

DATE 2 OCTOBER 2020

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) PHILIP DYMOKE WHITE, FIONA ELIZABETH WHITE AND ALEXANDER

STUART DYMOKE WHITE

**DEED OF VARIATION
PURSUANT TO SECTION 106 AND 106A OF THE TOWN AND
COUNTRY PLANNING ACT 1990**
relating to a Section 106 Agreement dated 7 October 1992 relating to land to the north
of Barton Road, Havant

THIS DEED OF VARIATION is dated

2 OCTOBER

2020

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**); and
2. **PHILIP DYMOKE WHITE, FIONA ELIZABETH WHITE AND ALEXANDER STUART DYMOKE WHITE** of Chidden Farmhouse, Chidden, Hambledon, Hampshire PO7 4TD the trustees of PD White (**Owners**).

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 Owners are the trustees for the freehold owner of the Land.
- (C) Philip White, on behalf of the Owners, has submitted the Application for planning permission for the Development to the Council.
- (D) The Land is currently bound by the terms of the Composite Agreement.
- (E) Clause 2 of the Composite Agreement prohibits new buildings from being constructed on the Land together with other land and restricts the use to open use.
- (F) By supplemental agreement dated 26th September 1995 and made between (1) Richard Charles Kirby and Peter Richard Wingate Pemberton and (2) the Council the parties thereto agreed inter alia to vary the provisions of the Original Agreement to substitute Plan 2, revoke clause 6, amend provisions within the conveyance attached to the Original Agreement and replace wording in clause 10.3 of the Original Agreement (**1995 Supplemental Agreement**).
- (G) By supplemental agreement dated 29th March 1996 and made between (1) the Council (2) Portsmouth Housing Association Limited and (3) Hermitage Housing Association Limited the parties thereto agreed inter alia to vary the provisions of the Original Agreement as varied by the 1995 Supplemental Agreement so as to acknowledge the roadworks obligations being satisfied and to confirm that once the land transfers occur the obligations within clause 10 shall be rendered null and void and the restrictions on commencement under clause 8 shall not apply and to acknowledge that the Council had completed and signed the application referred to in clause 3(a).
- (H) By supplemental agreement dated 4th April 1996 and made between (1) Richard Charles Kirby and James Westwood Squier and (2) the Council the parties thereto agreed inter alia to vary the provisions of the Original Agreement as varied by the supplemental agreements referred to at Recitals (F) and (G) to declare that clause 10 of the Original Agreement (as varied) was null and void and ceased to take effect and to secure the connection of certain land to the existing public highway.
- (I) By supplemental agreement dated 19 February 2004 and made between (1) Richard Charles Kirby and James Westwood Squier (2) Ideal Homes Limited and (3) the Council the parties thereto agreed to vary the provisions of the Original Agreement as varied by the supplemental agreements referred to at Recitals (F) to (H) in relation to the provision of a footpath.

- (J) By supplemental agreement dated 31 October 2012 and made between (1) the Council (2) Southern Co-operative Properties Limited (3) Richard Charles Kirby and Philip Dymoke White the parties thereto agreed inter alia to vary the provisions of the Original Agreement as varied by the supplemental agreements referred to at Recitals (F) to (I) to release certain land (as defined by that agreement) from being bound by the provisions of the Original Agreement (as varied).
- (K) By supplemental agreement dated 8 April 2015 and made between (1) the Council and (2) the Owners, the parties thereto agreed inter alia to vary the provisions of the Original Agreement as varied by the supplemental agreements referred to at Recitals (F) to (J) to release the land (as defined in that agreement) from being bound by the provisions of the Original Agreement (as varied).
- (L) By an agreement made pursuant to section 106 and section 106A of the Act dated 23 November 2016 between (1) the Owners, (2) the Council and (3) the County Council, the parties thereto agreed inter alia to release the land (as defined by that agreement) from the provisions of the Original Agreement as varied by the supplemental agreements referred to at Recitals (F) to (K).
- (M) Without prejudice to the terms of the other covenants contained in the Original Agreement as varied by the Supplemental Agreements the parties hereto have agreed to modify the Composite Agreement in order to release the Land from the provisions of the Composite Agreement to enable the Development to proceed.
- (N) This Deed of Variation is made under section 106A of the Act and is supplemental to the Composite Agreement.

AGREED TERMS

1 DEFINITIONS

- 1.1 In this Deed of Variation unless the context otherwise requires the following words and expressions shall have the following meanings:

“Act”	means the Town and Country Planning Act 1990 (as amended).
“Application”	means the application submitted to the Council with reference number APP/19/00007 for the Development.
“Composite Agreement”	means the Original Agreement as varied by the Supplemental Agreements.
“Deed of Variation”	means this deed of variation.

“Development”	means the construction of 72 dwellings plus associated access and landscaping in accordance with the Planning Permission.
“Land”	means that part of the land falling within the Council’s administrative boundary and known as Camp Field being land to the west of Havant Crematorium and on the north side of Barton’s Road and registered at the Land Registry with title number SH34071 together with other land and shown coloured blue on the Plan.
“Original Agreement”	means the agreement entered into between (1) Richard Charles Kirby and Peter Richard Wingate Pemberton and (2) the Council in relation to the development of land west of Southleigh Road and North of Rowan Road, Havant, Hampshire, pursuant to section 106 of the Act and dated 7 October 1992.
“Plan”	mean the plan with drawing number 089 PL 01 annexed to this Deed of Variation.
“Planning Permission”	means the conditional planning permission that may be granted by the Council in pursuance of the Application.
“Supplemental Agreements”	means the supplemental agreements referred to in recitals (F) to (L) inclusive.

2 INTERPRETATION

- 2.1 Save where expressly stated otherwise the words and expressions used in this Deed of Variation shall have the meaning assigned to them as in the Composite Agreement.
- 2.2 The clause and paragraph headings in this Deed of Variation are for reference only and do not affect its construction or interpretation.
- 2.3 References to clauses, paragraphs and Schedules are to the clauses, paragraphs and Schedules of this Deed of Variation, unless stated otherwise.
- 2.4 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.5 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.6 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.



- 2.7 Unless this Deed of Variation 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.
- 2.8 References to the Land include any part of it.
- 2.9 References to any party in this Deed of Variation include the successors in title of that party and any references to the Council include any successor local planning authority exercising planning powers under the Act.
- 2.10 References to "including" mean "including, without limitation".
- 2.11 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.
- 2.12 Where two or more people form a party to this Deed of Variation, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.13 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed of Variation shall be unaffected.

3 STATUTORY PROVISIONS

- 3.1 This Deed of Variation is made pursuant to section 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 of Variation 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 COMPOSITE AGREEMENT

- 4.1 From and including the date of this Deed of Variation the Composite Agreement shall be read and construed as varied by the provisions of this clause 4.
- 4.2 The Land shall be excluded from the definitions "Plan 1" and "Restricted Land" as contained within the Composite Agreement with the effect that from the date of this Deed of Variation the Land is released from the Composite Agreement and the obligations contained within the Composite Agreement will no longer be binding upon the Land.
- 4.3 Except as provided in this Deed of Variation, it is agreed between the parties that this Deed of Variation is supplemental to and not in substitution for the Composite Agreement and that the terms of the Composite Agreement will continue in full force and effect, subject only to the provisions of this Deed of Variation.

5 COVENANTS TO THE COUNCIL

The Owners covenant to observe and perform the covenants restrictions and obligations contained in the Composite Agreement as varied by this Deed of Variation.

6 COSTS

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

7 LAND CHARGES

This Deed of Variation shall be registered as a local land charge by the Council.

8 THIRD PARTY RIGHTS

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Deed of Variation 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 of Variation and their successors in title.

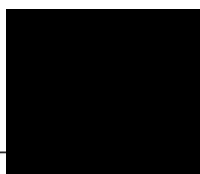
9 GOVERNING LAW

This Deed of Variation 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.

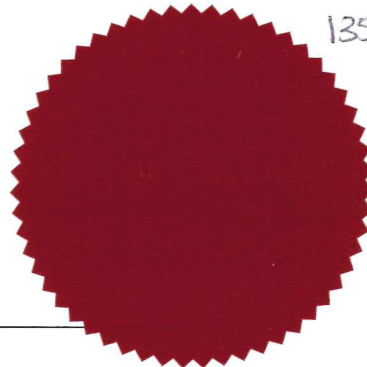
IN WITNESS whereof the parties hereto have sealed and/or executed this document as a deed the day and year first before written.

**EXECUTED as a DEED by affixing
THE COMMON SEAL of THE
COUNCIL OF THE BOROUGH OF HAVANT**

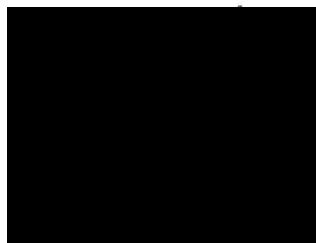
in the presence of:

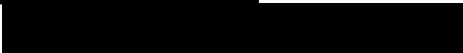


Authorised Signatory



Signed as a DEED by)
PHILLIP DYMOKE WHITE as TRUSTEE)
for PD WHITE in the presence of)
)



Name: 
Address: 
Occupation: 

Signed as a DEED by)

FIONA ELIZABETH WHITE as)

TRUSTEE for PD WHITE in the)

presence of)

Name:

Address:

Occupation:

Signed as a DEED by)

ALEXANDER STUART DYMOKE WHITE)

as TRUSTEE for PD WHITE)

in the presence of)

Name:

Address:

Occupation: