

DATED

3rd April

2014

PAUL ROGER JOPLING and RACHEL FRANCES JOPLING (1)

and

THE COUNCIL OF THE BOROUGH OF HAVANT (2)

**DEED OF VARIATION
AND PLANNING OBLIGATION**

Pursuant to (inter alia)
Section 106 and Section 106A of the Town and Country Planning Act 1990
Relating to land at
20 The Crescent, Waterlooville in Hampshire
PO7 5EU

Mrs J Barden-Hernandez
Solicitor to the Council
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant, Hampshire
PO9 2AX

THIS DEED OF VARIATION is made the 3rd day of April 2014
BETWEEN

- (1) PAUL ROGER JOPLING and RACHEL FRANCES JOPLING of 108 Queens Road, Hersham, Waltham-on-Thames KT12 5LL ("the Owners")
- (2) THE COUNCIL OF THE BOROUGH OF HAVANT OF Civic Offices Civic Centre Road Havant Hampshire PO9 2AX ("the Council")

WHEREAS:

- (1) This Deed is supplemental to a Unilateral Undertaking dated 28th September 2012 made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and Section 111 of the Local Government Act 1972 between Roger Maxwell Dicken and Terry William Dicken and the Council in relation to the development of land at 20 The Crescent Purbrook Waterlooville in Hampshire ("the Unilateral Undertaking")
- (2) Subsequent to completion of the Unilateral Undertaking Roger Maxwell Dicken and Terry William Dicken disposed of the whole of their freehold interest in the Land to the Owners. The Owners are the freehold owners of the Land registered at the Land Registry with title absolute under title number SH26966.
- (3) The Owners have made the Second Application to vary condition 10 of the First Planning Permission
- (4) The Parties hereto agree and consent to the terms of the Unilateral Undertaking being varied in respect of the Land as hereinafter provided.

NOW THIS DEED WITNESSETH as follows:

PRELIMINARY AND RECITALS

A Definitions

A.1 Words and phrases used in this Deed are defined at Clause 1.1. Save as otherwise provided words and phrases in this Deed shall have the meanings contained in the Unilateral Undertaking.

B Purpose of Deed

- B.1 This Deed is supplemental to and varies certain of the obligations contained in the Unilateral Undertaking.
- B.2 The Deed is being entered into to amend the definitions of Owner and Planning Permission contained within the Unilateral Undertaking and acknowledge payment of the Hampshire County Council Transport Contribution;
- B.3 The provisions of this Deed bind the Land (and each and every part of it) the parties and their successors in title save where this Deed expressly provides to the contrary

C Statutory Authorities

- C.1 The Council is for the purposes of Sections 106 and 106A of the Act the authority which can enforce the terms of this Agreement
- C.2 This Deed is made pursuant to the provisions of Section 106 and 106A of the 1990 Act and Section 111 of the Local Government Act 1972 and all other powers enabling

D Planning

- D.1 This Deed is supplemental to the Unilateral Undertaking which is varied by the provisions of this Deed

E Liability for this Deed

- E.1 The Planning Obligations restrictions covenants limitations and obligations in this Deed are binding in their entirety upon the Owner and their interest in the Land save as otherwise provided and shall bind and run with the land and each and every part of it..

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Undertaking (including the Recitals) the following expressions shall have the following meanings:

"the First Planning Permission"	Means the planning permission given reference APP/12/00718 granted by the Council in respect of the First Application;
"the Second Application"	an application registered by the Council

	under reference number APP/13/01141 to vary condition 10 of the First Planning Permission to replace approved plans and documents with those approved under planning permission APP/13/00722 and discharge of conditions 2,3,4,5,6,7 and 8 of the First Planning Permission;
"the Unilateral Undertaking"	Means the Agreement dated 28 September 2012 made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and Section 111 of the Local Government Act 1972 between Roger Maxwell Dicken and Terry William Dicken (1) and the Council (2) in relation to the development of land at 20 The Crescent Waterlooville in Hampshire

- 1.2 The definitions contained in the Unilateral Undertaking apply unless the context otherwise requires
- 1.3 The provisions of this Deed shall unless the context otherwise requires be construed as follows:
- 1.3.1 Words importing one gender shall include all other genders
- 1.3.2 The singular includes the plural and vice versa
- 1.3.3 Reference to a statute includes any amendment, modification, extension consolidation or re-enactment of it and any statutory instrument, regulation or order made under it which is for the time being in force
- 1.3.4 References to any "Clause" or "Sub-Clause" (or any part of them) shall (unless the context otherwise requires) be references to a Clause Sub-Clause (or any part of them) of this Deed
- 1.3.5 Headings to clauses of this Deed do not affect the interpretation or construction of this Deed

2 EFFECT OF AGREEMENT

- 2.1 The covenants restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the 1990 Act

and are enforceable by the Council as local planning authority against the Owners and their successors in title.

- 2.2 This Deed also varies and supplements certain of the provisions of the planning obligations contained in the Unilateral Undertaking.

3 LAND BOUND AND ENFORCING AUTHORITY

- 3.1 The provisions of this Deed and the covenants restrictions limitations and obligations given by the Owners shall bind and run with the Land and each and every part of it and shall be binding against the Owners and its successors in title and assigns to the Land and each an every part of it save as provided elsewhere in this Deed.

4 LOCAL LAND CHARGE REGISTRATION

- 4.1 This Deed is registerable by the Council as a local land charge in the Register of Local Land Charges kept by the Council.

5 THE OWNERS COVENANTS

- 5.1 The Owners for themselves and their successors in title to the Land and each and every part of it hereby covenants in favour of the Council to observe perform and abide by the obligations restrictions limitations and covenants contained in this Deed and in the Unilateral Undertaking as varied by this Deed and the said obligations restrictions limitations and covenants shall run with and bind with the Land and each and every part of it as set out below.

6 VARIATIONS TO THE UNILATERAL UNDERTAKING

- 6.1 The variations set out in the Schedule hereto shall have effect.

7 AGREEMENTS AND DECLARATIONS

It is hereby agreed and declared by the parties hereto that:

- 7.1 Except in so far as legally or equitably permitted this Deed shall not prejudice fetter or affect the exercise of any statutory power duty or discretion of the Council
- 7.2 The terms of the Unilateral Undertaking except as varied by this Deed are confirmed as if the same were set out in this Deed in full and that such terms as so varied shall for all purposes be deemed incorporated in this Deed.
- 7.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

IN WITNESS whereof this Deed has been executed as a Deed by the parties hereto
the day and year first before written

Signed as a DEED by the said
PAUL ROGER JOPLING
In the presence of

[Redacted]

X Name:
Address

[Redacted]

(Signed as a DEED by
RACHEL FRANCES JOPLING
In the presence of

[Redacted]

X Name:
Address

[Redacted]

EXECUTED as a DEED by affixing
THE COMMON SEAL of
THE COUNCIL OF THE BOROUGH
OF HAVANT
in the presence of:

)
)
)
)
)

[Redacted]



12905

Authorised Signatory

SCHEDULE

Variation of Unilateral Undertaking

1 Definitions

- 1.1 The Definitions set out in Clause 1.1 above shall be deemed to have been included in the Unilateral Undertaking
- 1.2 The following definitions in Clause 1 of the Unilateral Undertaking shall be amended as set out below:-

Defined Term in Section 106 Unilateral Undertaking	Amended Defined Term	Amendment to definition
The Application	The Applications	Means the applications for planning permission in respect of the Land submitted by or on behalf of the Owners to the Council given reference numbers APP12/00718 and APP13/01141
The Development	The Development	Means the development of the Land in accordance with the Applications
The Planning Permission	The Planning Permission	Means the permission to be granted pursuant to the Applications

2 Other Variations

- 2.1 A new Clause 9 shall be inserted as follows:-

"9 The Owners acknowledge that the liability for the Hampshire County Council Transport Contribution as set out in the Unilateral Undertaking also applies to the planning permission given reference APP/13/01141."

- 2.2 A new Clause 10 shall be inserted as follows:-

"10 The Council acknowledges receipt of the Hampshire County Council Transport Contribution in the amount of £5,457 on the 26th September 2012 as set out in the Unilateral Undertaking as amended"

- 2.3 Paragraph 2 of the Schedule within the Unilateral Undertaking shall be deleted in its entirety
- 2.4 A replacement Paragraph 2 of the Schedule within the Unilateral Undertaking shall be inserted as follows:-
2. "(See clause 1.10) the Owner(s)
PAUL ROGER JOPLING and RACHAEL FRANCES JOPLING
Of 108 Queens Road, Hersham, Walton-on-Thames KT12 5LL"
- 2.5 Paragraph 3 of the Schedule within the Unilateral Undertaking shall be deleted in its entirety
- 2.6 Extraneous Paragraph 9.3 of the Schedule within the Unilateral Undertaking shall be deleted in its entirety