

DATED 2ND OCTOBER 2020

(1) CHARLES FOSTER GLANVILLE

and

(2) LADY PIPPA JANE BLAKE, CHARLES FOSTER GLANVILLE and

SARAH LOUISE BURNET

and

(3) EXECUTORS OF JUDITH ANNE GLANVILLE

TO

THE COUNCIL OF THE BOROUGH OF HAVANT

UNILATERAL UNDERTAKING

made pursuant to Section 106 Town and Country Planning Act 1990
relating to land at Fowley Cottage, 46 Warblington Road, PO10 7HH

THIS UNILATERAL UNDERTAKING is made by DEED on 2ND OCTOBER 2020

BETWEEN:

1. **CHARLES FOSTER GLANVILLE** of 27 Albert Square, London SW8 1DA (**First Owner**);
2. **LADY PIPPA JANE BLAKE** of Longshore, 3 Western Parade, Emsworth PO10 7HS and **CHARLES FOSTER GLANVILLE** of 27 Albert Square, London SW8 1DA and **SARAH LOUISE BURNET** of Stuckenduff, Shandon, Helensburgh G84 8NW (**Second Owners**); and
3. **LADY PIPPA JANE BLAKE** of Longshore, 3 Western Parade, Emsworth PO10 7HS and **CHARLES FOSTER GLANVILLE** of 27 Albert Square, London SW8 1DA and **SARAH LOUISE BURNET** of Stuckenduff, Shandon, Helensburgh G84 8NW as the Executors of the estate of **JUDITH ANNE GLANVILLE** (**Third Owner**).

TO:

THE COUNCIL OF THE BOROUGH OF HAVANT of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated and is entitled to enforce the obligations contained in this Agreement.
- (B) The First Owner is the freehold owner of that part of the Land registered at the Land Registry under title numbers SH45958 and SH52897.
- (C) The Second Owners are the freehold owners of that part of the Land registered at the Land Registry under title numbers SH22967 and SH22968.
- (D) The Third Owner is the freehold owner of that part of the Land registered at the Land Registry under title number SH22966.
- (E) The Application has been submitted to the Council by the First Owner for permission to develop the Land in accordance with the Planning Permission.
- (F) On the 29 April 2020 the Council refused the Application and on 22 May 2020 the First Owner submitted the Appeal.
- (G) The Council considers that planning obligations are required to be secured to mitigate the impact of the proposed Development on the Solent Special Protection Areas.
- (H) In contemplation of the Secretary of State allowing the Appeal and granting the Planning Permission, the Owners enter into this deed in favour of the Council with the intention that the obligations contained in this deed may be enforced by the Council against the Owners and their successors in title.

The parties agree as follows:

1 DEFINITIONS

From the date of this deed unless the context otherwise requires, the following definitions apply:

“Act”	means the Town and Country Planning Act 1990.
“Appeal”	means the appeal submitted to the Secretary of State and given reference APP/X1735/W/20/3252953.
“Application”	means the application for planning permission submitted by the First Owner to the Council for the Development and given the Council’s reference number APP/19/00623.
“Commencement of Development”	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of: site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, site survey works and “Commence” and similar expressions shall be construed accordingly.
“Development”	means the retention of the existing 'Fowley Cottage' dwelling and construction of 7No. detached dwellings, two on the Warblington Road frontage and five to the rear garden area. Access to Plot 5 to be taken off Warblington Road with access to Plots 1-4, 6 and 7 to be taken off Curlew Close and in accordance with the Planning Permission.
“Expert”	means an independent and suitable person holding appropriate professional qualifications and of at least 10 years’ post qualification experience in the area of expertise relevant to the dispute and appointed in accordance with the provisions of clause 6, to determine a dispute.
“Index Linked”	means increased in accordance with the following formula: Amount payable = the payment specified in this deed x (A/B) where: A= the last figure published for RPI that applied immediately preceding the date that payment was due B= the last figure published for RPI that applied immediately prior to the date of this deed.
“Interest”	means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time.
“Land”	means the freehold property known as Fowley Cottage, 46 Warblington Road, Emsworth, PO10 7HH and shown edged red on the Plan and registered at the Land Registry with title numbers SH45958, SH52897, SH22966, SH22967 and SH22968.

"Owners"	means the First Owner, Second Owners and Third Owner together.
"Plan"	means the plan attached as Appendix 1 to this deed with drawing number 15048-RFT-00-XX-DR-A-0124 revision P02.
"Planning Permission"	means the conditional planning permission that may be granted in pursuance of the Application.
"RPI"	means the Retail Price Index published by the Office of National Statistics.
"Solent Recreation Mitigation Partnership"	means the partnership of local planning authorities bordering the Solent formed to develop the Solent Recreation Mitigation Strategy.
"Solent Recreation Mitigation Strategy (SRMS)"	means the framework to mitigate potential impacts on the Solent Special Protection Area from increased visitor pressure arising from housebuilding adopted by the Solent Recreation Mitigation Partnership in December 2017 which came into effect on 1 April 2018.
"Solent Special Protection Areas"	means the Special Protection Areas (designated under the Wildlife and Countryside Act 1981) in the Solent covered by the Solent Recreation Mitigation Strategy.
"SRMS Contribution"	means the sum of £5,551.30 Index Linked or calculated in accordance with the formula set out at Appendix 2 to this deed (whichever is greater) and payable as a contribution towards measures to mitigate against the impact of the Development on the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy.
"Working Day"	means a day other than a Saturday, Sunday or public holiday in England.

2 INTERPRETATION

- 2.1 The clause headings in this deed 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 Agreement, 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.
- 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 Agreement 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 Land include any part of it.
- 2.8 References to any party in this deed include the successors in title of that party and any reference to the Council include any successor local planning authority exercising planning powers under the Act.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owners not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, 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 the Agreement shall be unaffected.

3 STATUTORY PROVISIONS

- 3.1 This deed is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
- 3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of those sections of the Act and are enforceable by the Council.
- 3.3 Nothing in this deed restricts or is intended to restrict the proper exercise at any time by the Council of any of their statutory powers, functions or discretions in relation to the Land or otherwise.
- 3.4 This deed shall have effect from the date hereof.

4 OWNERS COVENANTS

The Owners covenant with the Council to comply and perform their covenants, restrictions and obligations as set out within this Agreement.

5 COSTS OF THIS DEED

The Owners shall on or before completion of this deed pay to the Council its reasonable legal costs incurred in connection with the preparation, negotiation and registration of this deed.

6 DETERMINATION OF DISPUTES

- 6.1 Subject to clause 6.7, if any dispute arises relating to or arising out of the terms of this deed, either party may give to the other not less than ten Working Days written notice requiring the dispute to be determined under this clause 6. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

- 6.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.
- 6.3 The Expert shall act as an independent expert and:
- 6.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;
 - 6.3.2 each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
 - 6.3.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 6.3.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
 - 6.3.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and
 - 6.3.6 the Expert shall use all reasonable endeavours to publish his decision within thirty Working Days of his appointment.
- 6.4 Responsibility for the costs of referring a dispute to an Expert under this clause 6, including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.
- 6.5 This clause 6 does not apply to disputes touching or concerning the construction or interpretation of this deed which will be subject to the jurisdiction of the courts.
- 6.6 The provisions of this clause 6 shall not affect the ability of the Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this deed and consequential and interim orders and relief.

7 LOCAL LAND CHARGE

This deed is a local land charge and is to be registered as such by the Council.

8 INDEXATION

- 8.1 The SRMS Contribution shall be Index Linked.
- 8.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owners in writing.

9 INTEREST

If the SRMS Contribution due under this deed is paid late then Interest will be payable from the date payment is due until the date of payment.

10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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 his deed and the Council and their successors in title.

11 TERMINATION

11.1 The obligations in this deed (with the exception of clause 5) shall cease to have effect if before the Commencement of Development, the Planning Permission:

11.1.1 expires;

11.1.2 is revoked other than at the request of the Owner; or

11.1.3 is quashed following a successful legal challenge.

12 FUTURE PERMISSIONS

12.1 Subject to clause 12.2, nothing in this deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

12.2 This deed shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission or subsequent permission granted under such powers (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council or the circumstances at clause 11.1.2 arise.

13 JURISDICTION

13.1 This Agreement shall be governed by and interpreted in accordance with the law of England.

13.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

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.

Signed as a deed by **CHARLES FOSTER**
GLANVILLE for himself as Executor of
JUDITH ANNE GLANVILLE

In the presence of:

Name

Address

Occupation

WITNESS

Signed as a deed by **LADY PIPPA JANE
BLAKE** for herself and as Executrix of **JUDITH
ANNE GLANVILLE**

[Redacted Signature]

In the presence of:

Name [Redacted]
Address [Redacted]

[Redacted Signature]

Occupation [Redacted]

[Redacted]

WITNESS

Signed as a deed by **SARAH LOUISE
BURNET** for herself and as Executrix of
JUDITH ANNE GLANVILLE

[Redacted]

In the presence of:

Name

Address

[Redacted]

Occupation

WITNESS

SCHEDULE

Owners covenants

The Owners covenant:

1 COMMENCEMENT

To give to the Council not less than 10 Workings Days written notice of their intention to Commence Development.

2 SRMS CONTRIBUTION

Not to Commence or permit Commencement of Development until it has paid the SRMS Contribution to the Council.

