

5106/443

Ashfield District Council
Development Control
18 DEC 2012
17th December
RFJ:

THIS UNILATERAL UNDERTAKING is given the

day of

BY:

(1) JOHN MICHAEL PARKER and SHEILA GWENDOLINE PARKER both of Peartree Cottage Peartree Lane Tversall Village Nottinghamshire NG17 3JN ("the Owner"); and

(2) ANDREW RICHARD PARKER of 26 Columbia Avenue Sutton-in-Ashfield Nottinghamshire NG17 2HA ("the Occupier")

TO

(3) ASHFIELD DISTRICT COUNCIL of Council Offices Urban Road Kirby-in-Ashfield Nottinghamshire NG17 8DA ("the Council")

RECITALS

A The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.

B The Owner is the freehold owner of the Site as set out in Schedule 1.

C The Occupier shares occupation of the garage located on part of the Site jointly with the Owner.

D The Owner is submitting the Application to the Council.

E The Owner is prepared to enter into this in order to secure the planning obligations it creates.

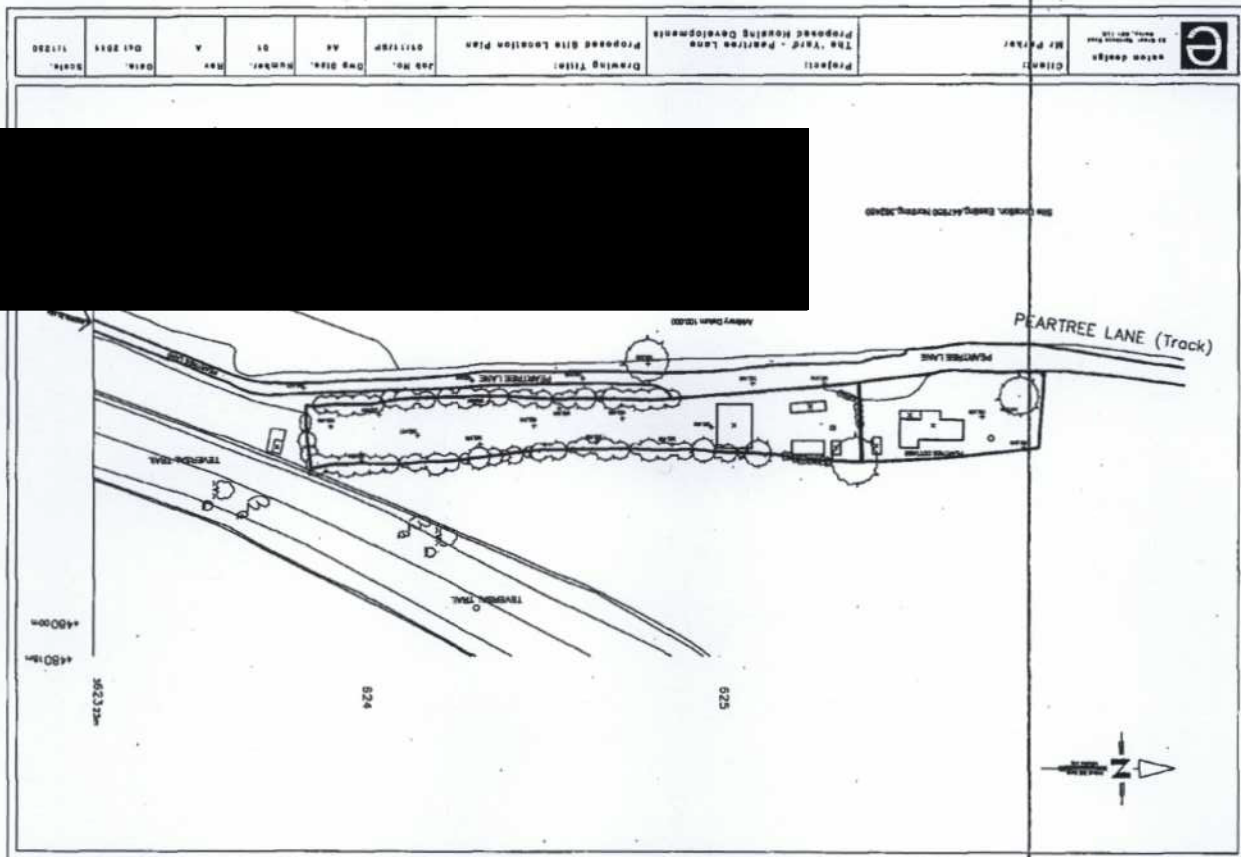
NOW THIS DEED WITNESSES as follows:


1 Definitions and Interpretation

1.1 Definitions

For the purposes of this Unilateral Undertaking the following expressions shall have the following meanings:

1.1.1	'the 1990 Act' means the Town and Country Planning Act 1990.
1.1.2	'the Application' means the application for full planning permission for the Development to be submitted to the Council.
1.1.3	'the Commencement of Development' means the commencement of any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development other than (for the purposes of this Unilateral Undertaking 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 any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commence the Development' shall be construed accordingly.
1.1.4	'the Development' means the development of the Site with the demolition of existing buildings and other structures on the Site and the construction of 4 two storey detached dwellings with double garages on the Site pursuant to the Planning Permission,
1.1.5	'the Plan' means the plan attached to this Unilateral Undertaking.
1.1.6	'the Planning Permission' means the full planning permission subject to conditions to be granted by the Council pursuant to the Application,
1.1.7	'the Site' means the land against which this Unilateral Undertaking may be enforced shown edged red on the Plan and described in the Schedule, and
1.2	Interpretation
1.2.1	Reference in this Unilateral Undertaking to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this Unilateral Undertaking so numbered.



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Peartree Lane PROPOSED HOUSING DEVELOPMENT	DRAWING TITLE: Proposed Site Location Plan	JOB NO.: 011178P DATE: AS	Dwg Size: A4 Number: 01 Rev: A	DATE: 04/2014 SCALE: AS SHOWN
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1.2.2	Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
1.2.3	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.
1.2.4	Wherever 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 unless there is an express provision otherwise.
1.2.5	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.
1.2.6	References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council the successors to their statutory functions.
1.2.7	Headings where they are included are for convenience only and are not intended to influence the interpretation of this Unilateral Undertaking
2	Legal basis
2.1	This Unilateral Undertaking is made pursuant to Section 106 of the 1990 Act
2.2	The terms of this Unilateral Undertaking create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council as local planning authority.

3	Conditions, duration and enforcement	3.1	Conditions precedent	This Unilateral Undertaking is conditional upon:
		3.1.1	the grant of the Planning Permission, and	
		3.1.2	the Commencement of Development	save for the provisions of clause 6, which shall come into effect immediately upon completion of this deed.
	3.2	Duration	3.2.1	This Unilateral Undertaking shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.
		3.2.2	No person shall be liable for any breach of any of the planning obligations or other provisions of this Unilateral Undertaking after parting with his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.	
		3.2.3	Nothing in this Unilateral Undertaking shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under clause 6, and no such early compliance shall amount to a waiver of the effect of clause 6.	
	3.3	Other development	Nothing in this Unilateral Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Unilateral Undertaking.	

3.4	Non-enforcement	The obligations contained in this Unilateral Undertaking shall not be binding upon or enforceable against:	5.1.1	this Unilateral Undertaking has been entered into by the Owner with his consent, and
3.4.1		any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage telecommunication services or public transport services, or	5.1	The Occupier acknowledges and declares that:
3.4.2		the Owner after he has disposed of his interest in the Site, or in the event of a disposal of part, in the part disposed of, other than disposal of an interest in the nature of an easement or the benefit of a restriction or similar, but not so as to release the Owner from any antecedent breach, non-performance or non-observance of his obligations.	5	The Occupier
4	Owner's covenants	The Owner covenants with the Council as follows.	4.1	the Owner will not use any part of the Site as scrap vehicle storage and dismantling; and retail of recovered parts; and storage of fixtures/fittings associated clearance of domestic, commercial and industrial premises and kennels for guard dogs after Commencement of the Development has occurred; and
4.1		the Owner will not use any part of the Site as scrap vehicle storage and dismantling; and retail of recovered parts; and storage of fixtures/fittings associated clearance of domestic, commercial and industrial premises and kennels for guard dogs after Commencement of the Development has occurred; and	4.2	the Owner shall prior to Commencement of the Development remove from the Site all fixtures and fittings used in the business referred to in clause 4.1 carried on at the Site.
5	The Occupier		5	The Occupier

5.1.2 that the Site shall be bound by the obligations contained in this Unilateral Undertaking.

5.2 The Occupier covenants with the Council and by way of a separate covenant with the Owner as follows:

5.2.1 the Occupier will not use any part of the Site occupied by the Occupier as scrap vehicle storage and dismantling; and retail of recovered parts; and storage of fixtures/fittings associated clearance of domestic, commercial and industrial premises offices and kennels for guard dogs after Commencement of the Development has occurred; and

5.2.2 the Occupier shall prior to Commencement of the Development remove from the Site all fixtures and fittings used in the business carried on by the Occupier on any part of the Site occupied by the Occupier.

6 Provisions of immediate effect

Nothing in this Unilateral Undertaking shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

7 Notices

7.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this Unilateral Undertaking shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.

7.2 The address for any notice or other written communication shall be within the United Kingdom.

7.3 A notice or communication shall be served or given to the Owner at Peartree Cottage Peartree Lane Teversall Village Nottinghamshire NG17 3JN, or such other address as shall be notified in writing by the Owner to the Council from time to time.

7.4 A notice or communication shall be served or given to the Occupier at 25 Columbia Avenue Huthwaite Nottinghamshire NG17 2JD, or such other address as shall be notified in writing to the Council by the Occupier from time to time.

8 Local land charge

This Unilateral Undertaking may be registered as a local land charge in the Register of Local Land Charges maintained by the Council.

9 Jurisdiction and legal effect

9.1 This Unilateral Undertaking shall be governed by and interpreted in accordance with the law of England and Wales.

9.2 In so far as any clause or clauses of this Unilateral Undertaking are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Unilateral Undertaking.

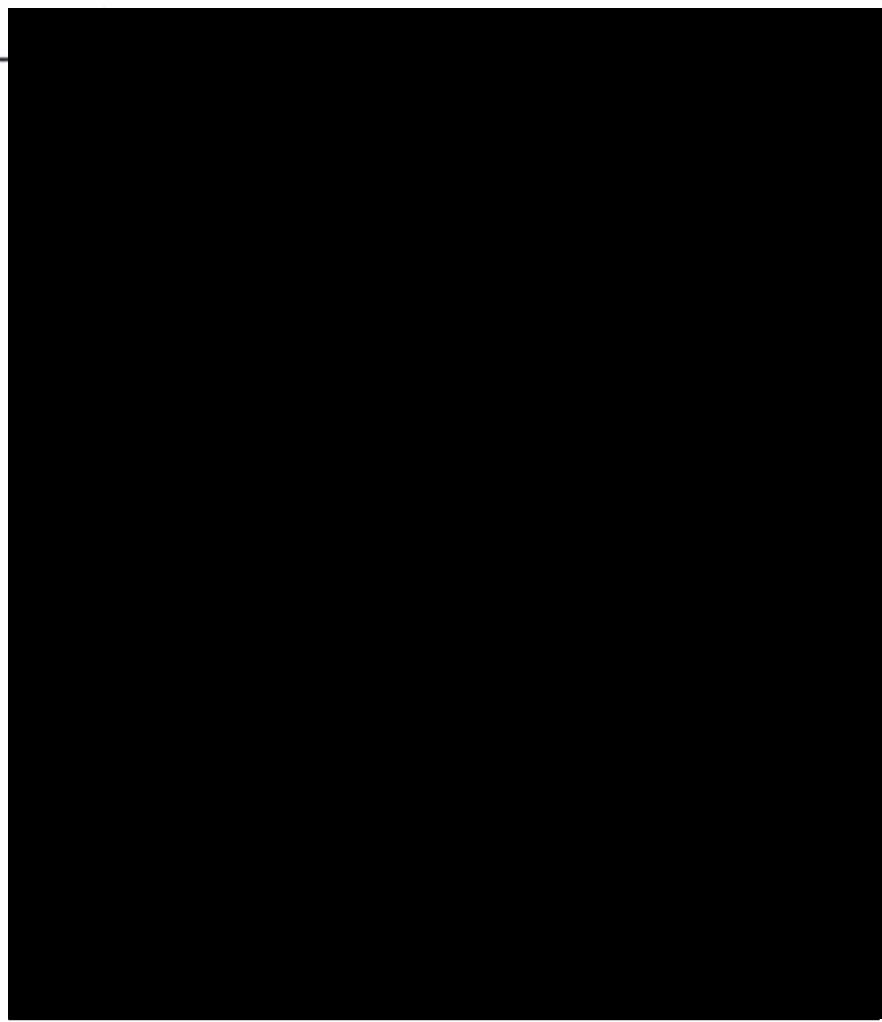
9.3 No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

