

Deed of Variation

Pursuant to Section 106A of the Town and Country Planning Act 1990

In respect of: Land at Sinah Lane, Hayling Island

Between: The Council Of The Borough Of Havant (1)
Hampshire County Council (2)
BDW Trading Limited (3)

Dated

2023

Osborne Clarke LLP

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BETWEEN

- together referred to as "the **Parties**"

WHEREAS:

1. The Council and the County Council are the local planning authorities for the purposes of the Act for the area within which the Residential Development Land (as defined in the Original Agreement) is situated and is the authority by whom the planning obligations contained in this Deed are enforceable
2. The Owner is the freehold owner of the Residential Development Land which is registered at the Land Registry under Title Number SH56832
3. The Original Agreement was entered into on 28 June 2021 in relation to the Planning Permission
4. The parties hereto now agree to vary the Original Agreement to remove the obligation to vary the triggers for delivery of the Community Orchard One and Open Space Land forming part of Phase 1 (as defined in the Original Agreement) on the Residential Development Land subject to the terms of this Deed
5. The parties to this Deed being the parties that are interested in the land for the purposes of section 106 and 106A of the Act at the date of this Deed have agreed pursuant to section 106A of the Act to vary the Original Agreement on the terms set out in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

- 1.1** In this Deed where the context so admits all expressions shall have the meanings given to them by the Original Agreement save that the following expressions shall have the following meanings:

“Original Agreement” the agreement made under Section 106 of the Act dated 28 June 2021 and made between (1) the Council; (2) the County Council; (3) Hayling Island Builders Limited; (4) the Owner; and (5) The Royal Society for the Protection of Birds

"Planning Permission"	means the conditional planning permission granted on 30 June 2021 for <i>"erection of 195 dwellings, associated open space, pumping station, sub-station and formation of new vehicular access off Sinah Lane. Change of use of land from agricultural to a Wader and Brent Geese Refuge Area"</i> under application reference APP/20/01093
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2 CONSTRUCTION OF THIS DEED

- 2.1 The definitions and rules of interpretation in this Clause apply in this Deed.
- 2.2 All references in this Deed to Clauses in the Original Agreement are to Clauses within the Original Agreement.
- 2.3 Clause headings shall not affect the interpretation of this Deed.
- 2.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.5 A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7 A reference to a party shall include that party's representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 2.8 A reference to a statute or statutory provisions is a reference to it as it is in force at the date of this Deed and shall include any subordinate legislation made under the statute or statutory provision.
- 2.9 References to clauses, schedules and plans (unless the context otherwise requires) are to clauses, schedules and plans of this Deed.
- 2.10 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to all powers enabling the parties and in particular Section 106 and 106A of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling acts with the intention that it binds all owners' interests in the Land and their successors in title.
- 3.2 The obligations imposed upon the Owner contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council in the manner set out in the Original Agreement.
- 3.3 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its function and its rights, powers, duties and obligations under all public private statutes, byelaws and regulations may be as fully and effectively exercised as if they were not a party to this Deed.
- 3.4 The parties agree that the Original Agreement shall remain in full force and effect save as expressly varied by this Deed.
- 3.5 It is hereby agreed by the parties that the variation contained at Clause 4 of this Deed shall take effect from the date of this Deed as though it had originally been contained in the Original Agreement.

4 VARIATION TO THE ORIGINAL AGREEMENT

- 4.1 In respect of the Residential Development Land only, paragraph 3.1 of Schedule 5 of the Original Agreement shall be deleted in its entirety and replaced as follows:

3 OPEN SPACE LAND

- 3.1 *Not to Occupy or permit Occupation of more than 190 Dwellings until the Open Space Land forming part of Phase 1 has been completed in accordance with the details approved in writing by the Council*

5 REGISTRATION

This Deed shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council.

6 COSTS

On execution of this Deed the Owner shall pay the Council's and the County Council's reasonable legal costs in connection with the negotiation and completion of this Deed.

7 GOVERNING LAW

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

8 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Deed 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.

IN WITNESS whereof this instrument has been executed as a Deed the date and year first before written

EXECUTED AS A DEED by affixing
THE COMMON SEAL of
THE COUNCIL OF THE BOROUGH OF HAVANT
In the presence of:

.....
Authorised Signatory

EXECUTED as a **DEED** by affixing
THE COMMON SEAL of
HAMPSHIRE COUNTY COUNCIL
in the presence of

Authorised Signatory

Name

Position

EXECUTED AS A DEED by
BDW TRADING LIMITED
acting by

and

as the Attorneys in the name of BDW Trading Limited in exercise of the power
Conferred upon them by a Power of Attorney dated
In the presence of:

.....
SIGNATURE OF ATTORNEY

.....
SIGNATURE OF WITNESS

Witness Name:

Witness Address:

.....

Witness Occupation:

.....
SIGNATURE OF ATTORNEY

.....
SIGNATURE OF WITNESS

Witness Name:

Witness Address:

.....

Witness Occupation: