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## Appeal Decisions

Inquiry held on 9 and 10 April 2019

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 25 April 2019**

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### **Appeal A Ref: APP/B9506/C/17/3187984 & 5**

#### **2 Tanners Lane, East End, Lymington SO41 5SP**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Mr Charles Nicholson (3187984) and Ms Anna Gordon (3187985) against an enforcement notice issued by New Forest National Park Authority.
  - The enforcement notice was issued on 29 September 2017.
  - The breach of planning control as alleged in the notice is the material change of use of the land affected from agriculture to that as residential garden and operational development consisting of the creation of a swimming pool, wall, fencing and bund with associated landscaping being integral to the use of the land affected as residential garden.
  - The requirements of the notice are 1. Cease the use of the land affected as residential garden; 2. Demolish/dismantle/infill/remove the swimming pool, wall, fencing and bund with associated landscaping. For the avoidance of doubt the land affected should be restored to its former level and condition; and 3. Remove all items and debris arising from compliance with the aforementioned requirements from the land affected.
  - The period for compliance with the requirements is 6 months.
  - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). The appeal by Mr Charles Nicholson is also proceeding on the grounds set out in section 174(2)(a) of the Act.
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### **Appeal B Ref: APP/B9506/C/17/3187989 & 10**

#### **2 Tanners Lane, East End, Lymington SO41 5SP**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Mr Charles Nicholson (3187989) and Miss Anna Gordon (3187990) against an enforcement notice issued by New Forest National Park Authority.
  - The enforcement notice was issued on 29 September 2017.
  - The breach of planning control as alleged in the notice is alterations and extensions to a barn.
  - The requirements of the notice are 1. Demolish/dismantle/remove all alterations and extensions to the barn and revert it to an open sided structure; and 2. Remove all items and debris arising from compliance with the aforementioned requirements from the land affected.
  - The period for compliance with the requirements is 6 months.
  - The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. The appeal by Mr Charles Nicholson is also proceeding on the grounds set out in section 174(2)(a) of the Act.
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## **Decisions**

Appeal A Ref: APP/B9506/C/17/3187984 & 5

1. The enforcement notice is varied by the deletion of the requirements, as set out in section 5, and the substitution instead of 'Mr Charles Nicholson and Miss Anna Gordon shall enter into the obligations, by way of a Unilateral Undertaking, as set out in a schedule attached to this decision'.
2. The enforcement notice is upheld as varied.

Appeal B Ref: APP/B9506/C/17/3187989 & 10

3. The enforcement notice is varied by:
  1. the deletion of 6 months as the time for compliance, as set out in section 5, and the substitution instead of 12 months;
  2. the deletion of the requirements, as set out in section 5, and the substitution instead of:
    - (a) Remove the southern extension;
    - (b) Make good the southern elevation;
    - (c) Over timber clad the whole barn structure, excluding the roof;
    - (d) Continue to use the barn for agricultural purposes only;

These steps are detailed in Plan No. AP-265.20B 'Floor Plan', Plan No. AP-265.22A 'East and West Elevations' and Plan No. AP-265.23B 'North and South Elevations, Section and Sketch of Fixing' and as clarified in the e-mail dated 1 March 2019 sent by Mr A Partridge for the Appellants to Mr D Williams for the National Park Authority.
4. The enforcement notice is upheld as varied.

## **Procedural matters**

5. Prior to the Inquiry the main parties agreed, with regard to the Appellants' ground (f) appeal in Appeal B, varied requirements to those as set out in the enforcement notice. The Appellants were informed that the notice would be varied accordingly and they subsequently withdrew their ground (a) and (g) appeals.
6. At the Inquiry the main parties agreed, with regard to the Appellants' ground (f) and (g) appeals in Appeal A, varied requirements and the time for compliance to those as set out in the enforcement notice. These agreed variations satisfy the Appellants overall and their ground (a), (b), (c) and (d) appeals have not therefore been considered. The obligations that are the varied requirements are set out as a draft Planning Obligation attached to this decision.

***John Braithwaite***

Inspector

# **Planning Obligation by Deed of Undertaking Section 106 of the Town and Country Planning Act 1990**

relating to the development of 2 Tanners Lane,  
East End, Lymington SO41 5SP

Dated 25 April 2019

**CHARLES NICHOLSON (1)**

**ANNA CRAWFORD GORDON (2)**

TO:

**NEW FOREST NATIONAL PARK AUTHORITY**

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**DATE**      **25 April 2019**

**UNDERTAKING PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990  
BY:**

- (1) CHARLES NICHOLSON** of 2 Tanners Lane, East End, Lymington SO41 5SP (“the First Owner”)
- (2) ANNA CRAWFORD GORDON** of 2 Tanners Lane, East End, Lymington SO41 5SP (“the Second Owner”)
- (3) THE RIGHT HONOURABLE JOHN CHRISTOPHER INGHAM BARON TEYNHAM, THE RIGHT HONOURABLE ELIZABETH BARONESS TEYNHAM, JOHN WILLIAM JAMES MIST and DAVID ARTHUR RULE** as **TRUSTEES OF THE PYLEWELL PARK MAINTENANCE FUND** all care of Clarke Willmott LLP, Burlington House, Botleigh Grange Business Park, Hedge End, Southampton S30 2AF (“the Chargee”)

**TO: NEW FOREST NATIONAL PARK AUTHORITY** (“the Authority”) of Lymington Town Hall, Avenue Road, Lymington, SO41 9ZG

## **INTRODUCTION**

- 1 The Authority is a National Park Authority by virtue of among other provisions section 63 of and Schedule 7 to the Environment Act 1995 and the New Forest National Park Authority (Establishment) Order 2005, SI 2005/421 and the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The First Owner and the Second Owner ('the Owners') are interested in the land as the freehold owners of Land adjoining 2 Tanners Lane, East End, Lymington, SO41 5SP registered with title absolute at the Land Registry under Title Number HP792642 subject to a Charge in favour of the Chargee but otherwise free from encumbrances which includes the Site bound by this Undertaking.
- 3 The Chargee is the registered proprietor of the Charge dated 21 September 2015 referred to in entry number 7 (seven) of the charges register of Title Number HP792642 and has agreed to enter into this Undertaking to give its consent to the terms of this Undertaking.
- 4 The Authority served the Enforcement Notice on the First Owner and the Second Owner.
- 5 Each of the First Owner and Second Owner submitted the Appeal from the Enforcement Notice pursuant to section 174 of the Town and Country Planning Act 1990.
- 6 The inquiry into the Appeal was opened on Tuesday 9 April 2019.
- 7 The Owners consider that certain planning obligations should be entered into as at the date of this Undertaking.
- 8 The Owners have agreed to enter into this Deed with the intention that the obligations contained in this Undertaking may be enforced by the Authority against the Owners and their respective successors in title. However, the Owners do not intend that this Undertaking will take effect unless and until the Inspector determines that this Undertaking is necessary in order to grant Planning Permission or make a Relevant Variation.

## **NOW THIS DEED WITNESSES AS FOLLOWS:**

### **OPERATIVE PART**

#### **1 DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990
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“Appeal”	the appeals by the Owners pursuant to section 174 of the Act given Planning Inspectorate allocated reference numbers APP/B9506/C/17/3187985, APP/B9506/C/17/3187989, APP/B9506/C/17/3187990, APP/B9506/C/17/3187984
“Authority”	New Forest National Park Authority as local planning authority by virtue of section 4A of Town and Country Planning Act 1990
“Charge”	the legal charge of land adjoining 2 Tanners Lane, Lymington, Hampshire SO41 5SP dated 21 September 2015 referred to in entry number 7 (seven) of the charges register of Title number HP792642
“Chargee”	The Right Honourable John Christopher Ingham Baron Teynham, the Right Honourable Elizabeth Baroness Teynham, John William James Mist and David Arthur Rule as Trustees of the Pylewell Park Maintenance Fund
“Development”	means the development authorised by the Planning Permission or Relevant Variation
“Enforcement Notice”	the document dated 29 September 2017 issued by the Authority and marked ‘Enforcement Notice ‘1’’ which at paragraph 2 identified the land affected as ‘Land at 2 Tanners Lane, East End, Lymington, SO41 5SP’.
“First Owner”	Charles Nicholson
“Index”	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
“Inspector”	the Planning Inspector appointed by the Secretary of State to determine the Appeal
“Interest”	interest at 4 per cent above the base lending rate of the Bank of England from time to time

“New Permission”	a planning permission other than Planning Permission authorising the redevelopment of the Site which would, if such redevelopment were completed, cause the Owners to be in breach of any or all of the provisions of this Undertaking
“Owners”	the First Owner and the Second Owner
“Plan”	the plan attached to this Deed at the Fourth Schedule
“Planning Permission”	a conditional or unconditional planning permission granted by a determination of the Inspector in a decision notice for the Appeal as provided by section 177(1)(a) of the Act pursuant to the application deemed to have been made by one of the First Owner or Second Owner as a ground of appeal under section 174(2)(a) of the Act for the swimming pool and walled garden
“Relevant Variation”	the exercise by the Inspector of the power in section 176(1) of the Act by determination of the Inspector in a decision notice for the Appeal to vary the steps required by paragraphs 5(1) and 5(2) of the Enforcement Notice (whether in whole or in part) in a manner that has the legal effect of permitting the permanent use of the Site by the occupiers of 2 Tanners Lane, East End, Lymington SO41 5SP as a residential garden in connection with that building and the retention of the swimming pool and walled garden
“Second Owner”	Anna Crawford Gordon
“Site”	the land against which this Deed may be enforced as shown edged red on the Plan
“Undertaking”	this deed of Undertaking given by the Owners to the Authority pursuant to section 106 of the Act and references to the term “Deed” or “Deed of Undertaking” shall also be construed as a reference to this deed of Undertaking