IN WITNESS whereof the Owner and the Occupier have executed this Unilateral Undertaking as their deed the day and year first before written

THE SCHEDULE

The Owner's Title and Site Description

Land forming part of Pear Tree Cottage Pear Tree Lane Teversall Village Nottinghamshire NG17 3JN which (together with the land edged blue on the Plan) comprises the land registered at the Land Registry under title number NT163425



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Client: Mr PEARCE

Project: THE VAID - PEARCE LANE

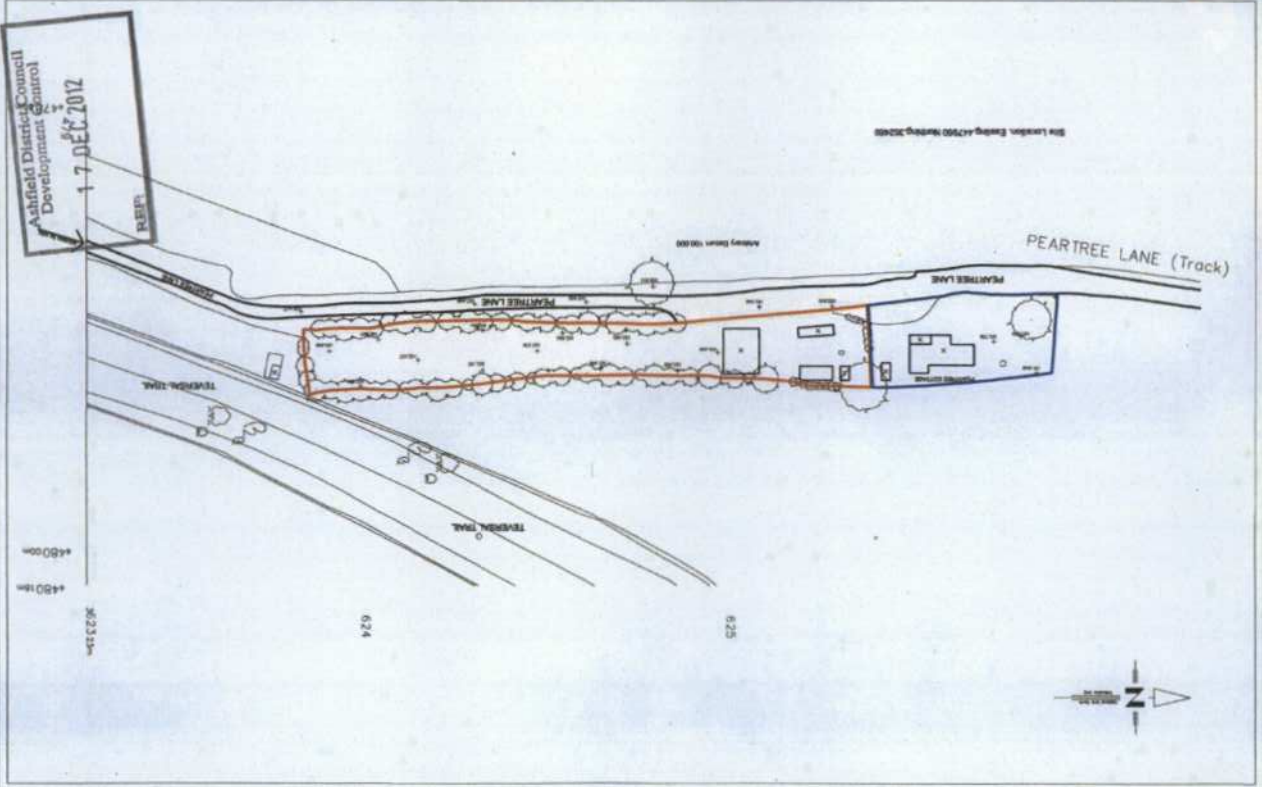
Drawing Title: Proposed Site Location Plan

Job No. DWG No. 01/11/12P

Date: 01/11/12

Scale: 1:1250

Asfield District Council Development Control



5106/443

THIS FURTHER UNILATERAL UNDERTAKING is given the 24th day of June 2014 BY:

- (1) ADRIAN FROST of 138 Forest Road, Skegby, Sutton in Ashfield, Notts, NG17 3BN (the owner); and
- (2) ASHFIELD DISTRICT COUNCIL of Council Offices Urban Road Kirkby-in-Ashfield Nottinghamshire NG17 8DA (the Council)

RECITALS

A The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.

