



DATED 16 March 2022

A.B. CARPETS LIMITED
to
THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF MERTON

UNILATERAL UNDERTAKING

under Section 106 and 106A of the Town and Country Planning Act 1990
and section 16 of the Greater London Council (General Powers) Act 1974
relating to 293 Mitcham Road and 1C and 1D Links Road, London SW17 9JQ

South London Legal Partnership
Gifford House
67c St Helier Avenue
Morden SM4 6HY
DX 161030 Morden 3
Ref: 1743/422

THIS UNILATERAL UNDERTAKING is made as a **DEED** the 14 day of **MARCH** 2022

BY

(1) **A.B. CARPETS LIMITED** (Company Registration Number 1318486) whose registered office is situate at Ds House, 306 High Street, Croydon, CR0 1NG. (the "Owner")

TO

(2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON** of Merton Civic Centre London Road Morden SM4 5DX (the "Council")

1. DEFINITIONS

In this Undertaking (except where the context otherwise requires):

"Act"	means the Town and Country Planning Act 1990
"Car Club"	means a car club established and operated by the Car Club Operator which provides motor vehicles available for hire in the vicinity of the Property on a flexible basis and which residents of the Development and members of the general public may join
"Car Club Membership"	means membership of the Car Club free of any membership fee and cost for a period of three (3) years from First Occupation
"Car Club Operator"	means an operator of a Car Club which is accredited by Carplus or otherwise approved by the Council in writing who will be responsible for the operation of the Car Club including bookings and charges
"Commencement of Development"	means the earliest date upon which a material operation is begun in accordance with the provisions of section 56 (4) of the Act but for the purposes of this Undertaking only shall not include marking out, ground investigations, site preparation, site clearance works, demolition, remediation works and archaeological investigations, erection of hoardings and fences, site investigations or surveys, decontamination works, diversion and laying services and temporary display of

	advertisements and "Commence the Development" shall be construed accordingly
"CPZ"	means the controlled parking zone GC, GC2 and CW3 or any controlled parking amending or replacing the same
"Development"	means the development of the Property as described in the Planning Application
"Disabled Persons Badge"	means a disabled person's badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970 (or such other legislation as may supersede it and provide for the issue of disabled persons parking badges/permits)
"First Occupation"	means the first Occupation of a specified part of the Development for the purposes permitted by the Planning Permission and references to "First Occupy" and "First Occupied" shall be construed accordingly;
"HSC"	means Head of Sustainable Communities the person the Council shall appoint as Head of Department responsible for planning services for the time being
"Management Monitoring Fee"	means the sum of five hundred pounds (£500) payable by the Owner to the Council towards the costs of administering and monitoring the obligations contained in this Undertaking
"Motor Vehicle"	means any mechanically propelled vehicles intended or adapted for use on a road and/or highway
"Occupy"	means beneficially occupy for purposes permitted by the Planning Permission but not including occupation by persons engaged in construction fitting out or decoration or occupation for advertising marketing or display purposes or occupation in relation to site security and management of the Property (and "Occupies" "Occupiers" "Occupied" and "Occupation" shall be construed accordingly)
"Parking Permit"	means a parking permit (whether for residential or visitor use or for business use) for a Permit Parking Bay
"Permit Parking Bay"	means a parking space whether in a residential parking bay or in a business parking bay) designated by the Council by order under the Road Traffic Regulation Act 1984 the Road Traffic Regulations (Parking) Act 1886 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation)

“Plan”	means the plan attached hereto
“Planning Application”	means the planning application and registered plans under number 20/P1667 for the retention of ground floor level commercial premise (Class E) and the change of use of upper floor to provide 1x self-contained unit (Class C3); demolition of existing warehouses at rear of site and erection of 7x terrace dwellings.
“Planning Permission”	means the planning permission that may be granted pursuant to the Planning Application
“Property”	means land at 293 Mitcham Road and 1C and 1D Links Road, London, SW17 9JQ registered at the Land Registry (with title absolute) under title numbers P146247 and SGL333802 for the purpose of identification shown edged with red on the Plan
“Qualifying Occupier”	means the First Occupier of any Residential Unit and for the avoidance of doubt, in the event that there is more than one Occupier on First Occupation of a Residential Unit, only one person shall qualify as a Qualifying Occupier
“Residential Units”	means the eight (8) residential units to be provided on the Property pursuant to the Planning Application and “Residential Unit” shall be construed accordingly
“Use Classes Order”	means Town and Country Planning (Use Classes) Order 1987 (as amended)
“Working Days”	means any day Monday to Friday inclusive which is not Christmas Day, Good Friday or a statutory Bank Holiday

