

DATED

17th August

2022

(1) CHURCHILL RETIREMENT LIVING LIMITED

(2) UA ASSET MANAGEMENT 2 LIMITED

TO

(3) OXFORDSHIRE COUNTY COUNCIL

UNILATERAL UNDERTAKING

Under section 106 of the Town and Country Planning Act 1990
relating to Former Buzz Bingo, Bolton Road, Banbury, OX16 0TH

PLANNING APPLICATION REF: 21/04202/F

PLANNING APPEAL REFERENCE: APP/C3105/W/22/3296229

SHOOSMITHS

Shoosmiths LLP
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Whiteley
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PO15 7PA
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Ref: MYP/TBC

THIS UNDERTAKING is given on

17th August

2022

BY:

1. **CHURCHILL RETIREMENT LIVING LIMITED** (Company Regn No. 06260373), of Churchill House, Parkside, Ringwood, Hampshire, BH24 3SG (the “**Applicant**”); and
2. **UA ASSET MANAGEMENT 2 LIMITED** (Company Regn No. 11069626) of 19-21 Crawford Street, London W1H 1PJ (the “**Owner**”);

TO:

3. **OXFORDSHIRE COUNTY COUNCIL** whose main office is at County Hall, New Road, Oxford, OX1 1ND (the “**County Council**”).

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council and the County Council are the local planning authorities for the area within which the Site is located.
- (B) The Owner is the freehold owner of the Site registered at HM Land Registry under Title Number ON191828 free from encumbrances that would prevent the Applicant from entering into this Undertaking subject to an agreement for sale dated 17 September 2021 in favour of the Applicant.
- (C) Pursuant to the Planning Application the Applicant applied to the Council for full planning permission for the Development.
- (D) The Planning Application was not determined within the statutory 13 weeks. The Applicant has made the Planning Appeal and enters into this Undertaking to the intent that any objections of the Council, the County Council and/or the Secretary of State to the grant of planning permission are overcome.

The parties agree as follows:

1 DEFINITIONS

In this Undertaking, unless the context otherwise requires, the following definitions apply:

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|--|---|
| “ 1990 Act ” | the Town and Country Planning Act 1990; |
| “ Administration and Monitoring Fee ” | the sum of £125 towards the County Council’s costs in monitoring the performance of the planning obligations in this undertaking; |
| “ Charge Holder ” | means any mortgagee or chargee of the Site (or any part of the Site) from time to time or the successors in title to such mortgagee or chargee or any receiver or manager appointed by such mortgagee or chargee; |
| “ Commencement Date ” | the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act other than (for the purposes of this Undertaking and no other); |

- (a) site investigations or surveys;
- (b) archaeological works;
- (c) site decontamination;
- (d) the demolition of any existing buildings or structures
- (e) excavation works;
- (f) the clearance or re-grading of the Site
- (g) the erection of hoardings and fences;
- (h) works connected with infilling;
- (i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or
- (j) the construction of access and service roads;

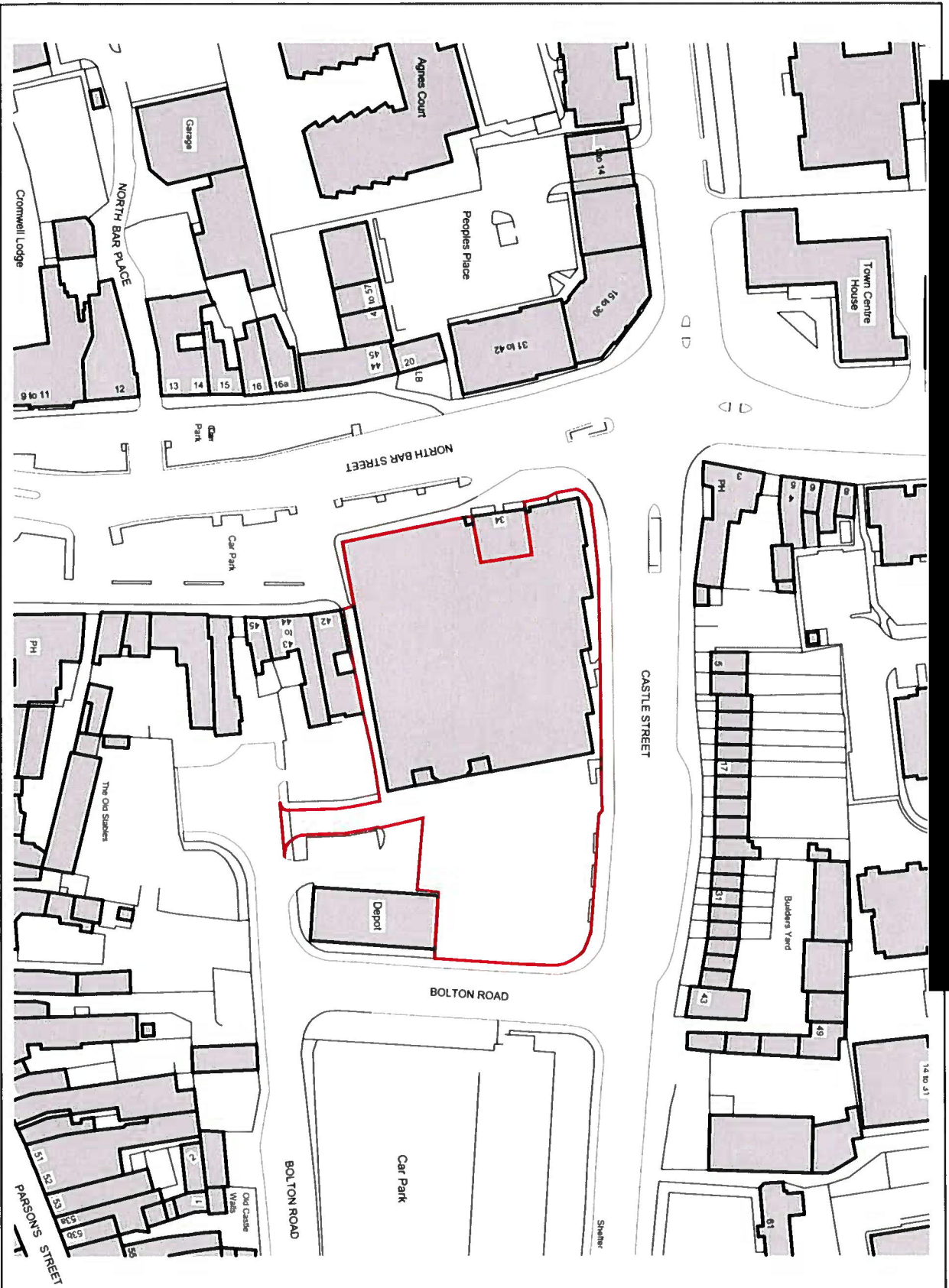
and “Commence” and “Commenced” shall be construed accordingly;

“Council”	Cherwell District Council of Bodicote House, Bodicote, Banbury OX15 4AA;
“Development”	redevelopment for 80 retirement living apartments including communal facilities, access, car parking and landscaping as detailed in the Planning Application;
“Dwelling”	a unit of residential accommodation comprised within the Development and “Dwellings” shall be construed accordingly;
“Expert”	a person having appropriate qualifications and local knowledge and experience in the matters in dispute as agreed by the Relevant Parties or failing agreement such person as is nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Relevant Parties;
“Index”	the RPI All Items Index Excl Mortgage Interest (RPI-X) or any such alternative index or comparable measure of price inflation as either shall replace such index, or as the Council reasonably requires;
“Index Linked”	means increased to reflect any increase in the Index during the period from December 2021 to and including the date of actual payment;
“Interest”	interest at 2 per cent above the base lending rate published by HSBC Bank Plc from time to time or if such rate shall not be published at any time such other comparable rate of interest as the County Council may then in writing specify having regard to interest rates current at such time;
“Inspector”	the inspector appointed by the Secretary of State to determine the