APPENDIX 1

PLAN

Ordnance Survey
Ukmapcentre.com



revisions

P01	6/11/2019
P02	9/24/2020

Red line corrected

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drawn by
RP
checked by
MS

date
Sept 2019
scale at A3
1:1250

project title
46 Warblington Road
document title
Location Plan

status
S1
drawing number
15048-RFT-00-XX-DR-A-0124

drawing status
Suitable for Co-ordination
revision
P02

RE-
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MAT



revisions

P01 6/11/2019
P02 9/24/2020

Red line corrected

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RP
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date
Sept 2019
scale at A3
1:1250

project title
46 Warblington Road
drawing title
Location Plan

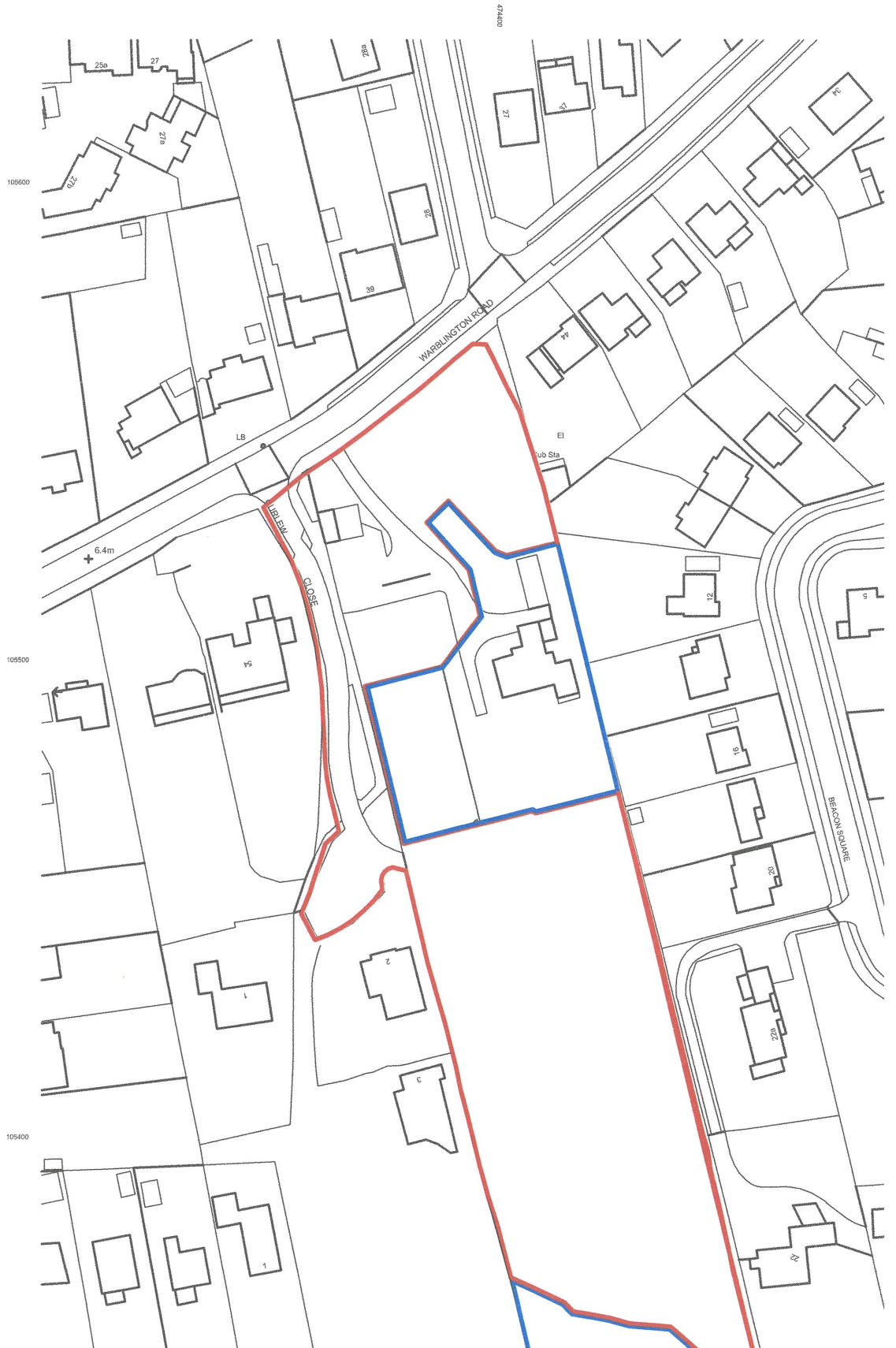
status
S1

drawing number
15048-RFT-00-XX-DR-A-0124

drawing status
Suitable for Co-ordination

revision
P02

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30/9/20

APPENDIX 2

SRMS CONTRIBUTION FORMULA

In this deed the SRMS Contribution is calculated in accordance with the following formula:

$$\text{SRMS Contribution} = (A \times B) \times C$$

Where:

- A = the number of dwellings at the applicable bedroom rate given in the table below
- B = the applicable bedroom rate given in the table below determined in accordance with the number of bedrooms per dwelling
- C = the monitoring fee calculated at 5% of the total of A x B

Solent Mitigation Contribution Rates (Index Linked)	
A	Applicable Bedroom Rate (B)
No. of dwellings with 1 bedroom	£356
No. of dwellings with 2 bedrooms	£514
No. of dwellings with 3 bedrooms	£671
No. of dwellings with 4 bedrooms	£789
No. of dwellings with 5+ bedrooms	£927