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 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.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally 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 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 person deriving title through or under that party and in the case of the Authority successors to their respective statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.

## **3 LEGAL BASIS**

- 3.1 This Undertaking is made pursuant to Section 106 of the Act and is a planning obligation for the purposes of Section 106 of the Act.
- 3.2 The covenants, restrictions and requirements accepted by the Owners pursuant to this Undertaking create planning obligations pursuant to Section 106 of the Act and are enforceable by the Authority as local planning authority against the Owners.

## **4 CONDITIONALITY**

This Deed is conditional upon the earlier of

- (i) the grant of the Planning Permission; or
- (ii) a Relevant Variation

save for the provisions of Clauses 1,2, 3, 4, 6, 6A, 7, 12 and 13 which shall come into effect immediately upon completion of this Undertaking.

## **5 THE OWNERS' COVENANTS**

Subject to Clause 4 (Conditionality) the Owners covenant with the Authority to comply with the planning obligations in this Undertaking and as set out in the Second Schedule and the Third Schedule and, further, to remove such of the bank immediately to the north of the area marked "Garden" within the Site as necessary to allow direct pedestrian access between the "Garden" and the land to the north of the Site.

## **6 MISCELLANEOUS**

- 6.1 This Deed shall be registrable as a local land charge by the Authority.
- 6.2 Insofar as any clause or clauses of this Deed 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.
- 6.3 This Undertaking shall cease to have effect if:
  - 6.3.1 the Appeal is determined and
    - 3.1.1 the Enforcement Notice is upheld and the Appeal is dismissed without a Planning Permission or Relevant Variation;
    - 3.1.2 the Appeal is upheld but there is no Planning Permission or Relevant Variation.
  - 6.3.2 the Appeal is determined and there is a Planning Permission or Relevant Variation but the Inspector states in the decision letter that the Undertaking is an immaterial or impermissible planning consideration, or that no weight is attached by the Inspector to this Undertaking in determination of the Appeal, whether because it is unnecessary to make the Development acceptable in planning terms or not directly related to the Development or not fairly related in scale and kind to the Development, or otherwise;
  - 6.3.3 the Planning Permission or the Relevant Variation or the Enforcement Notice is quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure save for a variation or modification in accordance with a Relevant Variation;
  - 6.3.4 at any time after the date of this Undertaking the Authority or any other competent authority grants a New Permission that is incompatible with the requirements of this Undertaking.
- 6.4 No person shall be liable for any breach of any of the planning obligations or other provisions of this Undertaking after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 6.5 Nothing in this Undertaking shall prohibit or limit the right to develop the Site (other than the Ecology and Landscape Area) or any other part of the freehold of the land adjoining 2 Tanners Lane, East End, Lymington, SO41 5SP registered with title absolute at the Land Registry under Title Number HP792642 in accordance with a planning permission (other than the Planning Permission or a Relevant Variation) granted (whether or not on appeal excepting this Appeal) after the date of this Deed, save as provided for in the Third Schedule.
- 6.6 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Authority under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local planning authority or National Park.

#### **6A CHARGEES CONSENT**

- 6A.1 The Chargee hereby agrees that this Undertaking shall take effect as if it was executed by the Owners and registered as a local land charge immediately prior to the Charge.
- 6A.2 The Chargee shall not be liable for the observance performance or non-performance of the covenants in this Undertaking unless and unless it becomes a Chargee in possession PROVIDED THAT if the Chargee becomes a chargee in possession any liability as such will cease once they have parted with their interest in the Site.
- 6A.3 The liability of the Chargee shall at all times be limited to the assets of the trust being the Pylewell Park Maintenance Fund AND FOR THE AVOIDANCE OF DOUBT no liability shall extend to the individual trustees of the Chargee in their personal capacity.

#### **7 WAIVER**

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

#### **8 CHANGE IN OWNERSHIP**

The Owners shall give the Authority 10 (ten) days written notice of any change in ownership of any of their interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

#### **9 INDEXATION**

Any sum payable by the Owners to the Authority in the Second Schedule shall be increased by an amount equivalent to the increase in the Index from the date of the demand by the Authority or the date by which payment must be made (as appropriate) until the date on which such sum is paid.

