

Deed of Variation

Pursuant to Section 106A of the Town and Country Planning Act 1990

In respect of: Land at Forty Acre Farm Bedhampton Havant

Between: BDW Trading Limited (1)
The Council Of The Borough Of Havant (2)
Hampshire County Council (3)

Dated 6th December 2024

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THIS DEED of VARIATION is made on the 6th of December 2024
BETWEEN

- (1) **BDW TRADING LIMITED** (Co. Reg. No. 3018173) of Barratt House Cartwright Way Forest Business Park Bardon Hill Coalville Leicestershire LE67 1UF ("**the Owner**")
- (2) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Services Plaza Civic Centre Road Havant PO9 2AX ("**the Council**")
- (3) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ ("**the County Council**")

WHEREAS:

1. The Council and the County Council are the local planning authorities for the purposes of the Act for the area within which the Land (as defined in the Original Agreement) is situated and are the authorities by whom the planning obligations contained in this Deed are enforceable.
2. The Owner is the freehold owner of the Land which is registered at the Land Registry under Title Number SH55541.
3. The Original Agreement was entered into on 17 January 2020.
4. The Original Agreement was varied by way of the First Deed of Variation on 2 June 2021.
5. The Original Agreement was varied by way of the Second Deed of Variation on 12 November 2021.
6. The Original Agreement was varied by way of the Third Deed of Variation on 23 December 2021.
7. The Original Agreement was varied by a Fourth Deed of Variation on 2 August 2023.
8. The parties to this Deed being the parties that are interested in the land for the purposes of section 106 and 106A of the Act at the date of this Deed have agreed pursuant to section 106A of the Act to vary the Principal Agreement on the terms set out in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

- 1.1 In this Deed where the context so admits all expressions shall have the meanings given to them by the Principal Agreement save that the following expressions shall have the following meanings:

"the **First Deed of Variation**" the agreement made under Section 106A of the Act dated 2 June 2021 and made between (1) the Council (2) the County Council and (3) the Owner

"the **Fourth Deed of Variation**" the agreement made under Section 106A of the Act dated 2 August 2023 and made between (1) the Council (2) the County Council and (3) the Owner

"the **Land**" has the same meaning as in the Original Agreement

"the **Original Agreement**" the agreement made under Section 106 of the Act dated 17 January 2020 and made between (1) the Council (2) the County Council (3) Melanie Jean Flint (4) Steven Walter Hamilton Mason

(5) Timothy Nelson Mason (6) Melanie Jean Flint, Steven Walter Hamilton Mason and Timothy Nelson Mason and (7) the Owner as amended by the First Deed of Variation, the Second Deed of Variation, the Third Deed of Variation and the Fourth Deed of Variation

"the Principal Agreement"

means the Original Agreement as varied by the First Deed of Variation, the Second Deed of Variation, the Third Deed of Variation and the Fourth Deed of Variation

"the Second Deed of Variation"

the agreement made under Section 106A of the Act dated 12 November 2021 and made between (1) the Council (2) the County Council and (3) the Owner

"the Third Deed of Variation"

the agreement made under Section 106A of the Act dated 23 December 2021 and made between (1) the Council (2) the County Council and (3) the Owner

2 CONSTRUCTION OF THIS DEED

- 2.1 The definitions and rules of interpretation in this Clause apply in this Deed.
- 2.2 All references in this Deed to Clauses in the Principal Agreement are to Clauses within the Principal Agreement.
- 2.3 Clause headings shall not affect the interpretation of this Deed.
- 2.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.5 A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7 A reference to a party shall include that party's representatives, successors or permitted assigns and in the case of the Council and the County Council the successors to its respective statutory functions.
- 2.8 A reference to a statute or statutory provisions is a reference to it as it is in force at the date of this Deed and shall include any subordinate legislation made under the statute or statutory provision.
- 2.9 References to clauses, schedules and plans (unless the context otherwise requires) are to clauses, schedules and plans of this Deed.
- 2.10 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to all powers enabling the parties and in particular Section 106 and 106A of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling acts with the intention that it binds all owners' interests in the Land and their successors in title.

- 3.2 The obligations imposed upon the Owner contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County Council in the manner set out in the Principal Agreement.
- 3.3 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council and the County Council in the exercise of their functions and their rights, powers, duties and obligations under all public private statutes, byelaws and regulations may be as fully and effectively exercised as if they were not a party to this Deed.
- 3.4 The parties agree that the Principal Agreement shall remain in full force and effect save as expressly varied by this Deed.
- 3.5 It is hereby agreed by the parties that the variation contained at Clause 4 of this Deed shall take effect from the date of this Deed as though it had originally been contained in the Principal Agreement.

4 VARIATION TO THE PRINCIPAL AGREEMENT

- 4.1 The definition of "First Phase Open Space Land" at Clause 1 of the Principal Agreement shall be deleted in its entirety.
- 4.2 The following definitions shall be inserted at Clause 1 of the Principal Agreement and shall read as follows:

"Open Space Phasing Plan" means the plan annexed to this Deed at Appendix 1 showing the phased delivery of the Open Space Land

"Phase 1 Open Space Land" means the Open Space Land shown coloured red on the Open Space Phasing Plan

"Phase 2 Open Space Land" means the Open Space Land shown coloured purple on the Open Space Phasing Plan

"Phase 3 Open Space Land" means the Open Space Land shown coloured green on the Open Space Phasing Plan

- 4.3 Paragraphs 3, 5 and 6 of Schedule 6 of the Principal Agreement shall be deleted in their entirety and replaced with the following:

3. OPEN SPACE AND LAP

- 3.1 *Not to Occupy or permit Occupation of more than 253 Dwellings until the Phase 1 Open Space Land and the LAP shall have been completed and made available for use in accordance with the details approved in writing by the Council*
- 3.2 *Not to Occupy or permit Occupation of more than 320 Dwellings until the Phase 2 Open Space Land shall have been completed and made available for use in accordance with the details approved in writing by the Council*
- 3.3 *Not to Occupy or permit Occupation of the final Dwelling until the Phase 3 Open Space Land shall have been completed and made available for use in accordance with the details approved in writing by the Council save that the Owners shall be entitled to set up and use a compound area within the Phase 3*

Open Space Land (such compound not to exceed more than 5% of the Open Space Land) for use and storage of construction materials only during the construction of the Development

- 3.4 *Not to use or permit the use of the LAP and Open Space Land for any purpose other than for the purposes of public recreation by the owners-occupiers of the Dwellings and by the public at large and to ensure future access for the public to the LAP and Open Space Land in perpetuity in accordance with the Planning Permission*
- 3.5 *To include in any transfer or lease of the LAP and Open Space Land covenants to restrict the use of the LAP and Open Space Land for the purposes of public recreation by the owners-occupiers of the Dwellings and by the public at large and to ensure future access for the public to the Open Space Land in perpetuity save that where such transfer or lease is to the Land Trust the use of the LAP and Open Space Land shall also be used for the delivery of the Land Trust's charitable objectives*

5. ALLOTMENT LAND

- 5.1 *Not to Occupy or permit Occupation of more than 253 Dwellings until the Allotment Land has been constructed and laid out in accordance with the details approved in writing by the Council and made available for use as private allotments*
- 5.2 *Not to use or permit the use of the Allotment Land for any purpose other than for use as private Allotments in accordance with the Planning Permission*

6. COMMUNITY ORCHARD

- 6.1 *Not to Occupy or permit Occupation of more than 253 Dwellings until the Community Orchard has been planted and laid out in accordance with the details approved in writing by the Council*
- 6.2 *Not to use or permit the use of the Community Orchard other than for that purpose and in accordance with the Planning Permission save that where the Owners of the Community Orchard is the Land Trust the Community Orchard shall also be used for the delivery of the Land Trust's charitable objectives*

5 REGISTRATION

This Deed shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council.

6 COSTS

On execution of this Deed the Owner shall pay the Council's and the County Council's reasonable legal costs in connection with the negotiation and completion of this Deed.

7 GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

8 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

IN WITNESS whereof this instrument has been executed as a Deed the date 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:

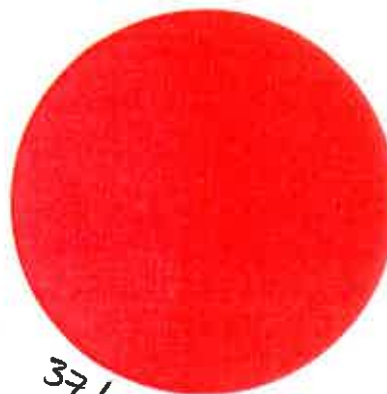


102673

.....
Authorised Signatory

EXECUTED as a DEED by affixing
THE COMMON SEAL of
HAMPSHIRE COUNTY COUNCIL

in the presence of



37/102412

.....
Authorised Signatory

Name

Position

PROJECT LEGAL ADVISER

EXECUTED AS A DEED by

BDW TRADING LIMITED

acting by

and

as the Attorneys in the name of BDW Trading Limited in exercise of the power
Conferred upon them by a Power of Attorney dated
In the presence of:

.....
SIGNATURE OF WITNESS

Witness Name:

Witness Address:

Witness Occupation:

.....
SIGNATURE OF ATTORNEY

.....
SIGNATURE OF WITNESS

Witness Name:

Witness Address:

Witness Occupation:

APPENDIX 1
OPEN SPACE PHASING PLAN

**Harbour Place:
Open Space Phasing Plan -
April 2024 (C)**

**AUTHORISED
SIGNATORY**

KEY:

- Phase 1 - Open end of Jun '24 - 253 Occupations
- Phase 2 - Open end of Dec '24 - 320 Occupations
- Phase 3 (BH & DWH Compound areas) - 354th Occupation
- Occupied/ Completed area

103673

POS Open by end of
June 2024

Allotments
parking and
original access
delivered JUN '24
once compound
is moved

Completed

BH Compound

DWH
Compound

331102412