B The Owner is the freehold owner of the Site as set out in Schedule 1.

C The Owner has prior to the date of this Further Undertaking been carrying out the Maintenance Works on a voluntary basis.

D The Owner has submitted the Application to the Council.

E By a Unilateral Undertaking ("2012 Undertaking") given on 17 December 2012 by the Owner to the Council certain undertakings were given by the Owner to cease using the Site for certain commercial purposes if Commencement of Development occurs.

F The Owner is willing to give a further undertaking to perform the further obligations set out in this Further Unilateral Undertaking in order to facilitate the grant of planning permission by ensuring that the Council can regulate the Development by securing the benefits contained in this further undertaking.

NOW THIS DEED WITNESSES as follows:

1 Definitions and Interpretation

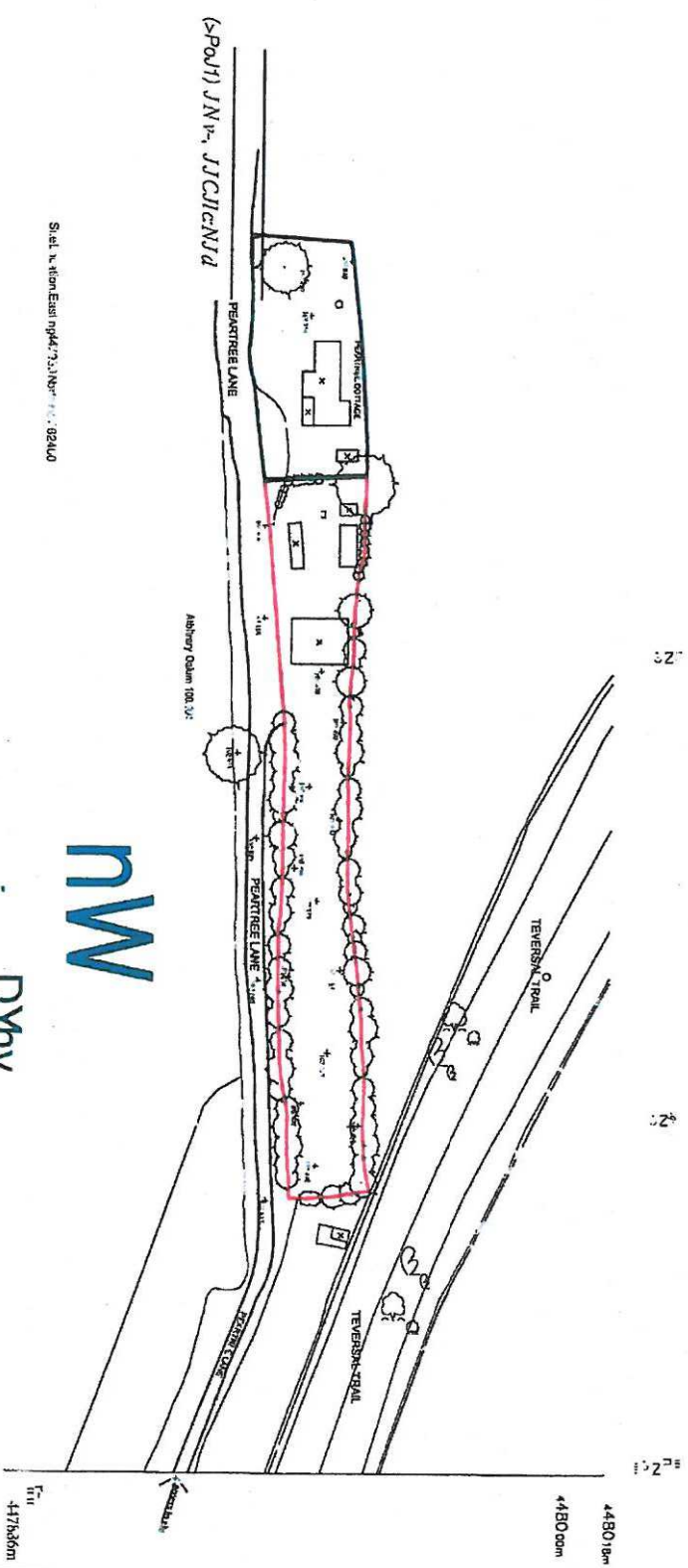
1.1 Definitions

For the purposes of this Further Unilateral Undertaking the following expressions shall have the following meanings:

- 1.1.1 'the 1990 Act' means the Town and Country Planning Act 1990,
- 1.1.2 'the Application' means the application for full planning permission for the Development submitted to the Council and allocated reference.....
- 1.1.3 'the Commencement of Development' means the commencement of any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development other than (for the purposes of this Further Unilateral Undertaking 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 any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commence the Development' shall be construed accordingly,
- 1.1.4 'the Development' means the development of the Site with the demolition of existing buildings and other structures on the Site and the construction of 4 two storey detached dwellings with double garages on the Site pursuant to the Planning Permission,
- 1.1.5 'the Maintenance Works' means the annual maintenance of Pear Tree Lane carried out by the Owner voluntarily prior to the date of this Further Unilateral Undertaking by the Owner following receipt by the Owner of funding from Nottinghamshire County Council in payment of all requisite materials such annual maintenance consisting of the filling of soft spots and pot holes and consequential grading of the surface of Pear Tree Lane with road plantings,


- 1.16 "Occupier" means: any person or persons who occupy any one of the dwellings to be constructed on the Site
- 1.17 Pear Tree Lane' means the land edged red Plan 2 (but excluding the land edged red on Plan 1),
- 1.18 'Plan 1' means drawing number 01 Rev A prepared by Eaton Designs attached to this Further Unilateral Undertaking,
- 1.19 'Plan 2' means drawing number NK017254P_0100 prepared by RPS attached to this Further Unilateral Undertaking,
- 1.1.10 'the Planning Permission' means the full planning permission subject to conditions to be granted by the Council pursuant to the Application,
- 1.1.11 'the Site' means the land against which this Further Unilateral Undertaking may be enforced shown edged red on Plan 1 and described in the Schedule, and
- 1.2 **Interpretation**
- 1.21 Reference in this Further Unilateral Undertaking to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this Further Unilateral Undertaking so numbered.
- 1.22 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
- 1.23 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.
- 1.24 Wherever 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 unless there is an express provision otherwise.
- 1.25 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,