**10 INTEREST**

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

**11 VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

**12 JURISDICTION**

This Undertaking is governed by and interpreted in accordance with the law of England and Wales and the Owners submit to the jurisdiction of the courts of England and Wales.

**13 DELIVERY**

The provisions of this Undertaking (other than this clause which shall be of immediate effect) shall be of no effect until this Undertaking has been dated.

**IN WITNESS** whereof the Owners and Chargee have hereto executed this Deed on the day and year first before written.

Executed as a deed by **CHARLES NICHOLSON**, in the presence of: .....

.....  
SIGNATURE OF WITNESS

WITNESS NAME:

WITNESS ADDRESS:

Executed as a deed by **ANNA CRAWFORD GORDON**, in the presence of: .....

.....  
SIGNATURE OF WITNESS

WITNESS NAME:

WITNESS ADDRESS:

Executed as a deed by

**LORD TEYNHAM**, .....

in the presence of:

.....

SIGNATURE OF WITNESS

WITNESS NAME:

WITNESS ADDRESS:

Executed as a deed by

**LADY TEYNHAM,**

.....

in the presence of:

.....

SIGNATURE OF WITNESS

WITNESS NAME:

WITNESS ADDRESS:

Executed as a deed by

**JOHN WILLIAM JAMES MIST,**

.....

in the presence of:

.....

SIGNATURE OF WITNESS

WITNESS NAME:

WITNESS ADDRESS:

Executed as a deed by

**DAVID ARTHUR RULE,**

.....

in the presence of:

.....

SIGNATURE OF WITNESS

WITNESS NAME:

WITNESS ADDRESS:

## FIRST SCHEDULE

The Owners are freehold owners of Land adjoining 2 Tanners Lane, East End, Lymington, SO41 5SP registered with title absolute at the Land Registry under Title Number HP792642

### 1. HM Land Registry Office Copy Register and Plan Title Number HP792642

HM Land Registry



Official copy  
of register of  
title

Title number HP792642

Edition date 30.03.2016

This official copy shows the entries on the register of title on 01 APR 2019 at 09:30:55.

This date must be quoted as the "search from date" in any official search application based on this copy.

The date at the beginning of an entry is the date on which the entry was made in the register.

Issued on 01 Apr 2019.

Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.

This title is dealt with by HM Land Registry, Weymouth Office.

#### A: Property Register

This register describes the land and estate comprised in the title.

HAMPSHIRE : NEW FOREST

- 1 The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land adjoining 2 Tanners Lane, East End, Lymington (SO41 5SP).

#### B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

##### Title absolute

- 1 (30.03.2016) PROPRIETOR: CHARLES EDWARD NICHOLSON and ANNA CRAWFORD GORDON of 2 Tanners Lane, East End, Lymington SO41 5SP.
- 2 (30.03.2016) The price stated to have been paid on 30 March 2016 was £400,000.
- 3 (30.03.2016) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by The Right Honourable John Christopher Ingham Baron Teynham, The Right Honourable Elizabeth Baroness Teynham, John William James Mist and David Arthur Rule as Trustees of the Pylewell Park Maintenance Fund care of Burlington House, Botleigh Grange Business Park, Hedge End, Southampton SO30 2AF or their conveyancer that the provisions of clause 4 of a Deed dated 21 September 2015 and made between (1) The Right Honourable John Christopher Ingham Baron Teynham, The Right Honourable Elizabeth Baroness Teynham, John William James Mist, Mist and David Arthur Rule as Trustees of the Pylewell Park Maintenance Fund and (2) Charles Edward Nicholson and Anna Crawford Gordon have been complied with.
- 4 (30.03.2016) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by

1 of 3

Title number HP792642

## B: Proprietorship Register continued

The Right Honourable John Christopher Ingham Baron Teynham, The Right Honourable Elizabeth Baroness Teynham, John William James Mist, Mist and David Arthur Rule as Trustees of the Pylewell Park Maintenance Fund care of Burlington House, Botleigh Grange Business Park, Hedge End, Southampton SO30 2AF or their conveyancer that the provisions of the agreement dated 21 September 2015 referred to in the Charges Register of have been complied with or that they do not apply to the disposition

- 5 (30.03.2016) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the Charge dated 21 September 2015 in favour of (The Right Honourable) John Christopher Ingham (Baron Teynham), (The Right Honourable) Elizabeth (Baroness Teynham), John William James Mist and David Arthur Rule as trustees of The Pylewell Park Maintenance Fund referred to in the Charges Register.

## C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 The land tinted pink on the title plan is subject to such restrictive covenants as may have been imposed thereon before 30 March 2016 and are still subsisting and capable of being enforced.
- 2 The land tinted blue on the title plan is subject to the rights granted by a Deed dated 22 September 1975 made between (1) William Ingham Whitaker (2) Baring Brothers & Co Limited and Alan David Donger (3) The Agricultural Mortgage Corporation Limited (4) Stanley Frederick Knappett and (5) Vera Irene Constance Carter.  
  
~NOTE:-Copy filed under HP213963.
- 3 The land tinted blue on the title plan is subject to the rights granted by a Deed dated 31 May 1977 made between (1) William Ingham Whitaker (2) The Agricultural Mortgage Corporation Limited (3) Richard Beck (4) Henry Woolgar (5) Baring Brothers & Co.Limited and Alan David Donger.  
  
NOTE: Copy filed under HP326636.
- 4 If and so far as affected thereby the land tinted blue on the title plan is subject to the following rights granted by a Conveyance of land in this title dated 4 May 1990 made between (1) The Right Honourable John Christopher Ingham Baron Teynham (Lord Teynham) and (2) The Right Honourable John Christopher Ingham Baron Teynham and Others (Trustees):- "except and reserving unto Lord Teynham  
  
(a) a full and free right of way with or without animals and vehicles for agricultural purposes through the existing gates in Sowley Land and through part OS numbers 5000 0005 and 1700 to the remainder of the Ordnance Survey numbers  
  
(b) a full and free right of way at all times and for all purposes over that part of Pitts Deep Lane that passes between Ordnance Survey Numbers Part 0005 and Part 1700 and subject to and with the benefit of  
  
(i) all leases and tenancy agreements affecting and part of the said land  
  
(ii) all covenants and rights or easements or quasi rights or quasi easements or rights or privileges in the nature of easements affecting any part of the said land"  
  
~NOTE: Copy plan filed under HP708906.
- 5 (30.03.2016) A Transfer of the land in this title dated 21 September 2015 made between (1) The Right Honourable John Christopher Ingham Baron Teynham, The Right Honourable Elizabeth Baroness Teynham, John William James Mist and David Arthur Rule and (2) Charles Edward Nicholson and Anna Crawford Gordon contains restrictive covenants.

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Title number HP792642

## C: Charges Register continued

-NOTE: Copy filed.

- 6 (30.03.2016) Right of pre-emption in favour of Charles Edward Nicholson and Anna Crawford Gordon and (2) The Right Honourable John Christopher Ingham Baron Teynham, The Right Honourable Elizabeth Baroness Teynham, John William James Mist, Mist and David Arthur Rule care of Burlington House, Botleigh Grange Business Park, Hedge End, Southampton SO30 2AF contained in an Agreement dated 21 September 2015 made between (1) Charles Edward Nicholson and Anna Crawford Gordon and (2) The Right Honourable John Christopher Ingham Baron Teynham, The Right Honourable Elizabeth Baroness Teynham, John William James Mist, Mist and David Arthur Rule.

-NOTE:-Copy filed.

- 7 (30.03.2016) REGISTERED CHARGE dated 21 September 2015.
- 8 (30.03.2016) Proprietor: THE RIGHT HONOURABLE JOHN CHRISTOPHER INGHAM BARON TEYNHAM care of Clarke Willmott Llp, Burlington House, Grange Drive, Hedge End, Southampton SO30 2AF (ref: 1717/35919.15) and THE RIGHT HONOURABLE ELIZABETH BARONESS TEYNHAM care of Clarke Willmott Llp, Burlington House, Grange Drive, Hedge End, Southampton SO30 2AF (ref: 1717/35919.15) and JOHN WILLIAM JAMES MIST care of Clarke Willmott Llp, Burlington House, Grange Drive, Hedge End, Southampton SO30 2AF (ref: 1717/35919.15) and DAVID ARTHUR RULE care of Clarke Willmott Llp, Burlington House, Grange Drive, Hedge End, Southampton SO30 2AF the trustees of The Pylewell Park Maintenance Fund (ref: 1717/35919.15).

End of register

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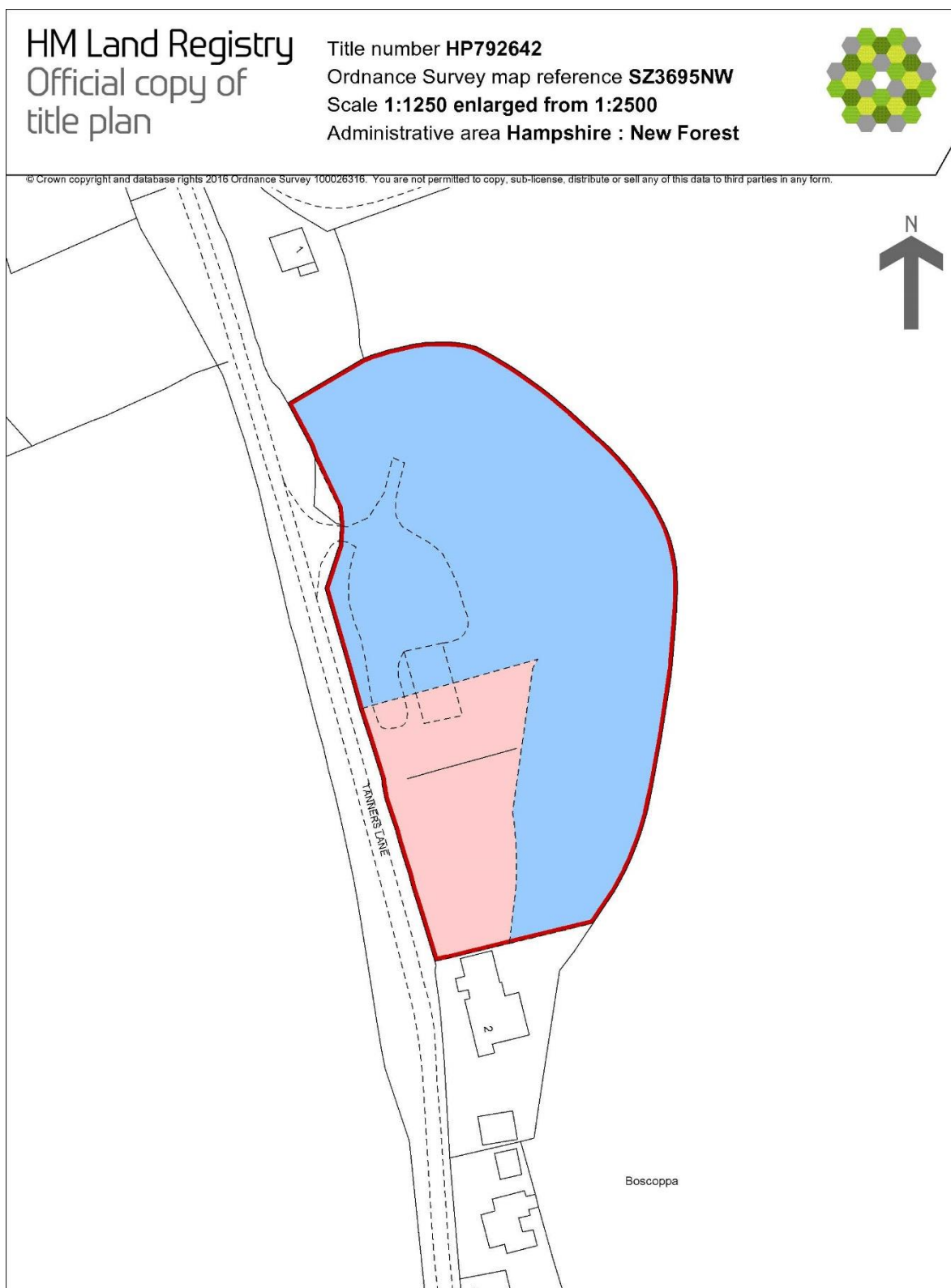
**These are the notes referred to on the following official copy**

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 01 April 2019 shows the state of this title plan on 01 April 2019 at 09:30:55. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. This title is dealt with by the HM Land Registry, Weymouth Office .



