter provided.

IT IS AGREED AS FOLLOWS:-

1. INTERPRETATION & DEFINITIONS

IN THIS DEED, UNLESS THE CONTEXT OTHERWISE REQUIRES:

"the Act"	means the Town and Country Planning Act 1990;
"Deed"	means this Deed of Variation;
"First Deed of Variation"	means the Deed of Variation dated 14 April 2020 between the Owner and the Council;
"Fourth Planning Application"	means the application to vary Condition 2 of application reference 4058/APP/2020/1003 (Construction of a new 90-bed three-storey ward building (Ward Building South); an additional two storeys to be constructed on the site of the ground-floor 28-bed Decant Ward Building (Ward Building North) and the provision of 117 replacement car parking spaces, involving the demolition of the existing Paediatric building and relocation of the existing waste compound and its associated parking) to amend the elevations of Ward Building South under the Council's reference number 4058/APP/2021/3691;
"Fourth Planning Permission"	means the planning permission to be granted pursuant to the Fourth Planning Application and the approved plan(s);
"Original Deed"	means the legal agreement dated 14 August 2013 under Section 106 of the

	Town and Country Planning Act 1990 between the Owner and the Council;
"Original Planning Permission"	means the planning permission granted on 14 August 2013 by the Council for the Land under the Council's reference number 4058/APP/2013/99;
"Second Deed of Variation"	means the Deed of Variation dated 6th October 2020 between the Owner and the Council;
"Second Planning Application"	means the application for planning permission for the erection of a temporary single storey prefabricated system building, together with a link to the AMU building, with a total floor area of 888 sq.m, to provide for a 28 bed space decant and winter overspill ward, including 4 parking spaces; demolition of Building 17 and the creation of 30 replacement staff car parking spaces; reconfiguration of the parking area to the east of the Womens' Services Building resulting in a net provision of 11 replacement visitor parking spaces (amended scheme) under the Council's reference number 4058/APP/2019/3286;
"Second Planning Permission"	means the planning permission granted pursuant to the Second Planning Application;
"Second Proposed Development"	means the development authorised by the Third Planning Permission or the Fourth Planning Permission;

"Third Planning Application"	means the application for planning permission for construction of a new 90-bed three-storey ward building (Ward Building South); an additional two storeys to be constructed on the site of the ground-floor 28-bed Decant Ward Building (Ward Building North) and the provision of 117 replacement car parking spaces, involving the demolition of the existing Paediatric building and relocation of the existing waste compound and its associated parking under the Council's reference number 4058/APP/2020/1003;
"Third Planning Permission"	means the planning permission granted pursuant to the Third Planning Application;

2. THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THIS DEED.

- 2.1 All words and phrases defined in the Original Deed (as already varied by the First Deed of Variation and the Second Deed of Variation) shall have the same meaning in this Deed save where the context otherwise requires and for the avoidance of doubt the Original Deed (as varied by the First Deed of Variation and the Second Deed of Variation) shall remain in full force and effect save as varied by this Deed.
- 2.2 All references in this Deed to clauses in the Original Deed (as already varied by the First Deed of Variation and the Second Deed of Variation) are to clauses within the Original Deed.
- 2.3 Where in this Deed reference is made to a clause schedule or recital such reference (unless the context otherwise requires) is a reference to a clause schedule or recital of this Deed.
- 2.4 Headings are for ease of reference only and are not intended to be construed as part of this Deed and shall not be construed as part of this Deed and shall not affect the construction of this Deed.

- 2.5 Unless the context otherwise requires references to the singular shall include the plural and vice versa.
- 2.6 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 2.8 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 2.9 The provisions of the Original Deed (as already varied by the First Deed of Variation and the Second Deed of Variation) in relation to its interpretation and in relation to statutory provisions interests bound disputes liability notices and jurisdiction apply to this Deed except to the extent that they are expressly varied by this Deed.