	Planning Appeal;
"Occupation"	occupation of the Development for the purposes permitted by the Planning Permission but not occupation for the purposes of construction, fitting out or decoration for marketing or display purposes or in connection with security operations and "Occupy" and "Occupied" shall be construed accordingly;
"Plan"	the plan attached to this Undertaking;
"Planning Appeal"	the planning appeal submitted by the Applicant under Section 78 of the 1990 Act which has been given reference APP/C3105/W/22/3296229;
"Planning Application"	the application for full planning permission for the carrying out of the Development made by the Applicant on 17 December 2021, validated on 23 December 2021 and given the reference 21/04202/F by the Council;
"Planning Permission"	the full planning permission that may be granted for the Development in pursuance of the Planning Application following the completion of this Undertaking or any variation to that permission granted pursuant to Section 73 of the 1990 Act;
"Relevant Parties"	the parties to this Undertaking;
"Secretary of State"	the Secretary of State for Levelling Up, Housing and Communities (or such successor Secretary of State or minister of state who shall assume the same decision-making powers from time to time)
"Site"	the land at Former Buzz Bingo, Bolton Road, Banbury OX16 5UL shown edged in red on the Plan against which this Undertaking may be enforced;
"Travel Plan Monitoring Fee"	the sum of £1,558 (one thousand five hundred and fifty eight pounds) (Index Linked) payable by the Owner to the County Council towards the County Council's costs in monitoring the Owner's performance of the travel plan planning condition to be attached to the Planning Permission.

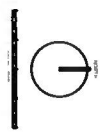
2 INTERPRETATION

- 2.1 The clause headings in this Undertaking are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Undertaking, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.



REVISIONS

No.	Date	By



CHURCHILL RETIREMENT LIVING

planning issues
Town Planning and Architectural Services

Rob Jackson RIBA
Chartered Architect

Project Director - Local Plans
Architect - Applications and Licences
Tel: 01451 442101
Fax: 01451 442101
Email: rob@planningissues.co.uk

Client

Churchill Retirement Living

Project Title

Proposed Retirement Housing
Bolton Road
Bardon,
OX11 0TH

Drawing Title

**LOCATION PLAN
PLANNING APPLICATION**

Date: 11/2/2019 9:44 AM Date: DEC-2021
Drawn: KLS Checked: RJ
Drawing No: 10116BB - PA00

- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Undertaking states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to any party in this Undertaking include the successors in title of that party and in the case of the County Council includes any successor local planning authority exercising planning powers under the 1990 Act.
- 2.9 References to "including" means "including, without limitation".
- 2.10 Any undertaking by the Applicant and/or the Owner not to do any act or thing includes an undertaking not to permit or allow the doing of that act or thing.
- 2.11 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.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Undertaking shall be unaffected.

3 LEGAL EFFECT

- 3.1 This Undertaking constitutes a Deed and is made pursuant to section 106 of the 1990 Act and section 2 of the Localism Act 2011 and all other enabling powers and enactments that are relevant.
- 3.2 To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Undertaking are planning obligations for the purposes of section 106 of the 1990 Act with the intent that they bind the Site and are enforceable by the County Council.
- 3.3 The County Council is the local planning authority having the power to enforce the planning obligations contained in this Undertaking against the Owner but without prejudice to all and any other means of enforcing them at law or in equity or by statute and a planning obligation not to do any act or thing includes an obligation not to cause or permit or suffer that act or thing to be done by any other person.
- 3.4 No person constituting the Owner will be liable for breach of a covenant restriction or obligation contained in this Undertaking after he has parted with all the interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 3.5 This Undertaking may be registered as a local land charge by the Council.
- 3.6 No Charge Holder shall have any liability under or in connection with this Deed unless and until it takes possession of the Site or the relevant part of it (and it shall not be liable for any pre-existing breach arising prior to the date it enters into possession nor for any breach after it has parted with or released its interest in the Site).
- 3.7 Nothing in this Undertaking:

- 3.7.1 prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Undertaking, whether or not pursuant to an appeal;
- 3.7.2 shall be construed as restricting the exercise by the County Council of any powers exercisable by it under the 1990 Act or under any other Act in the exercise of their functions as a local authority.
- 3.8 The obligations in this Undertaking will not be enforceable against:
 - 3.8.1 the individual owners or occupiers or mortgagees of any Dwellings constructed on the Site pursuant to the Planning Permission nor anyone deriving title from such owners, occupiers or mortgagees nor against anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant.; or
 - 3.8.2 a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated or is to be situated) by the Owner to that statutory undertaker.
- 3.9 This Undertaking shall cease to have effect if in determining the Planning Appeal, the Secretary of State or the Inspector expressly states in his decision letter that this Undertaking does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 3.10 If in determining the Planning Appeal, the Secretary of State or the Inspector expressly states in his decision letter that any individual obligation within this Undertaking does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010 that/those obligations(s) will cease to have effect.
- 4 COMMENCEMENT**
- 4.1 This Undertaking will take effect on the Commencement Date save for clause 11 which shall take effect immediately upon completion of this Undertaking.
- 5 OBLIGATIONS OF THE PARTIES**
- 5.1 The Owner undertakes to comply with the obligations expressed to be on their part set out in Schedule 1 in relation to the Development.
- 6 TERMINATION OF THIS UNDERTAKING**
- 6.1 This Undertaking will come to an end if:
 - 6.1.1 the Planning Permission is quashed or revoked before the Commencement Date; or
 - 6.1.2 the Planning Permission expires before the Commencement Date without having been implemented;
 - 6.1.3 the Planning Appeal is dismissed; or
 - 6.1.4 in determining the Planning Appeal the Secretary of State or the Inspector states in his decision letter that this Undertaking is not a material planning consideration or that no weight can be attached to the deed in determining the Planning Appeal.
- 7 NOTICES**

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

7.2 Any notice, consent, demand or any other communication served shall 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.

8 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

8.1 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 provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Undertaking from being able to benefit from or to enforce any of the provisions of this Undertaking.

9 JURISDICTION

9.1 This Undertaking shall be governed by the laws of England and Wales and the Courts of England shall have sole jurisdiction in respect of the construction of this Undertaking and as to the respective rights and liabilities of the parties.

10 INTEREST

10.1 If any sum due under this Undertaking is paid late Interest will be payable from the date the payment is due to the date of payment.

11 ADMINISTRATION AND MONITORING FEE

11.1 The Applicant undertakes to the County Council to pay to the County Council the Administration and Monitoring Fee on the date hereof.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

SCHEDULE 1

Owner's Obligations

1 CONTRIBUTIONS

- 1.1 The Owner undertakes to the County Council to pay the Travel Plan Monitoring Fee to the County Council on or before the Commencement Date.
- 1.2 The Owner undertakes to the County Council not to Commence Development prior to paying the Travel Plan Monitoring Fee to the County Council.

Signed as a deed by

**CHURCHILL RETIREMENT LIVING
LIMITED**

acting by:

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)
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Alfred Smith

Director

~~Director/Secretary~~

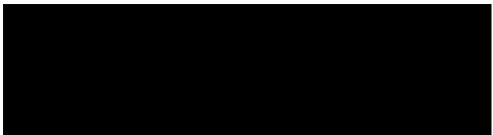
SIGNED as a DEED by)
)
UA ASSET MANAGEMENT 2)
LIMITED)
acting by a director in the presence)
of:)



Carl Hommerstone

Director

Signature of Witness:



Name of Witness (IN CAPITALS):

SAMANTHA HALL

Address:

93 DERINTON RD

LONDON

SW17 8JA

Occupation:

ACCOUNTANT