**This official copy is incomplete without the preceding notes page.**

## SECOND SCHEDULE

### The Owners' Covenants with the Authority

1. In this Schedule the following expressions shall have the following meanings:-

"Ecological and Landscape Design Strategy"	means a design strategy for the Ecology and Landscape Area whose aim is to minimise as far as reasonably practicable the environmentally destructive impacts of the Development and enhance secure and deliver the maximum benefit reasonably practicable to enhance the biodiversity value and the natural environment, including landscape character, having regard to the Owners' desire to retain the Retained Planting and use the Site as a residential garden
"Ecology and Landscape Area"	means the land shown for identification purposes hatched purple on the Plan
"Ecological and Landscape Management Plan"	means a plan prepared by a Consultant to manage monitor and maintain and where necessary enhance the Ecology and Landscape Area within the Development and the plan shall have regard to and be aligned with the ecological and landscape mitigation and enhancement measures to be provided on the Ecology and Landscape Area pursuant to the Ecological and Landscape Design Strategy
"Consultant"	a person or company appointed by the Owners with appropriate professional qualifications to prepare an ELMP
"Ecology and Landscape Works"	works to be carried out under paragraph 4.2.1 to the Second Schedule <b>PROVIDED THAT</b> Ecology and Landscape Works shall not require the Owners to secure any further planning permissions in order to implement the ELMP nor to needlessly destroy or uproot the Retained Planting nor involve material changes in levels
"ELMP Contribution"	means the sum of £1,000 (one thousand pounds) towards the administrative costs of the Authority's approval of the ELMP and the supervision of the Owners' obligations in this Undertaking
"ELMP"	means Ecological and Landscape Management Plan
"Natural England"	means the executive non-departmental public body established pursuant to the Natural Environment and Rural Communities Act 2006 who is responsible for ensuring that the natural environment is conserved enhanced and managed for

	the benefit of present and future generations or any successor body that replaces it
“Occupation” and “Occupied”	occupation or use after the date of the determination of the Appeal for the purposes of the use of the Site as a residential garden as permitted by the Planning Permission or because of the Relevant Variation and the word “Occupy” in this Undertaking shall be taken as being an “Occupation” and or the Site being “Occupied” in accordance with this defined term
“Retained Planting”	means native species of flora growing on the extant ground levels of the Ecology and Landscape Area at the date of this Undertaking that are not incompatible with the Ecological and Landscape Design Strategy
“Revision Period”	the period between a refusal of the Authority to approve an ELMP; and three months from the date of the submission of that ELMP to the Third Party Consultant
“Third Party Consultant”	an appropriately qualified person or company to prepare an ELMP jointly instructed by the Owners and the Authority to resolve areas of disagreement about the appropriate content of the ELMP

## 2. ECOLOGICAL AND LANDSCAPE MANAGEMENT PLAN

- 2.1. The Owners covenant that no later than twelve months from the date of the Planning Permission or a Relevant Variation they shall
  - 2.1.1. submit the ELMP to the Authority; and
  - 2.1.2. pay the Authority the ELMP Contribution
- 2.2. The Owners covenant that from the date of the Planning Permission or the Relevant Variation they shall not Occupy the Site unless they are in compliance with the requirements of paragraph 2.1 **PROVIDED THAT** a subsequent submission by the Owners of the ELMP and the approval of the ELMP by the Authority and payment of the ELMP Contribution or by operation of paragraphs 2.4 or 6.2 shall release the Owners from this specific covenant
- 2.3. Subject to paragraph 2.4, the Owners covenant that they shall cease to Occupy the site if the ELMP submitted under 2.1.1 or submitted subsequently is refused by the Authority within six months of its submission to the Authority
- 2.4. The covenant in paragraph 2.3 is of no effect if the Owners submit an ELMP to a Third Party Consultant during a Revision Period and obtain the approval of a Third Party Consultant to that ELMP by the end of a Revision Period

- 2.5. In order to release themselves from a prohibition on Occupation of the Site in paragraph 2.3 the Owners may repeat the submission of an ELMP to the Authority and they may exercise more than one Revision Period

### **3. Content of the ELMP**

- 3.1. The content of any ELMP submitted pursuant to this Undertaking shall include

- 3.1.1. (save to the extent as may be varied by a European Protected Species Licence issued by Natural England which must not result in the reduction in the quality or quantity of mitigation/compensation provided) an Ecological and Landscape Design Strategy which strategy shall as a minimum (and without limitation)
  - 3.1.1.1. identify the purpose and conservation objectives for any proposed Ecology and Landscape Works
  - 3.1.1.2. review site potential and constraints
  - 3.1.1.3. provide detailed designs and/or working methods to achieve stated objectives (which may comprise a set of method statements)
  - 3.1.1.4. provide for the incorporation of bird and bat boxes on trees or other habitat mitigation within the Ecology and Landscape Area (as appropriate)
  - 3.1.1.5. identify the on-site role and responsibilities of the Owners
  - 3.1.1.6. identify the extent of the proposed Ecology and Landscape Works on appropriately scaled maps and plans
  - 3.1.1.7. identify the type and source of materials to be used where appropriate (e.g. native species of local provenance)
  - 3.1.1.8. identify a timetable and the triggers for implementation of the Ecology and Landscape Works
  - 3.1.1.9. identify describe and evaluate all landscape features and areas to be managed in relation to a plan
  - 3.1.1.10. identify ecological and landscape trends and/or constraints on the Site that might influence its management
  - 3.1.1.11. identify and describe the long term aims and objectives of management and maintenance of the areas identified on the plan and how this is to be secured and achieved
  - 3.1.1.12. where any pre-existing natural or manmade features and Retained Planting are identified details to manage and maintain such features in a manner consistent with the objectives of the Ecological and Landscape Design Strategy shall be provided

- 3.1.1.13. include a work schedule (including an annual work plan capable of being rolled forward over a 5 year period)

AND such other matters as the Authority may reasonably require **PROVIDED THAT** as a matter of law the content of the ELMP may only require of the Owners that which is necessary to make the Development acceptable in planning terms, is directly related to the Development and is fairly related in scale and kind to the Development and, further, shall not require any material change in levels.

3.1.2. The ELMP shall also

- 3.1.2.1. provide details of the individual, body or organisation responsible for implementation of the ELMP and associated Ecology and Landscape Works
- 3.1.2.2. provide for on-going monitoring and remedial measures of the Ecology and Landscape Area
- 3.1.2.3. set out (where the results from monitoring show that conservation aims and objectives of the ELMP are not being met) how contingencies or remedial action and measures (as appropriate) will be identified agreed and implemented so that the Development still delivers biodiversity and landscape objectives of the originally approved scheme

#### 4. Implementation

- 4.1. The Owners shall implement and adhere to the ELMP approved by the Authority or a Third Party Consultant and the triggers pursuant to 3.1.1.8 including any approved Ecology and Landscape Works required
- 4.2. The Owners covenant to:
  - 4.2.1. carry out and complete the Ecology and Landscape Works in accordance with the timetable approved pursuant to 3.1.1.8
  - 4.2.2. manage monitor and maintain the Site in accordance with paragraph 5.1.

#### 5. General

- 5.1. The Owners shall manage monitor and maintain (including where necessary carry out such remedial Ecology and Landscape Works and measures as may be necessary) the Ecology and Landscape Area in accordance with the approved ELMP or any subsequent revision or amendment thereto as may be approved by the Authority
- 5.2. The Owners covenants that no new permanent operational development will take place on the Ecology and Landscape Area other than Ecology and Landscape Works required or permitted pursuant to the ELMP or as otherwise permitted under the Planning Permission or the Relevant Variation **PROVIDED THAT** this will not prevent the

- 5.2.1. laying beneath the Ecology and Landscape Area those underground pipes drains cables and conduits which may be required to supply electricity gas water telephone television internet and related services or to carry the same away and the maintenance of the same thereafter; or
- 5.2.2. temporary occupation of and/or operational development on the Ecology and Landscape Area which is temporary and necessary to implement the Ecology and Landscape Works **PROVIDED THAT** this shall be done in accordance with the ELMP and the Owners shall remove all such temporary operational development as soon as reasonably practicable after they are no longer required and the land is restored to the Authority's satisfaction

## 6. Review of the ELMP

### 6.1. Following approval of a ELMP

- 6.1.1. the Owners may submit a new or revised ELMP to the Authority for approval by the Authority (and following such approval the ELMP shall take effect as replaced or revised), save that the Owners may not submit a new or revised ELMP to the Authority for approval by the Authority within two years of the approval of an ELMP
- 6.1.2. if requested in writing by the Authority the Owners shall provide a written review of the ELMP to the Authority but such a request shall not be repeated for a period of at least five years from the last review and no request may be made more than 15 (fifteen) years from the date of the implementation of the first ELMP in accordance with paragraph 4.1 of this Schedule

- 6.2. No proposed new or revised ELMP submitted by the Owners to the Authority for approval pursuant to this Schedule shall come into force for the purposes of this Schedule unless and until it has been approved in writing by the Authority or where a Third Party Consultant has approved the proposed new or revised ELMP.

## 7. General

- 7.1. The Owners shall have due regard to any requirements and/or recommendations made by the Authority in relation to the drafting and operation of any ELMP submitted pursuant to the terms of this Undertaking and/or any subsequent review or amendment thereto.

### THIRD SCHEDULE

## The Owners' Covenants with the Authority

1. In this Schedule the following expressions shall have the following meanings:-

“Walled Garden” the area within the Site marked “Garden”

## 2. OWNERS' COVENANTS

Notwithstanding the permission granted by Schedule 2, Part 2, Class A (minor operations – gates, fences, walls etc) to the Town and Country Planning (General Permitted Development) (England) Order 2015, the Owners covenant that they shall not, absent a grant of planning permission by the Authority or on appeal or unless required by an ELMP under the Second Schedule, erect in the Walled Garden a wall or fence higher than 615 millimetres from ground level, save for a post and wire stock fence or a trellis not higher than 1200 millimetres, and they shall not install any gate that is higher than 1800 millimetres.

FOURTH SCHEDULE  
The Site Plan