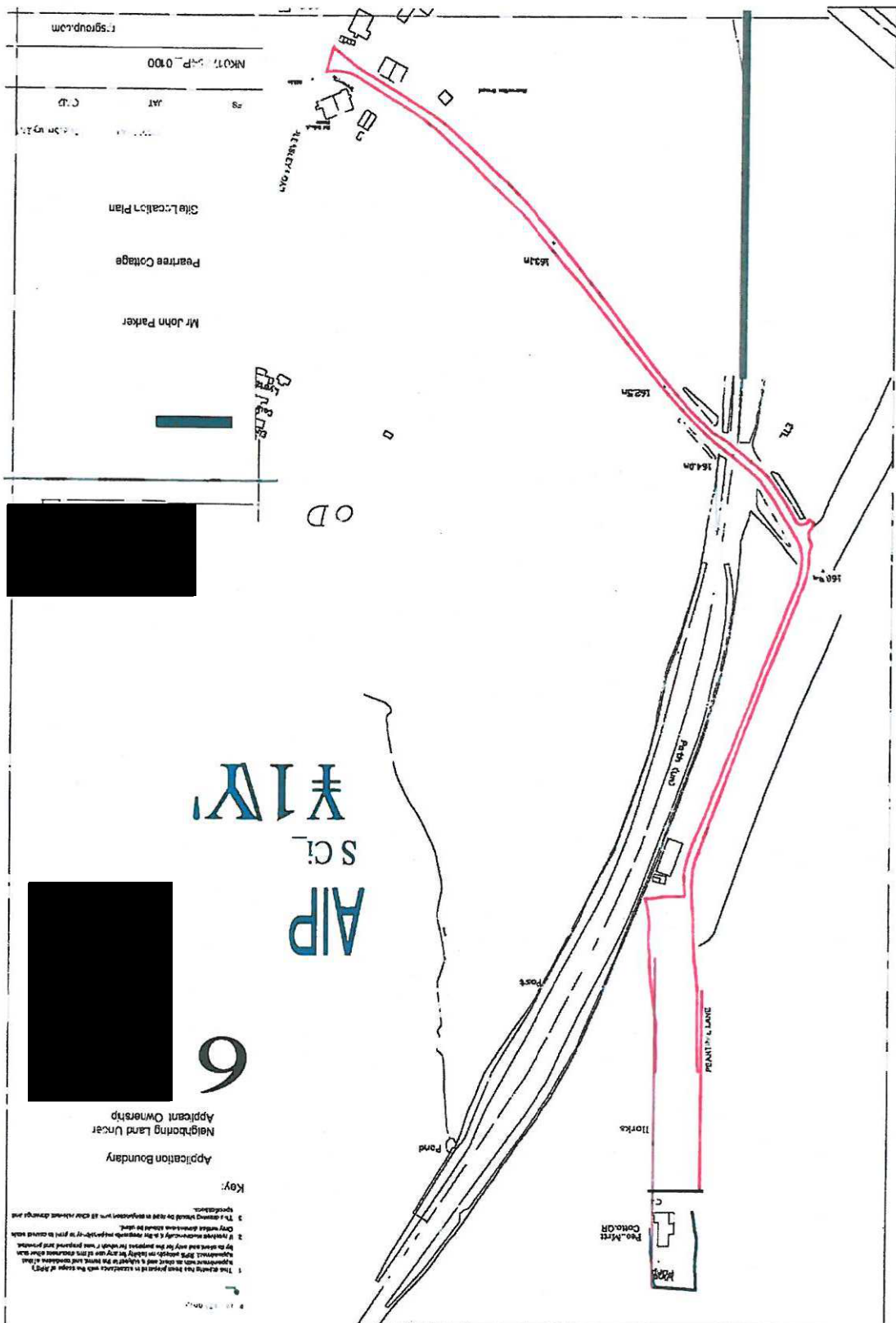
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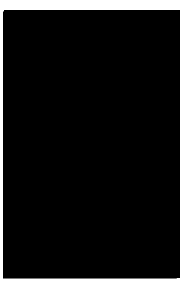
 <p>aston design <small>23 BROADWAY, BOSTON, LINCOLN</small></p>	<p>Client: Mr Parker</p>	<p>Project: The 'Yard' - Peartree Lane Proposed Housing Developments</p>	<p>Drawing Title: Proposed Site Location Plan</p>	<p>Job No. 01/11/SP</p>	<p>Drawn by: AK</p>	<p>Checked by: [Signature]</p>	<p>Rev: A</p>	<p>Date: Oct 2011</p>	<p>Scale: 1:1250</p>
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Mr John Parker	Peartree Cottage	Site Location Plan	1/250	0.100	1/250
Mr John Parker	Peartree Cottage	Site Location Plan	1/250	0.100	1/250
Mr John Parker	Peartree Cottage	Site Location Plan	1/250	0.100	1/250
Mr John Parker	Peartree Cottage	Site Location Plan	1/250	0.100	1/250



AIP S.C. 1V



6

Application Boundary
Neighbouring Land Unclear
Applicant Ownership

- Key:
- 1 This drawing has been prepared in accordance with the scope of AIP/3
 - 2 The drawing is the property of the Applicant and shall remain the property of the Applicant and shall not be used for any other purpose without the written consent of the Applicant
 - 3 The drawing is the property of the Applicant and shall remain the property of the Applicant and shall not be used for any other purpose without the written consent of the Applicant
 - 4 The drawing is the property of the Applicant and shall remain the property of the Applicant and shall not be used for any other purpose without the written consent of the Applicant

	orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.	
1.26	References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council the successors to their statutory functions.	
1.27	Headings where they are included are for convenience only and are not intended to influence the interpretation of this Further Unilateral Undertaking.	
2	Legal basis	
2.1	This Further Unilateral Undertaking is made pursuant to Section 106 of the 1990 Act.	
2.2	The terms of this Further Unilateral Undertaking create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council as local planning authority.	
3	Conditions, duration and enforcement	
3.1	Conditions precedent	
	This Further Unilateral Undertaking is conditional upon:	
3.1.1	the grant of the Planning Permission, and	
3.1.2	the Commencement of Development	
	save for the provisions of clause 7, which shall come into effect immediately upon completion of this deed.	