2. INTERPRETATION

In this Undertaking (except where the context otherwise requires):

- 2.1 Reference to the masculine feminine and neuter genders shall include other genders
- 2.2 Reference to the singular includes the plural and vice versa unless the contrary intention is expressed
- 2.3 Reference to natural persons includes corporations and vice versa

- 2.4 Headings in this Undertaking are for reference purposes only and shall not be taken into account in its construction or interpretation
- 2.5 The expression "Owner" shall include successors in title and assigns and the expression "Council" shall include a successor to its statutory functions
- 2.6 A reference to a clause paragraph or schedule is (unless the context otherwise requires) a reference to a clause paragraph or schedule of this Undertaking
- 2.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of such restriction
- 2.8 Where in this Undertaking a party includes more than one person any obligation of that party shall be joint and several
- 2.9 Any reference in this Undertaking to a statute or to a section of a statute includes any statutory re-enactment or modification of it and any reference to a statutory instrument include any amendment or consolidation of it from time to time and for the time being in force

3. RECITALS

- 3.1 The Owner is the registered proprietor of the freehold title absolute in the Property
- 3.2 The Council is the local planning authority for the purposes of the Act for the Property
- 3.3 The Owner has applied to the Council for full planning permission to redevelop the Property in accordance with the Planning Application
- 3.4 The London Borough of Merton Sites and Policies Plan (2014) provides that the Council will only approve new development where the transport infrastructure can accommodate it or be adapted to it and new development should be acceptable in terms of traffic generation and traffic impact in the road

3.5 The Owner has agreed to enter into this Undertaking so that it may be taken into account as a material consideration in the determination of the Planning Application by the Council

4. STATUTORY AUTHORITY AND LEGAL EFFECT

4.1 This Undertaking is made pursuant to section 106 of the Act and Section 16 of the Greater London Council (General Powers) Act 1974 and section 111 of the Local Government Act 1972 and all other enabling powers and enactments which may be relevant for the purposes of giving validity hereto

4.2 The obligations of the Owner in this Undertaking are planning obligations for the purpose of section 106 of the Act and are enforceable by the Council as local planning authority

4.3 Subject to clause 4.4 the Owner undertakes to the Council in this Undertaking to the intent that the covenants given to the Council in this Undertaking shall be planning obligations and enforceable without limit of time (other than as expressly mentioned in this Undertaking) against the Owner and any person deriving title through or under the Owner to the Property (or any part or parts of it) as if that person had also been an original covenanting party

4.4 Upon parting with all or any interest in the Land no party shall have liability for the breach of any covenant or Planning Obligation in this Undertaking other than in respect of any breach by it at the time when it held such an interest.

4.5 No statutory undertaker shall be bound by any obligations rights and duties contained in this Undertaking and/or be liable for any breach of covenant and/or obligation contained in this Undertaking in respect of any site used only as an electricity substation gas governor station or pumping station

4.6 Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop any part of the Property in accordance with a planning permission (other than the Planning Application) granted (whether or not on appeal) after the date of this Undertaking

4.7 Nothing in this Undertaking shall be construed as restricting the exercise by the Council of any powers exercisable by them under the Act or under any other act or any statutory instrument order or bylaw in the exercise of their function as a local authority

Application
to be taken into

5. CONDITION PRECEDENT

This Undertaking shall come into effect upon the grant of the Planning Permission except the covenants at Schedules 2 and 3 which shall come into effect upon the grant of the Planning Permission and the Commencement of the Development

6. OBLIGATIONS

The Owner Undertakes covenants agrees and declares in respect of the Property as set out in Schedule 1, Schedule 2 and Schedule 3

7. INVALIDITY

It is agreed and declared that if a clause or sub-clause of this Undertaking shall be deemed to be unenforceable or ultra vires the remainder of this Undertaking shall remain in full force and effect provided severance from this Undertaking is possible

8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing contained in this Undertaking shall give or be construed as giving any rights privileges powers or enforceability other than to the Council and to the specific persons executing this Undertaking as the Owner and their successors (if any) as defined in this Undertaking and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Undertaking

9. COSTS

The Owner undertakes to pay to the Council:

- 9.1 prior to or on completion of of this Undertaking the Council's reasonable legal costs up to £950.00 for the preparation and negotiation of this Undertaking.
- 9.2 the Management Monitoring Fee on or before Commencement of Development and not to Commence the Development or cause of permit the Commencement of Development until the Management Monitoring Fee has been paid to the Council