3. VARIATION OF THE ORIGINAL DEED

- 3.1 The Parties agree that, except as varied by this Deed, the Original Deed (as already varied by the First Deed of Variation and the Second Deed of Variation) shall remain in full force and effect.
- 3.2 Nothing in this Deed affects the Council's powers in respect of any antecedent breach or omission in relation to the Original Deed.
- 3.3 The Parties agree that with effect from the date of this Deed, the Original Deed (as already varied by the First Deed of Variation and the Second Deed of Variation) shall be varied as set out below:
- 3.4 Paragraph 6 of Schedule 2 to the Original Deed (as varied by the First Deed of Variation and the Second Deed of Variation) shall be deleted and replaced with the following:

"6. Notwithstanding the provisions in this Schedule 2, the parties agree that in this instance, the restrictions set out in paragraphs 1-5 of said Schedule 2 shall not prevent the Owner from bringing forward and seeking or implementing either:

- (a) the Second Planning Application and the Second Planning Permission;

(b) the Third Planning Application and the Third Planning Permission; or

(c) the Fourth Planning Application and the Fourth Planning Permission.

The Original Deed (as already varied by the First Deed of Variation and the Second Deed of Variation) and this Deed shall remain unchanged in all other respects."

3.5 The following definitions shall be inserted within the Original Deed (as already varied by the First Deed of Variation and the Second Deed of Variation):

"Second Proposed Development"	means the development authorised by the Third Planning Permission or the Fourth Planning Permission;
"Fourth Planning Application"	means the application to vary Condition 2 of application reference 4058/APP/2020/1003 (Construction of a new 90-bed three-storey ward building (Ward Building South); an additional two storeys to be constructed on the site of the ground-floor 28-bed Decant Ward Building (Ward Building North) and the provision of 117 replacement car parking spaces, involving the demolition of the existing Paediatric building and relocation of the existing waste compound and its associated parking) to amend the elevations of Ward Building South under the Council's reference number 4058/APP/2021/3691;
"Fourth Planning Permission"	means the planning permission to be granted pursuant to the Fourth Planning Application and the approved plan(s);

4. **STATUTORY PROVISION**

This Deed is made pursuant to Sections 106 and 106A of the Act, Section 111 of the Local Government Act 1972, Section 16 of the Greater London Council (General Powers) Act 1974, Section 1 of the Localism Act 2011 and any other enabling powers, to the intent that it will bind the Owner and their successors in title to the Land.

5. **COVENANTS TO THE COUNCIL**

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Deed as varied by the First Deed of Variation the Second Deed of Variation and this Deed.

6. **REGISTRATION AS LOCAL LAND CHARGE**

The covenants in the Original Deed as modified by the First Deed of Variation the Second Deed of Variation and this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as provided in the Original Deed as modified by the First Deed of Variation the Second Deed of Variation and this Deed and the Council shall register this Deed in its register of Local Land Charges.

7. **THIRD PARTIES**

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

8. **INVALIDITY OF CERTAIN PROVISIONS**

If any of this Deed or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable the same shall be severable and the remainder of this Deed as to the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Deed shall be valid and enforced to the fullest extent permitted by law.

9. **CONFIRMATION**

It is hereby declared by the parties to this Deed saving and excepting for as is expressly provided for by the provisions of this Deed the covenants and provisions contained in the Original Deed continue to have full force and effect.

10. COSTS

On or before the completion of this Deed the Owner shall pay to the Council the Council's reasonable legal costs in this matter.

11. VALUE ADDED TAX

11.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable.

11.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

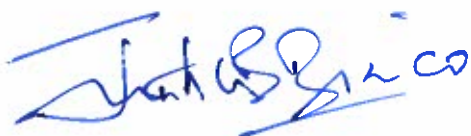
12. JURISDICTION

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

In witness whereof this document has been executed and delivered as a deed on the date first stated above.

THE COMMON SEAL of the
**MAYOR AND BURGESSES OF
HILLINGDON** was duly affixed to
this Deed in the presence of:

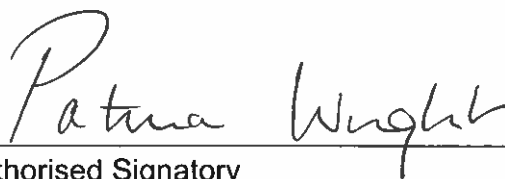
MEMBER OF THE COUNCIL

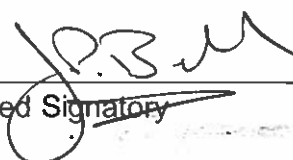


AUTHORISED OFFICER



THE COMMON SEAL of
**HILLINGDON HOSPITALS
NHS FOUNDATION TRUST**
was duly affixed to this Deed
in the presence of two
Authorised Signatories:



Authorised Signatory

Authorised Signatory