- 3.2 **Duration**
- 3.2.1 This Further Unilateral Undertaking shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.
- 3.2.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this Further Unilateral Undertaking after parting with his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.
- 3.2.3 Nothing in this Further Unilateral Undertaking shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under clause 7, and no such early compliance shall amount to a waiver of the effect of clause 7.
- 3.3 **Other development**
- Nothing in this Further Unilateral Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Further Unilateral Undertaking.
- 3.4 **Non-enforcement**
- The obligations contained in this Further Unilateral Undertaking shall not be binding upon or enforceable against:
- 3.4.1 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage telecommunication services or public transport services, or
- 3.4.2 the Owner after he has disposed of his interest in the Site, or in the event of a disposal of part, in the part disposed of, other than disposal of an interest in the nature of an easement or the benefit of a restriction or similar, but not so as to release the Owner from any antecedent breach, non-performance or non-observance of his obligations.

4 Owners covenants

The owner covenants with the Council as Follows

4.1 The Owner will notify the council within 14 days after Commencement of the Development has occurred

4.2 The Owner shall within 14 days after Commencement of the Development has occurred pay the sum of Five thousand pounds (£5,000) to the Friends of Teversal Trails (or such other person or body corporate as is responsible for the maintenance and improvement of the Teversal Trails and the receipt of the Treasurer or other proper officer shall be a sufficient discharge of the obligation in this clause 4.2.

4.3 Subject to the Owner receiving from Nottinghamshire County Council funding for all requisite materials the Owner shall during the period commencing on the Commencement of Development and expiring on the date on which the last of the four dwellings comprised in the Development is first occupied carry out the Maintenance Works as soon as reasonably practicable following receipt of such funding PROVIDED THAT:

4.3.1 the use of any dwelling as a show home shall not amount to the first occupation of the relevant dwelling; and

4.3.2 (for the avoidance of doubt) if any materials are required to carry out any of the Maintenance Works the Owner shall not be obliged to carry out the relevant works unless the Owner shall have received from Nottinghamshire County Council the funding to acquire the requisite materials; and

4.3.3 (for the avoidance of doubt) the obligation on the part of the Owner on this clause 4.3 shall cease on the date on which the last of the four dwellings comprised in the Development is first occupied.

5	The Occupier	The Occupier acknowledges and declares that:
5.1	this Unilateral Undertaking has been entered into by the Owner with his consent,	and
5.2	that the Site shall be bound by the obligations contained in this further Unilateral Undertaking.	2012 Undertaking
6	The Owner and the Occupier declare that the provisions of the 2012 Undertaking shall remain in full force and effect save that the 2012 Undertaking shall henceforth be read and construed as if the word "Reversal" were spelt "Reversal"	Provisions of immediate effect
7	Nothing in this Further Unilateral Undertaking shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.	Notices
8	Any notice or other written communication to be served upon a Party or given by one party to any other under the terms of this Further Unilateral Undertaking shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing	8.1
8.2	The address for any notice or other written communication shall be within the United Kingdom	8.2

- 8.3 A notice or communication shall be served or given to the Owner at Peartree Cottage Peartree Lane Teversal Village Nottinghamshire NG17 3JN, or such other address as shall be notified in writing by the Owner to the Council from time to time.
- 8.4 A notice or communication shall be served or given to the Occupier at 25 Columbia Avenue Huthwaite Nottinghamshire NG17 2JD, or such other address as shall be notified in writing to the Council by the Occupier from time to time.
- 9 **Local land charge**
This Further Unilateral Undertaking may be registered as a local land charge in the Register of Local Land Charges maintained by the Council.
- 10 **Jurisdiction and legal effect**
- 10.1 This Further Unilateral Undertaking shall be governed by and interpreted in accordance with the law of England and Wales.
- 10.2 In so far as any clause or clauses of this Further Unilateral Undertaking are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Further Unilateral Undertaking.
- 10.3 No waiver (whether expressed or implied) by the Council or 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 Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- IN WITNESS whereof the Owner has executed this Further Unilateral Undertaking as their deed the day and year first before written

THE SCHEDULE

The Owner's Title and Site Description

Land forming part of Pear Tree Cottage Pear Tree Lane Tversal Village Nottinghamshire NG17 3JN shown edged red on Plan 1 which (together with the land edged blue on Plan 1 and Plan 2) comprises the land registered at the Land Registry under title number NT163425