10. REGISTRATION AS A LOCAL LAND CHARGE

This Undertaking shall be registered as a Local Land Charge

11. VARIATION

11.1 The covenants undertakings and restrictions contained in this Deed shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Deed by or on behalf of the relevant parties hereto or by a subsequent deed of variation

11.2 This Deed shall continue to be valid and enforceable following an amendment or variation to the Planning Permission achieved through the submission of the Planning Application pursuant to Section 73 of the Act as if this Deed had been completed pursuant to such an application

12. JURISDICTION

This Undertaking is governed by and shall be interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

SCHEDULE 1

The Owner Undertakes to the Council as follows:

1. Notification of Commencement

1.1.1 to give the HSC notice in writing:

1.1.2 no later than seven (7) days prior to the anticipated Commencement of the Development and a further written notice of the Commencement Date within seven (7) days occurrence of the same

1.1.3 within seven (7) days of applying to the Council for new addresses for each Residential Unit

1.1.4 within seven (7) days of the Council allocating address numbers for each Residential Unit

SCHEDULE 2
(Restriction on applying for Parking Permits)

The Owner UNDERTAKES TO the Council as follows:

1. That any Occupier of a Residential Unit will not be entitled to a Parking Permit for the CPZ established by the Council for the area on which the Property is situated unless the Occupier is or becomes the holder of a Disabled Persons Badge and has first notified the Council in writing of such entitlement; and:
 - 1.1 upon the first and any subsequent disposition of the Residential Unit the Residential Occupier shall within 10 Working Days of taking up use and/or Occupation of the Residential Unit notify the Council in writing of the change in occupancy thereof; and
 - 1.2 shall procure that the restrictions set out in paragraph 1 above of this Schedule are included in any lease option licence or other disposal of the Residential Unit to any person
2. Upon receipt of a written request from the Council to provide to the Council such information as the Council may reasonably require to enable it to be satisfied as to compliance with the provisions of this Schedule.

SCHEDULE 3
(Car Club Membership)

The Owner UNDERTAKES to the Council as follows:

- 1.1 Prior to the First Occupation of any Residential Unit to use reasonable endeavours to enter into a contract with a Car Club Operator to provide a Car Club Membership to each Residential Unit.
- 1.2 To supply the Council with a copy of the said contract or other satisfactory evidence of a binding agreement having been entered into by the Owner with the Car Club Operator
- 1.3 To procure that the Car Club Operator shall provide Car Club Membership to each Residential Unit for a period of three (3) years calculated from the First Occupation of such Residential Unit.
- 1.4 Without prejudice to the generality of paragraph 1.3 of this Schedule:
 - 1.4.1 upon the First Occupation of every Residential Unit to notify the Qualifying Occupier thereof of his/her entitlement to Car Club Membership with effect from such First Occupation; and
 - 1.4.2 In every case where a Qualifying Occupier of a Residential Unit applies to join the Car Club (in the event that the membership fee has not already been paid by virtue of the contract entered into pursuant to paragraph 1.1) to procure that the Car Club Membership shall be paid by the Owner to the Car Club Operator; and
 - 1.4.3 To use reasonable endeavours to promote the Car Club within the Development including:
 - (a) (from time to time) informing estate and lettings agents responsible for marketing the Residential Units of the identity of the Car Club Operator and the availability of Car Club Membership to Qualifying Occupiers; and
 - (b) publicising details of the Car Club within the marketing materials for the Residential Units.
- 1.5 At any time (and from time to time) during the period commencing upon the First Occupation of the first Residential Unit and ending on the date three (3) years after the First Occupation of the last Residential Unit to be occupied (and upon being requested to do so by the Council) to provide evidence to the Council that it has

offered Car Club Membership to each Residential Unit in accordance with the provisions of this Schedule together with evidence of the payment of Car Club Membership to the Car Club Operator (in respect of Occupiers who have applied to join the Car Club)

1.6 In the event that the Car Club Operator is no longer able to provide the Car Club for the Development the Owner shall notify the HSC in writing and shall then use all reasonable endeavours to secure another Car Club Operator for the Development in accordance with the provisions of this Deed

IN WITNESS WHEREOF THIS AGREEMENT has been executed as a Deed by the parties hereto and is intended to be and is hereby delivered on the date first before written


Executed as a deed by
A.B. CARPETS LIMITED

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) 

Director JOEL DAVID Bushaway

acting by)

a director in the presence of:)

Witness signature: 

Witness name: KEVIN MOORE

Witness address: CEEDAR HOUSE, 95 CASTLE AVENUE, EWELL, SURREY, KT17 2PS

Witness occupation: INDEPENDENT FINANCIAL ADVISER