

DATE

3 March

2021

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) DOLPHIN QUAY LLP

and

(3) NATIONAL WESTMINSTER BANK PLC

DEED OF VARIATION

**PURSUANT TO SECTION 106 AND 106A OF THE TOWN AND
COUNTRY PLANNING ACT 1990**

relating to a section 106 Agreement dated 10 December 2018 in respect of the development on land
at Dolphin Quay, Queens Street, Emsworth

THIS DEED OF VARIATION is dated

3 March

2021

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);
2. **DOLPHIN QUAY LLP** a body corporate registered in England and Wales with number OC424886 and whose registered office is at Oatscroft, Heyshott, Midhurst, United Kingdom, GU29 0DZ (**"Owner"**); and
3. **NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY** a company registered in England and Wales with company number 00929027 and whose registered office is at 250 Bishopsgate, London, England, EC2M 4AA (**"Mortgagee"**); *AND WHOSE ADDRESS FOR SERVICE IS CREDIT DOCUMENTATION, POBOX 339, MANCHESTER M60 2AH*

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated.
- (B) The Owner is the freehold owner the Land registered at the Land Registry under title numbers SH37434 and HP191786.
- (C) The Mortgagee is the proprietor of a registered charge dated 17 September 2019 referred to in entry number 2 of the charges register of title number HP191786, and is the proprietor of a registered charge dated 17 September 2019 referred to in entry number 2 of the charges register of title number SH37434.
- (D) On the 10 December 2018 an agreement was entered into pursuant to section 106 of the Act between (1) David Henry Still, (2) Wilson House Limited and (3) the Council which secured planning obligations to regulate the Development (**"Original Agreement"**).
- (E) The Owner has submitted an application with reference APP/20/00695 for permission to amend the trigger for the second instalment of the Affordable Housing Contribution to delay payment as a consequence of the impact of the Covid-19 pandemic upon the delivery of the Development.
- (F) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed and the Mortgagee consents to this deed.
- (G) This agreement is made under section 106A of the Act and is supplemental to the Original Agreement.

The parties agree as follows:

1 DEFINITIONS

- 1.1 From the date of this deed unless the context otherwise requires, the following definitions shall apply to this deed:

“Original Agreement”

means the agreement dated 10 December 2018 entered into pursuant to section 106 of the Act between (1) David Henry Still, (2) Wilson House Limited and (3) the Council which secured planning obligations to regulate the Development.

2 INTERPRETATION

- 2.1 Save where expressly stated otherwise, all words and phrases used in this deed shall have the same meaning assigned to them as in the Original Agreement.
- 2.2 Clause and paragraph headings shall not affect the interpretation of this deed.
- 2.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.6 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 2.7 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.8 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.9 Unless the context otherwise requires, references to clauses are to the clauses of this deed.
- 2.10 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.11 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 STATUTORY PROVISIONS

- 3.1 This deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 3.2 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 VARIATIONS TO THE ORIGINAL AGREEMENT

- 4.1 From and including the date of this deed the Original Agreement shall be amended in the manner as set out in this clause 4.

- 4.2 Paragraph 2.3 of the First Schedule to the Original Agreement shall be deleted and replaced with a new paragraph 2.3 as set out below:

2.3 *To pay or cause to be paid to the Council the Affordable Housing Contribution in the following proportions:*

2.3.1 *as to 25% thereof upon commencement of the construction of the foundations (after piling) in respect of the Development;*

2.3.2 *as to 25% on or before the 31 March 2021;*

2.3.3 *as to the balance of 50% upon the Occupation of 50% of the Dwellings.*

- 4.3 Save as expressly provided in this deed it is hereby agreed and declared between the parties that this deed is supplemental to and not in substitution for the Original Agreement and that the terms of the Original Agreement will continue in full force and effect, subject only to the provisions of this deed.

5 OWNER'S COVENANTS

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

6 MORTGAGEES CONSENT

- 6.1 The Mortgagee consents to the completion of this deed and declares that its interest in the Land shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee interest in the Land.
- 6.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless such breach is committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land in which case the Mortgagee shall be bound by the obligations in this deed as if the Mortgagee had been the owner at the time that it was executed.

7 COUNCIL'S COSTS

The Owners shall pay to the Council on or before the date of completion of this deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

8 THIRD PARTY RIGHTS

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this deed is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to this deed and their successors in title.

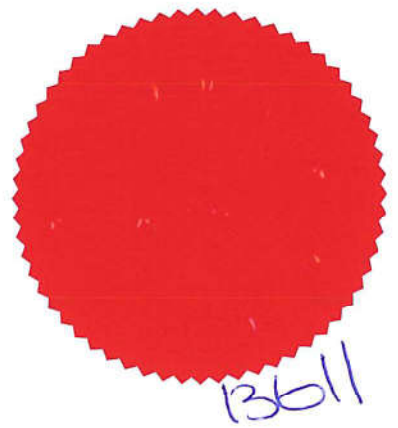
9 GOVERNING LAW

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.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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 DOLPHIN
QUAY LLP acting by a director in the
presence of

Witness sign:

Witness print name:

Witness print address

SIGNED & DELIVERED AS A DEED FOR & ON BEHALF OF
~~EXECUTED as a DEED by~~
NATIONAL WESTMINSTER BANK PLC
~~Acting by its Attorney~~ *By A duly AUTHORIZED*
[*ATTORNEY*]

In the presence of:

