

Dated

3rd February 2014

ANKERS AND RAWLINGS DEVELOPMENTS LIMITED

and

LINDEN LIMITED

and

HAVANT BOROUGH COUNCIL

and

HSBC BANK PLC

AGREEMENT

**Under Section 106 of the Town and Country
Planning Act 1990 (as amended)**

relating to land at
Havant Retail Park, Portsdown Hill Road,
Havant, Hampshire

Planning Application Ref: APP/13/00266

DAC Beachcroft LLP
100 Fetter Lane London EC4A 1BN UK
tel: +44 (0) 20 7242 1011 fax: +44 (0) 20 7831 6630
DX 45 London
Ref: KALY/LIN545- 0892982

THIS DEED is made the 3rd day of

February

2014

BETWEEN

- (1) **ANKERS AND RAWLINGS DEVELOPMENTS LIMITED** (Company Registration Number 01217177) whose registered office is at Unit 5, Mitchell Road, Fernside Park, Ferndown Industrial Estate, Ferndown, Dorset BH21 7SG ("the Owner"); and
- (2) **LINDEN LIMITED** (Company Registration Number 01108676) whose registered office is at Cowley Business Park Cowley Uxbridge Middlesex UB8 2AL ("the Developer")
- (3) **HAVANT BOROUGH COUNCIL** of Public Service Plaza Civic Centre Road Havant Hampshire PO9 2AX ("the Council")
- (4) **HSBC BANK PLC** (Company Registration Number 14259) whose registered office is situated at Level 24 8 Canada Square London E14 5HQ but whose address for the purposes of this Deed is Sheffield Securities Processing Centre PO Box 3924 Sheffield S1 9BD ("the Mortgagee")

RECITALS

- A. This Deed contains planning obligations for the purposes of Section 106 of the Town and Country Planning Act 1990 (as amended) and all other powers enabling the parties hereto
- B. The Owner is the freehold owner of the Land which is registered at Land Registry under Title Number HP306963 subject to the Charge in favour of the Mortgagee
- C. The Developer has entered into a contract with the Owner dated 20 June 2013 to acquire the Land
- D. The Council is the Local Planning Authority for the purposes of Part III of the Act for the area in which the part of the Land edged red on the Plan is situated and as such is the local planning authority entitled to enforce the planning obligations hereinafter recited
- E. The Mortgagee has the benefit of the Charge and consents to the Owner entering into this Deed
- F. The Developer and the Owner have submitted the Application to the Council
- G. The Council has resolved on 21 November 2013 to grant the Planning Permission subject to the prior completion of this Deed to secure the planning obligations contained herein

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

"the Act"	means the Town and Country Planning Act 1990 as amended inter alia by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004
"Affordable Housing"	means housing which is rented or sold (including an equity share in whole or part) below market levels by means of public or private subsidies such that it can be afforded by those whose incomes are insufficient for them to afford adequate housing locally on the open market.
"Affordable Housing Contribution"	means the sum of £118,543 Index Linked to be applied by the Council towards the provision of Affordable Housing in the Borough of Havant
"the Application"	means the planning application reference number APP/13/00266 registered on 5 April 2013 in respect of the Land
"the Charge"	means the legal charge over the Land dated 27 August 2010 in favour of the Mortgagee
"Commencement"	means the date on which the Development commences by the carrying out on the Land pursuant to the Planning Permission of a material operation within the meaning of section 56(4) of the 1990 Act save that for the purposes of this Deed only, the following activities shall not be a material operation: • site investigations or surveys (including archaeological works); • site decontamination or other remedial works in respect of adverse ground conditions; • erection of any hoarding and any temporary means of enclosure • erection of a construction works compound and associated storage • construction of an access for the purposes of carrying

out the construction works;

- the temporary display of site notices or advertisements
- works for the provision of drainage or other utility services to prepare the Land for development
- erection of tree protection measures and associated tree surgery works

and "Commence" and "Commenced" shall be construed accordingly

"Common Parts"	means the parts of the Land which do not comprise a Dwelling or the curtilage of a Dwelling and shall without prejudice to the generality thereof include the roads, communal parking areas, footways, footpaths and landscaped areas and drainage thereof
"Community Projects Contribution "	means the sum of £30,000 Index Linked to be applied by the Council towards the provision of sports and built leisure projects within the Borough of Havant
"County Council"	means Hampshire County Council, The Castle, Winchester, Hampshire. SO23 8UJ
"Default Interest Rate"	means 4% per annum above the Base Rate. Base Rate being the base rate from time to time of Nat West Bank plc
"the Development"	Demolition of existing buildings and construction of 86 dwellings consisting of 9No. 1 bed flats, 28No. 2 bed flats, 24No. 3 bed houses, 21No. 4 bed houses and 4No. 5 bed houses with associated parking, landscaping and the provision of open space together with acoustic fencing and improvements to existing site access.
"Dwelling"	means any residential dwelling built pursuant to the Planning Permission and "Dwellings" shall be construed accordingly
"Education Contribution"	Means the sum of £118,543 Index Linked to be applied by the County Council towards the provision of educational facilities in the Borough of Havant
"Employment and Skills Plan"	means a scheme for the improvement and benefit of the local labour market and economy, by raising skills and enabling local people to compete for the jobs generated, in a form as set out in the Sixth Schedule to the

reasonable satisfaction of the Council

"Framework Residential Travel Plan" means the approved framework travel plan document prepared in anticipation of a full Workplace Travel Plan

"Index Linked" means increased in accordance with the following formula such indexation shall only be applied in circumstances where the Retail Prices Index (All Items)(RPI) at the date of payment stands at a higher level than it did at 21 November 2013

The amount payable = the payments specified in the First Schedule x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the Payment Date.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

"Interest in Default" means interest at the rate of 4% above the base lending rate of the National Westminster Bank PLC from time to time in force

"the Land" means the land at Havant Retail Park, Portsdown Hill Road, Havant and which for the purposes of identification only is shown edged with a heavy black line on the Plan

"Management Company" means a company or other body to be charged with the management of the Common Parts and the Open Space in accordance with the Third Schedule

"Monitoring Fee" means the sum of Five Thousand Pounds (£5,000) being a fee (and to be applied at such time and in such manner as the Council shall in its absolute discretion determine) used towards the costs to be incurred by the Council in the provision of suitably qualified and experienced persons whose function is inter alia to monitor co-ordinate and enforce planning deeds

"Occupation" means the first beneficial residential occupation of a Dwelling which shall be the date upon which Council Tax becomes payable for that Dwelling or when the Owner first Transfers that Dwelling (whichever is the earlier) but excluding occupation for the purposes of fitting out or marketing and "Occupy" and "Occupied" shall be construed accordingly

"Open Space "	means those areas of the Land to be provided and laid out by the Owner for use as open space in locations to be agreed with the Council
"Planning Permission"	means the grant of full conditional planning permission pursuant to the Application
"Plan"	means drawing number PC44/0586 annexed hereto
"Residential Travel Plan"	means a travel plan for any phase of Residential Development pursuant to the Planning Permission in accordance with the framework set out in the Second Schedule
"Solent Ecological Mitigation Contribution"	means the sum of Fifteen Thousand and Fifty Pounds £15,050 being a contribution to be applied by the Council and or the County Council in respect of the Special Protection Area avoidance and mitigation measures delivered through the Solent Interim Planning Framework.
"Travel Plan Monitoring Fee"	means the sum of One Thousand Two Hundred and Fifty pounds (£1250) payable in instalments over 5 years to the costs incurred by the Council in monitoring and evaluating submitted travel plan reports, £250 to be paid firstly prior to Commencement of Development and then 4 further instalments of £250 once yearly payments to be paid on the 1 st of April each year

2. INTERPRETATION

2.1. In this Deed:

- 2.1.1. Words importing the masculine gender include the feminine and vice versa
- 2.1.2. Words importing the singular include the plural and vice versa
- 2.1.3. Words importing persons include companies and corporations and vice versa

2.2. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally

2.3. Any reference to a clause or schedule or plan is to one in or attached to this Deed



Public Service Plaza
Civic Centre Road
Havant
Hampshire PO9 2AX
tel 023 9247 4174 fax 023 9248 0263
www.havant.gov.uk



Title: APP/13/00266
Havant Retail Park
Portsmouth Hill Road
Havant

S106 Plan

Drawn By:
Daniel Gender-Sherry

Scale:
1:1800

Drawing No:
PC44/0586

Cleaner, Safer, More Prosperous

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- 2.4. In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment or replacement of it and every statutory instrument direction specification made or issued under the statute or deriving validity from it
- 2.5. References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council any the successor to its statutory functions
- 2.6. Save as expressly provided by this Deed obligations given by any of the parties shall attach to the Land and each and every part of it and shall bind their successors in title and assignees or any persons claiming by under or through them

3. LEGAL BASIS

- 3.1. This Deed is made pursuant to Section 106 of the Act Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 Section 111 of the Local Government Act 1972 and all other enabling powers
- 3.2. The covenants set out in the First Schedule Second Schedule Third Schedule and the Fourth Schedule are planning obligations for the purposes of Section 106 of the Act and shall be enforceable by the Council

4. CONDITIONALITY

- 4.1. With the exception of clauses 1, 2, 3, 4, 5, 6 and 7 (which shall come into effect on the date hereof) this Deed shall come into effect upon the grant of the Planning Permission and the Commencement of Development

5. GENERAL PROVISIONS

- 5.1. The planning obligations in this Deed are enforceable by the Council as the local planning authority for the area in which the Land is situated
- 5.2. This Deed shall run with the Land and shall bind the Owner and its successors in title and assigns PROVIDED THAT the planning obligations contained herein shall not be binding upon any individual owners or occupiers of Dwellings or their mortgagees or upon any statutory undertaker where it has taken an interest in the Land solely for the purpose of its statutory undertaking including apparatus
- 5.3. No party shall be liable for breach of a covenant contained in this Deed after it shall have parted with all interest in the Land or the part in respect of which such breach

occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

5.4. The obligations in this deed shall cease to have effect if before the Development is commenced, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owners or
- (c) is quashed following a successful legal challenge.

5.5. Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other Act PROVIDED ALWAYS that this Deed shall remain in full force and effect notwithstanding the terms and conditions of any planning permission in respect of the Land which may be or has been at any time issued by the Council or any other appropriate person or authority pursuant to the provisions of that Act or any statutory amendment or re-enactment thereof

5.6. The terms and conditions of this Deed shall be capable of being varied by a supplemental deed executed by the parties hereto

5.7. No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the obligations terms or conditions of the Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default

5.8. None of the provisions of this Deed are intended to operate so as to confer a benefit (pursuant to the Contract (Rights of Third Parties) Act 1999) on any person who is not named as a party to this Deed

5.9. This Deed is a local land charge and shall be registered as such by the Council

5.10. For the purpose of such parts of this Deed as may be subject to the rule against perpetuities the perpetuity period applicable to this Deed shall be one hundred and twenty five years from the date hereof

5.11. All approvals certificates consents agreement satisfactions confirmations or calculations (or anything of a similar nature) that may be requested by the Owner and given by the Council or their officers in accordance with this Deed shall be in addition to any other approvals consents agreement or confirmations that may be required by the Act or by any other statute or regulation (together with all determinations as to whether for the purpose of this Deed dwellings have been occupied and/or completed) and shall not be unreasonably withheld or delayed

- 5.12. If any provision of this Deed is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of the Deed is to be unaffected and the same shall remain in full force and effect
- 5.13. On the date hereof the Developer shall pay to the Council the Council's reasonable legal costs relating to the negotiation, preparation and completion of this Deed
- 5.14. Any notice to the Council under this Deed shall be deemed to be sufficiently served if delivered personally or sent by pre-paid first class recorded delivery post to the Council at the address specified in this Deed
- 5.15. If any contribution due to be paid under the terms of this Deed shall remain unpaid after the same has become due then Interest in Default from the date when any contribution became due until the date of payment thereof shall be paid

6. THE OWNER'S AND THE DEVELOPER'S COVENANTS

- 6.1. The Owner and the Developer (subject to the Developer acquiring a freehold interest in the Land) covenant with the Council as set out in the First Schedule the Second Schedule the Third Schedule and the Fourth Schedule of this Deed

7. DISPUTES

- 7.1. In the event of any dispute or difference arising between the parties in respect of any matter contained in this Deed including questions of value and any question of reasonableness the same shall be referred to an independent person (the "Specialist") for determination in accordance with the following provisions:
 - 7.1.1. the Specialist shall have at least 10 years post qualification experience in the subject matter of the dispute;
 - 7.1.2. where such dispute relates to engineering construction or highway works it shall be referred to a Chartered Civil Engineer agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Institution of Civil Engineers;
 - 7.1.3. where such dispute relates to the valuation of property it shall be referred to a Chartered Surveyor agreed upon by the parties or in default of agreement appointed on the application of either party or at the direction of the President for the time being of the Royal Institution of Chartered Surveyors; and

- 7.1.4. where such dispute relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the parties or in default of agreement appointed on the application of either party or at the direction of the President for the time being of the Royal Town Planning Institute

PROVIDED THAT the parties may otherwise agree an alternative Specialist appropriate to the nature of the dispute

- 7.2. Unless otherwise agreed by the parties to the dispute the Specialist is to act as an independent expert and:
- 7.2.1. each party may make written representations within 21 Working Days of the appointment of the Specialist and will copy the written representations to the other party;
- 7.2.2. each party is to have a further 14 Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- 7.3. the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as her may reasonably require;
- 7.4. the Specialist is not to take oral representations from the parties without giving the parties the opportunity to be present and to give evidence and to cross examine each other;
- 7.5. the Specialist is to have regard to all representations and evidence before him when making his decision which is to be in writing and is to give reasons for his decision
- 7.6. Responsibility for the reasonably incurred costs of referring a dispute to a Specialist under this clause 7 including costs connected with the appointment of the Specialist and the Specialist's own costs will be decided by the Specialist
- 7.7. The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

8 NO FETTER OF DISCRETION

- 8.1 Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

9. MORTGAGEE'S CONSENT

- 9.1 The Mortgagee hereby consents to the Owner entering this Deed and acknowledges that its interest in the Land shall be bound by the obligations contained in this Deed PROVIDED THAT the Mortgagee (and any successor in title or any other mortgagee) shall otherwise have no liability under this Deed unless it becomes a mortgagee in possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

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

Executed as a Deed

by

ANKERS AND RAWLINGS DEVELOPMENTS LIMITED

acting by two directors or by one
director and the company secretary

Director

Director/Company Secretary

Executed as a Deed

by

LINDEN LIMITED

acting by two directors or by one
director and the company secretary

Director

Director/Company Secretary

Executed as a Deed
by affixing the Common Seal of
The COUNCIL OF THE BOROUGH OF HAVANT
in the presence of



Authorised signatory

In witness hereof this document which
is intended to take effect as a Deed has been duly
executed by a duly authorised official of the **HSBC BANK**
PLC as Attorney of the Bank the day and year
first above written



Signed and delivered as a Deed by

TIMOTHY STEPHENS

Attorney of HSBC Bank Plc

In the presence of :



Signature of Wit

Name (in BLOCK CAPITALS)

Address:

Occupation

FIRST SCHEDULE

FINANCIAL CONTRIBUTIONS

The Owner and the Developer (subject to the Developer acquiring a freehold interest in the Land) hereby covenant with the Council as follows:-

1. Prior to Commencement of Development to pay the following financial contributions to the Council :
 - 1.1 the Affordable Housing Contribution
 - 1.2 the Community Projects Contribution
 - 1.3 the Monitoring Fee
2. Prior to Occupation of the Development to pay the following financial contributions to the Council:
 - 2.1 the Solent Ecological Mitigation Contribution
 - 2.2 the Education Contribution

SECOND SCHEDULE

RESIDENTIAL TRAVEL PLAN

The Owner and the Developer (subject to the Developer acquiring a freehold interest in the Land) hereby covenant with the Council as follows:

- 1. Prior to Commencement of the Development to prepare and submit a draft of the Residential Travel Plan to the Council for approval based on the approved Framework Residential Travel Plan and the County Council's guidance "A Guide to Development Related Travel Plans dated January 2009" (or amendment replacement or variation thereof);
2. Not to Occupy the Development unless and until the Residential Travel Plan has been approved in writing by the Council
3. Not to amend the Residential Travel Plan without the prior written approval of the Council (such approval not to be unreasonably withheld or delayed)
4. Not to use the Development otherwise than in accordance with the approved Residential Travel Plan (including any approved amendments to them)
5. Prior to the Occupation of the Development to appoint a Travel Plan Co-Ordinator
PROVIDED THAT:-
 - 5.1 the post of the Travel Plan Coordinator shall be retained for a period of no less than five (5) years from the date of his first appointment;
 - 5.2 the Travel Plan Coordinator shall be responsible for (amongst other things) monitoring the performance of the Residential Travel Plan;
 - 5.3 the Travel Plan Coordinator shall provide a progress report (as to the performance of the Residential Travel Plan) to the Council no less than once every year throughout the monitoring period being five years from the date of first Occupation
6. Not to Commence the Development unless and until the first instalment of the Travel Plan Monitoring Fee (£250) has been paid to the Council and there from the remaining four annual instalments of £250 shall be paid on the 1st April in each year.

THIRD SCHEDULE

MANAGEMENT COMPANY

The Owner and the Developer (subject to the Developer acquiring a freehold interest in the Land) hereby covenant with the Council as follows:

1. Prior to Commencement of Development to supply to the Solicitor to the Council for written approval by the Council (such approval not to be unreasonably withheld or delayed):-
 - 1.1 a draft memorandum and articles of association for the Company for the purpose of managing, maintaining (including sweeping, scavenging, repair and replacement of street lighting) and cleansing of the Common Parts and the Open Space. Such draft memorandum and articles of association are to provide until their adoption for the management arrangements for any new roads and footpaths to be provided and maintained (including sweeping, scavenging, repair and replacement of street lighting) to an adoptable standard of the Highway Authority
 - 1.2 proposals for arrangements to secure the future maintenance of the Common Parts and the Open Space by the Company (which may include a Transfer of the Common Parts and Open Space to the Company or the granting of a long lease of the Common Parts and the Open Space by the Owners in favour of the Company) so as to ensure that the Common Parts and the Open Space are properly maintained, such proposals to include details of how the costs of street lighting charges, cleaning and maintaining the Common Parts and the Open Space and the management arrangements (until their adoption) for any new roads and footpaths and parking spaces to be provided and maintained (including sweeping, scavenging, repair and replacement of street lighting) to an adoptable standard of the Highway Authority shall be met (by residents of the Development or otherwise).
2. Any submission of documents or details to the Council pursuant to this Schedule shall include a reference to the Planning Permission the date and parties to this agreement, and the paragraph under which approval is sought, together with a statement of the date by which a decision must be given by the Council
3. The Council shall give notice to the Owner of its decision to either approve (with or without modifications) or to refuse to approve the details submitted by the Owner under Paragraphs 1.1 and 1.2 above within one month of receipt of such details and in the event that the Council fails to give such notice the details as submitted shall be deemed to have been approved (provided the Owner has supplied the details fully in accordance with the provisions of this Schedule)
4. Forthwith after the approval by the Council of the proposed memorandum and articles of association the Owner shall take all necessary steps to secure the formation and registration of the Company at Companies House and to notify the Council accordingly within seven days of the completion of the registration of the Company

5. The Owner shall repair and maintain the Common Parts, the Open Space including (until their adoption) the new roads and footpaths and the parking spaces to the reasonable satisfaction of the Council:-

5.1 until such time as the Company is registered and the maintenance arrangements approved by the Council have been completed and the relevant areas transferred to the Company and all Dwellings on the Land have been sold or leased; and

5.2 in the event of the Company at any time failing to maintain the Common Parts and the Open Space to the reasonable satisfaction of the Council.

6. The Owner may submit to the Council for its written approval alternative proposals for the management and maintenance of the Common Parts and the Open Space (such approval not to be unreasonably withheld or delayed) and in relation to any such alternative arrangements the provisions of paragraphs 1, 2, 3, 4 and 5 of this Schedule shall apply to the extent that the Owner shall remain responsible for the management and maintenance of the Common Parts and the Open Space without prejudice to the generality of paragraph 5.2 above until such alternative arrangements (as approved by the Council) have been fully implemented.

FOURTH SCHEDULE

EMPLOYMENT AND SKILLS PLAN

The Owner and the Developer (subject to the Developer acquiring a freehold interest in the Land) hereby covenant with the Council as follows:

1. Prior to Commencement of the Development to submit to the Council for written approval the Employment and Skills Plan for the construction phase of the Development (such approval not to be unreasonably delayed or withheld) and unless otherwise agreed in writing with the Council not to Commence the Development or permit Commencement until an Employment and Skills Plan has been approved by the Council .
2. The Employment and Skills Plan for the construction phase of the development shall include arrangements setting out how the Owner and to the extent they are not the same person any developer or Occupier and their contractors will work directly with local employment/training agencies as part of an employment and training consortium including but not limited to:
 - 2.1 Jobcentre Plus and the Skills Funding Agency; and
 - 2.2 Voluntary and private sectors providers; and
 - 2.3 Sixth form colleges; colleges of further education; and Universities
3. The Employment and Skills Plan shall specify the provision for training opportunities and other initiatives in respect of the vocational and employability skills required by the Owners/developer and their contractors, for any new jobs and business opportunities created during the construction of the Development.
4. Following approval of the Employment and Skills Plan by the Council the Owner will commence and where necessary procure commencement and promote the objectives of the approved plan and ensure that so far as is reasonably practicable the objectives are met.
5. As part of the Employment and Skills Plan the Owner may be required to provide financial contributions to the Council to cover specific costs incurred by the Council in the implementation of the Employment and Skills Plan. The Plan shall set out the matters on which expenditure may be incurred together with the timings for such expenditure and the trigger for these payments

FIFTH SCHEDULE

COUNCIL'S COVENANTS

The Council hereby covenants with the Owner and the Developer as follows:

1. Not to use the Affordable Housing Contribution and the Community Projects Contribution for any purposes other than those specified in this Deed
2. To repay any part of the Affordable Housing Contribution and the Community Projects Contribution remaining unspent and any interest accrued at the expiry of 10 years from the date of payment of the relevant contribution such repayment to be to the person who paid the said contribution to the Council
3. To pay the Education Contribution to the County Council within 10 working days of receiving such contribution from the Owner
4. To use reasonable endeavours to procure the repayment of any part of the Education Contribution remaining unspent and any interest accrued at the expiry of 10 years from the date of payment of the Education Contribution to the County Council to the person who paid the said contribution to the Council
5. To pay the Solent Ecological Mitigation Contribution to the County Council within 10 working days of receiving such contribution from the Owner
6. To use reasonable endeavours to procure the repayment of any part of the Solent Ecological Mitigation Contribution remaining unspent and any interest accrued at the expiry of 10 years from the date of payment of the Solent Ecological Mitigation Contribution to the County Council to the person who paid the said contribution to the Council

APPENDIX

DRAFT PLANNING PERMISSION

DRAFT DECISION NOTICE



Havant
BOROUGH COUNCIL

Public Service Plaza
Civic Centre Road
Havant
Hampshire PO9 2AX

T 023 9247 4174
F 023 9248 0263
DX 50005 Havant
www.havant.gov.uk

Mr Heppell
WYG Planning & Environment
The Loft
St Clair's Farm
Wickham Road
Droxford, SO32 3PW

For: Linden Limited

**The Town and Country Planning (Development Management Procedure) (England) Order
2010
Grant of Planning Permission**

Application Number: APP/13/00266

Site Address: Havant Retail Park, Portsdown Hill Road, Havant

Proposal: Demolition of existing buildings and construction of 86 dwellings consisting of 9No. 1 bed flats, 28No. 2 bed flats, 24No. 3 bed houses, 21No. 4 bed houses and 4No. 5 bed houses with associated parking, landscaping and the provision of open space together with acoustic fencing and improvements to existing site access.

Further to your application received on 15 March 2013, Havant Borough Council, as Local Planning Authority **Grants Planning Permission** for the above proposal in accordance with the submitted plans and particulars as detailed below.

This permission is subject to compliance with:

- (i) The plans and other documents submitted with regard to your application; and
- (ii) The following conditions:

Conditions:

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date on which this planning permission was granted.
Reason: To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 No development hereby permitted shall commence until plans and particulars specifying the alignment, width, gradient and type of construction proposed for all footways, roads and individual accesses thereto (including all relevant horizontal cross and longitudinal sections) and the related provision to be made for street lighting and for surface water disposal and a programme for the implementation and making up of the same have been submitted to and approved in writing by the Local Planning Authority. The implementation and making up of the same shall be completed in full accordance with such plans, particulars and programme as are thus approved by the Authority.
Reason: To ensure that they are constructed to satisfactory standard and, where appropriate a standard which will enable them to be taken over as publicly maintained highways and having due regard to policies CS16 and CS20 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

Our Ref: APP/13/00266

DRAFT DECISION NOTICE

- 3 Construction of the building(s) hereby permitted shall not commence until samples and details of all external facing and roofing materials shall be submitted to and approved by the Local Planning Authority. Thereafter only such approved materials and finishes shall be used in carrying out the development.
Reason: To ensure the appearance of the development is satisfactory and having due regard to policies CS16 of Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
- 4 No development hereby permitted shall commence until a specification of the materials to be used for the surfacing of all open parts of the site proposed to be hardsurfaced has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall not be brought into use until the implementation of all such hardsurfacing has been completed in full accordance with that specification.
Reason: In the interests of the amenities of the locality and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
- 5 No development hereby permitted shall be commenced until a detailed soft landscaping scheme for all open parts of the site not proposed to be hardsurfaced has been submitted to and approved in writing by the Local Planning Authority. Such scheme shall specify the proposed finished ground levels in relation to the existing levels, the distribution and species of ground cover to be planted, the positions, species and planting sizes of the trees and shrubs to be planted and/or retained, and timing provisions for completion of the implementation of all such landscaping works.
The implementation of all such approved landscaping shall be completed in full accordance with such approved timing provisions. Any tree or shrub planted or retained as part of such approved landscaping scheme which dies or is otherwise removed within the first 5 years shall be replaced with another of the same species and size in the same position during the first available planting season.
Reason: To ensure the appearance of the development is satisfactory and having due regard to policies CS16 and DM8 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
- 6 The proposed works must be carried out in accordance with the Arboricultural Impact Appraisal and Method Statement prepared by Barrell Tree Consultancy dated 24 July 2013 Ref 13042-AIA2-PB and the Tree Protection Plan Ref: 13042-BT2.
Reason: To ensure the trees are not adversely affected by the construction of the development and having due regard to policy DM8 of the Havant Borough Local Plan (Core Strategy) 2011 and National Planning Policy Framework, March 2012.
- 7 No development hereby permitted shall commence until plans and particulars specifying the alignment, type, height and, where appropriate, construction materials and design of all proposed screen walls, fences, hedges and other means of enclosure including the acoustic fence adjacent to the A3(M) and catch fences where required adjacent to the chalk faces within the site have been submitted to and approved in writing by the Local Planning Authority. Unless agreed otherwise in writing by the Authority, the development hereby permitted shall not be brought into use prior to the completion of the installation of all screening provision as is thus approved by the Authority. At all times thereafter, all of that screening provision shall be retained in a wholly sound and effective condition.
Reason: To safeguard the amenities of the locality and occupiers of neighbouring property and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

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- 8 No development hereby permitted nor any related site clearance shall commence until a plan and particulars specifying the provision to be made within the site and/or on other land nearby for the parking (throughout the clearance and construction period) of construction vehicles and of other vehicles delivering/removing materials and other items to/from the development site have been submitted to and approved in writing by the Local Planning Authority. Thereafter, throughout such site clearance and implementation of the development hereby permitted, all such temporary parking provision shall be provided and used only as such.
Reason: To safeguard the amenities of the locality and in the interests of traffic safety and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
- 9 No development hereby permitted nor any related site clearance shall commence until plans and particulars specifying the provision to be made for a material storage compound within the site have been submitted to and approved in writing by the Local Planning Authority throughout the contract period and no materials shall be stored anywhere else on the site.
Reason: To safeguard the amenities of the locality and in the interests of traffic safety and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
- 10 No development hereby permitted nor any related site clearance shall commence until a specification of measures to be undertaken to prevent deposition on nearby roads of mud and spoil from vehicles leaving the site throughout the implementation of the same has been submitted to and approved in writing by the Local Planning Authority. All measures forming part of such approved specification shall be undertaken and fully adhered to at all times when such implementation is in progress.
Reason: In the interests of traffic safety and having due regard to policies CS16, CS20 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
- 11 The development hereby permitted shall not commence until plans and particulars specifying the provision to be made for external lighting of the same has been submitted to and approved in writing by the Local Planning Authority. There shall be no external lighting on the site other than as thereby approved.
Reason: To safeguard the amenities of the locality and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
- 12 Prior to each phase of development approved by this planning permission no development (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:
- 1) A preliminary risk assessment which has identified:
 - All previous uses
 - Potential contaminants associated with those uses
 - A conceptual model of the site indicating sources, pathways and receptors of potentially unacceptable risks arising from contamination at the site.
 - 2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - 3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

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4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components shall be submitted to and approved in writing by Local planning Authority. The scheme shall be implemented as approved.

Reason: In order to (i) protect water sources as the site is located on the Portsdown Chalk that is designated as a Principal Aquifer and the north west of the site is located in the Source Protection Zone for the public water supply abstraction at Havant and Bedhampton Springs and (ii) to prevent future site users, buildings & key services being exposed to unacceptable risks of harm arising from previous land uses, inclusive of filled land, soil gas & vapours and having due regard to policies CS19 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and National Planning Policy Framework, March 2012.

- 13 No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

Reason: In order to protect water sources as the site is located on the Portsdown Chalk that is designated as a Principal Aquifer and the north west of the site is located in the Source Protection Zone for the public water supply abstraction at Havant and Bedhampton Springs and having due regard to policies CS19 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and National Planning Policy Framework, March 2012.

- 14 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

Reason: In order to (i) protect water sources as the site is located on the Portsdown Chalk that is designated as a Principal Aquifer and the north west of the site is located in the Source Protection Zone for the public water supply abstraction at Havant and Bedhampton Springs and (ii) to prevent future site users, buildings & key services being exposed to unacceptable risks of harm arising from previous land uses, inclusive of filled land, soil gas & vapours having due regard to policies CS19 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework March 2012.

- 15 Piling using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: In order to protect water sources as the site is located on the Portsdown Chalk that is designated as a Principal Aquifer and the north west of the site is located in the Source Protection Zone for the public water supply abstraction at Havant and Bedhampton Springs and having due regard to policies CS19 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework March 2012.

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- 16 The development hereby permitted shall not commence until a scheme for protecting the proposed dwellings from traffic noise from the A3(M) has been submitted to and approved in writing by the Local Planning Authority. The dwellings shall not be brought into use until the implementation of all works forming part of such approved noise protection scheme has been completed in full accordance with all detailed components of such scheme.

N.B. The configuration of double glazed window units shall not contain panes of equal thickness and the maximum noise level (predicted 15 years from completion of dwellings) in habitable rooms, with windows closed and other means of ventilation provided should not exceed the following:

Daytime 35 dB LAeq,16h

Night time 30 dB LAeq,8h

Reason: To safeguard the amenities of occupiers of those dwellings and having due regard to policy CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and National Planning Policy Framework March 2012.

- 17 i) No development hereby permitted shall commence (other than demolition and site preparation) until a detailed design & specification for a fresh air ventilation system has been submitted to, and approved in writing by the Local Planning Authority (the 'approved mitigation works'). The systems shall be applicable to all floors of 'Apartment A', no.'s 50-83.

The ventilation system shall be of sufficient capacity to provide adequate ventilation with all openings (windows & doors) closed.

The submitted specification shall include:

- a) the position of the fan box and / or air intake duct, to be located either at roof level or at the Eastern Façade, and;
- b) the ventilation standards to be achieved (i.e. as m³/min or air changes per hour (% total volume/hr)), with reference to CIBSE & HVCA recommendations.

ii) All measures forming part of the approved mitigation works for the site shall be undertaken and fully adhered to, prior to occupation of the units.

Reason: To protect future occupants from the effects of locally elevated concentrations of Nitrogen Dioxide (NO₂), and having due regard to policy DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and National Planning Policy Framework March 2012.

Note : It is suggested that documentary evidence including receipts, invoices &/or guarantees (if applicable) in connection with the purchase & installation of the extraction system are submitted to the Local Planning Authority in order to facilitate confirmation of compliance with this condition.

- 18 No development hereby permitted shall be occupied prior to the completion of the roadworks substantially in accordance with the details shown indicatively on Bellamey Roberts' drawings 4186/001 for the alterations to Portsdown Hill Road adjacent to the entrance and on 4186/005 for alterations to the Belmont Roundabout.

Reason: In the interests of highway safety and having due regard to policies CS16 and CS20 of the Havant Borough Local Plan (Core Strategy) 2011 and National Planning Policy Framework March 2012.

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- 19 Immediately prior to the commencement of site clearance works , an updating badger survey shall be undertaken and the results submitted in writing to the Local Planning Authority. The applicant will undertake any necessary mitigation, compensation or enhancement measures resulting from the updating survey in accordance with an agreed timescale.
Reason: In order to provide appropriate protection and mitigation and having due regard to policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011 and National Planning Policy Framework 2012.
Note: Under the Protection of Badgers Act 1992, it is an offence to willfully kill or injure a badger or to intentionally or recklessly interfere with a sett. Any works which will interfere with a sett will need to be carried out under licence.
- 20 Demolition, clearance, excavation, road or construction works and deliveries during the development phase shall take place only between the hours of 0800 hours and 1800 hours on Mondays to Saturdays and not all on Sundays and all recognised public holidays.
Reason: To protect the amenity of adjoining residents and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and National Planning Policy Framework March 2012.
- 21 No dwelling shall be occupied until space for the loading, unloading and parking of vehicles and cycles and has been provided within the site, surfaced and marked out in accordance with the approved plans. Such areas shall thereafter be retained and used solely for those purposes.
Reason: In the interests of highway safety and having due regard to policy DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.
- 22 Prior to the occupation of the development a Post Construction Certificate shall be submitted to the Local Planning Authority. The Certificate shall state that the development has attained a minimum standard of Level 3 of the Code, unless otherwise agreed in writing by the Local Planning Authority.
Reason: To ensure that the development is carried out in accordance with policy CS14 of the Havant Borough Local Plan (Core Strategy) 2011 and National Planning Policy Framework 2012.
- 23 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
- Approved plans to be inserted.
- Reason:** - To ensure provision of a satisfactory development.

Other Important Information:

- (1) This notice only relates to the decision of Havant Borough Council as Local Planning Authority under the Town and Country Planning Acts. It does not relate to any other application that may be required under the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6573.
- (2) Your attention is drawn to the attached information regarding firstly your right to appeal to the Planning Inspectorate, if you are aggrieved by the Council's decision, and secondly the rights of an owner to, in certain circumstances serve a purchase notice on the Council. See www.planningportal.gov.uk/pcs.

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(3) Any failure to adhere to the details of the approved plans, and other documents or to comply with any conditions listed above may lead to enforcement action being taken by the Council. If you wish to depart from the approved details or conditions in any way you should contact the Planning and Development service at the The Plaza or by telephoning 023 9244 6015.

(4) In accordance with paragraphs 186 and 187 of the NPPF Havant Borough Council (HBC) takes a positive and proactive approach and works with applicants/agents on development proposals in a manner focused on solutions by:

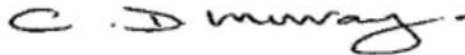
- Offering a pre-application advice service, and
- Updating you of any issues that may arise in the processing of your application and where possible suggesting solutions, and,

In this instance:

- You sought and were provided with pre-application advice,
- You were updated about issues after the initial site visit.

(5) This permission was granted subject to a planning obligation agreement made under Section 106 of the Town & Country Planning Act 1990 dated which incorporates the following:

- (1) a contribution of £15,050 for Solent ecological mitigation.
- (2) A contribution of £267,087 divided between local community projects, affordable housing and education.
- (3) The provision of a Residential Travel Plan.
- (4) The management arrangements for new roads, including street cleaning and street lighting and for managing the parking within the site.
- (5) On site open space management and maintenance arrangements.
- (6) An Employment and Skills Plan for the construction phase of the development.



Mr Chris Murray
Service Manager (Planning Development)

