

DATED 11th January

20 23

HAVANT BOROUGH COUNCIL

- and -

THREADNEEDLE PENSIONS LIMITED

DEED OF VARIATION
PURSUANT TO SECTION 106 AND 106A OF THE TOWN AND
COUNTRY PLANNING ACT 1990
relating to a Section 106 Agreement dated 16TH January 1999 associated with
the development of Land at Waterloooville, Hampshire

THIS DEED is dated 11th January 2023 ~~2022~~

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Services Plaza Civic Centre Road Havant PO9 2AX ("**the Council**")
- (2) **THREADNEEDLE PENSIONS LIMITED** who is incorporated and registered in England and Wales with company number **00984167** whose registered office is at **Cannon Place, 78 Cannon Street, London, EC4N 6AG** ("**the Owner**"); and

BACKGROUND

- (A) This Deed of Variation is made under section 106A of the Act and is supplemental to the section 106 agreement made on 19th January 1999 between (1) the Council and (2) Wilson Connolly Properties Limited (**Principal Agreement**).
- (B) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated.
- (C) The Owner is the freehold owner of the whole of the Land and therefore bound by the terms of the Principal Agreement.
- (D) Without prejudice to the terms of the other covenants contained in the Principal Agreement the parties have agreed to modify the obligation in relation to the provision of a public car park within the Development operated as short term shopper parking available to visitors to Dukes Walk.

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:

"**Deed of Variation**"

means this deed of variation

"**Principal Agreement**"

means the Agreement entered into between (1) the Council and (2) Wilson Connolly Properties Limited pursuant to Section 106 of the Act dated 19th January 1999.

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 Principal Agreement.
- 2.2 The clause headings in this Deed of Variation are for reference only and do not affect its construction or interpretation.

- 2.3 References to clauses and Schedules are to the clauses 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 Owner 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 PROVISION

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.

4 VARIATIONS TO THE ORIGINAL AGREEMENT

- 4.1 From and including the date of this Deed of Variation the Principal Agreement shall be read and construed as varied by the provisions of the Schedule to this Deed of Variation.
- 4.2 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 Principal Agreement and that the terms of the Principal Agreement will continue in full force and effect, subject only to the provisions of this Deed of Variation.
- 4.3 The Parties agree and acknowledge that any obligation imposed pursuant to the Principal Agreement and subsequently performed by the Owner and restated in this Deed of Variation does not need to be revisited or performed again and that the restatement of the obligation in this Deed of Variation is for the avoidance of doubt only.

5 COVENANTS TO THE COUNCIL

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

6 COSTS

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

7 LAND CHARGES

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

8 THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

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.

SCHEDULE

Variations to the Principal Agreement

1. Paragraph 5.8 of the Principal Agreement shall be deleted and replaced with the following:

"5.8 Before the first unit within the Development opens for trade the Owner shall provide within the Development ,fully constricted, laid out and marked to the satisfaction of the Council a public car park of 256 spaces and the car park shall be available for public use within and outside of normal shopping hours. During normal shopping hours, the car park shall be operated as a short term shoppers' car park intended to ensure as a first priority that suitable short stay shopper parking will be available to visitors to Dukes Walk. The precise management regime, including the level of Charges and the hours of use of the car park, will be at the Owner's discretion save that for an initial period of three hours rates shall not exceed the highest rates charged at other Comparator Short Term Car Parks unless otherwise agreed in writing with the Council . The Owner may grant Parking Permits to tenants of the commercial units at Dukes Walk from time to time.

14.12.22

2. The following definitions shall be inserted into the Principal Agreement at clause 1:

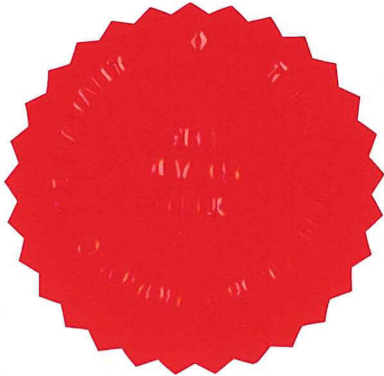
"Charges" means the hourly chargeable rate to customers using the car park and does not include any imposition of any fines or penalties on customers.

"Comparator Short Term Car Parks" means car parks operated by the Council in Waterloooville Town Centre from time to time.

"Parking Permits" means a parking permit which entitles the holder to park at Dukes Walk car park without incurring Charges.

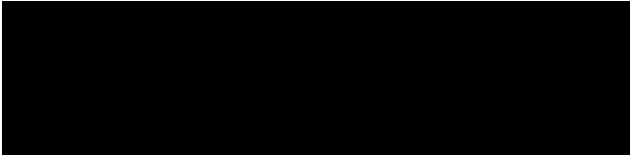
"Waterlooville Town Centre" means the extent of Waterloooville Town Centre as set out in the Council's Adopted Local Plan (Allocations) July 2014 at Appendix 5.

13419



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

in the presence of:



Authorised Signatory

Executed as a Deed by **Threadneedle
Property Execution 1 Limited** acting by
two directors as attorney for **Threadneedle
Pensions Limited** pursuant to a Power of
Attorney dated with effect from the 12
December 2018

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Director

Director

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