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L220406 SAV Cover Letter



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Dear Sirs

**SECTION 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
APPLICATION TO MODIFY A LEGAL AGREEMENT
DUKES WALK, WATERLOOVILLE, PO7 7HS
THREADNEEDLE PENSIONS LIMITED**

Introduction

We write on behalf of our client, Threadneedle Pensions Limited, to apply for a variation to a legal agreement made pursuant to Section 106 of the Act which relates to Dukes Walk in Waterlooville.

Threadneedle Pensions Limited is the owner of Dukes Walk (**'the Property'**) which is a modern shopping precinct accessed via Stakes Hill Road.

The documents which comprise this application for the modification include the following:

- This covering letter;
- Completed application form and notices;
- Drawing Ref: TN/DW2022/SLP – 'Site Location Plan'; and
- s106 Agreement, dated 14 January 1999

We understand that an application made pursuant to Section 106A of the Town and Country Planning Act commands a planning administration fee of £254.20 which is payable to the Council. The applicant also agrees to underwrite the Council's reasonable legal fees associated with reviewing the draft Deed of Variation.

The Application Site

The site to which the proposed modification relates is Dukes Walk in Waterlooville. It specifically relates to the surface car park for the Property which is accessed from either Curzon Road or Stakes Hill Road.

Dukes Walk comprises of a purpose built retail scheme in Waterlooville town centre. Current retailers who are represented at the scheme include Holland & Barrett, Bon Marche and The Works. The scheme was previously anchored by a Waitrose supermarket however this operation ceased in 2020 and this unit is currently vacant.

Relevant Planning History and Legal Agreements

Dukes Walk was constructed pursuant to a planning permission granted on 15 February 1999 for "demolition of No 29 Stakes Hill Road, Nos 3, 5, & 7 Spur Road and the Tavern Public House and construction of 15 food and non-food retail outlets, 1st floor leisure/fitness use and 256 car parking spaces..." (Ref: 98/53856/3) (**'1999 Permission'**).

Offices and associates throughout the Americas, Europe, Asia Pacific, Africa and the Middle East..

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The 1999 Permission was granted subject to an Agreement made on 14 January 1999 between Wilson Connolly Properties Limited and the Council of the Borough of Havant pursuant to Section 106 of the Town and Country Planning Act 1990 (**'the Agreement'**).

Any successor in title is bound by the terms of the Agreement.

The Agreement included a series of covenants that bound the Owner. These related to the original development and imposed controls on the use and operation of the subsequent floorspace and associated land uses (e.g. access and car parking).

This application seeks to vary one of the Developers covenants set out in Section 5 of the Agreement.

Clause 5.8 of the Agreement related to car parking at the site and states that:

"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 operate 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 subject to the Owner ensuring that for an initial period of no longer than three hours similar rates will be charged as in other car parks in Waterlooville town centre operated by the Council save that where the application of this regime shall not be apt to ensure as a first priority that suitable short stay shoppers' parking will be available to visitors of the Development, the Owner shall, with the prior written approval of the Council, such approval not to be unreasonably withheld or delayed, be entitled to vary that regime from time to time to achieve that objective but the Owner shall ensure that public access is available 24 hours per day and consider all changes to the management regime in relation to the interests of the town centre as a whole and in accordance with good estate management practice Provided That the Owner or Occupier of the Development shall be entitled to waive charges to visitors to Dukes Walk through a ticket validation checklist".

A copy of the 1999 Agreement is included as part of this submission for ease of reference.

The Proposed Modification

As stated above, this application seeks variation to the s106 Agreement, dated 14 January 1999.

This application seeks to vary Clause 5.8 to provide the Owner with greater flexibility in respect of charging for the use of car parking within the first three hour period. The specific wording of a revised Clause or its complete removal is to be agreed with the Council as part of this process.

The justification for the proposed variation to the Agreement has been discussed with the Council and is set out in more detail below.

Justification for Proposed Deed of Variation

Context for the Variation

The Agreement does not prohibit the Owner from altering the management regime for car parking at the application site subject to ensuring that suitable short stay shoppers' parking will be available to visitors for Dukes Walk.

Clause 5.8 only imposes limitations on charging for car parking within the first three hours. Specifically, this requires ensuring that similar rates will be charged as in other car parks in Waterlooville town centre which are operated by the Council.

At present, the Dukes Walk car park operates on the of a 2 hour maximum stay which is subject to a £1 charge. No return is permitted within 1 hour.

Prior to the cessation of the Waitrose operation in June 2020 it was possible for its customers to obtain a parking refund when spending £5 or more in store.

The applicant seeks a variation to Clause 5.8 to allow greater flexibility in respect of the current charging regime. Specifically, this relates to a desire to ensure the car park at the Property is aligned with other privately owned facilities within Waterloooville town centre such as Wellington Retail Park and the Sainsbury's Superstore on Hambledon Road. Both of these facilities currently provide free parking for their customers for a maximum stay of up to 3 hours.

In the case of the Sainsbury's Superstore, the operation of the car park is subject to the controls of a car park management plan that was approved as part of Planning Permission Reference: APP/13/01190. This states that the objective of the management system is to manage the car park with the primary objective of providing short stay car parking for customers of the Sainsbury's foodstore. It is understood that car park attendants patrol the car park to monitor and enforce any breaches of conditions of parking.

As currently worded, the Agreement requires the car park at the Property to maintain a charging regime which is consistent with other car parks within the town centre that are operated by the Council. Such an obligation is not imposed on other privately owned car parks elsewhere within the town centre and as such they would prove to be more attractive to potential customers.

In order to ensure parity with other privately owned car parks within the town centre the Applicant is seeking the ability to offer up to 3 hours free parking for its customers. Any breach of this condition would be monitored and enforced through the use of an ANPR system.

A standardised charging regime across all facilities is anticipated to deliver a more effective use of the existing spaces serving the town centre and encourage the use of the car park at the Property. This would generate an increase in the number of trips associated with the units at Dukes Walk and ensure fairer competition with other similar facilities within the town centre.

The obligation to ensue parity with the rates charged at the Council operated car parks within the town centre no longer serves a useful purpose. Beyond that, it is now considered to be harmful to the effective operation of the Property at the application site and is limiting further asset management opportunities from being progressed. It is also contrary to the aspirations of the development plan and the overarching objective of the NPPF to deliver sustainable development.

The reasoning for the restriction, was to ensure that suitable short stay shoppers' parking will be available to serve visitors of the development at Dukes Walk and the interests of the town centre as a whole. The introduction of up to 3 hours of controlled free parking at Dukes Walk would not compromise the ability to provide short stay car parking for its customers. This has been evidenced by the management of the Sainsbury's and Wellington Retail Park car parks whereby such an operation already exists. Conversely, the proposed variation would better serve the interests of Dukes Walk and encourage more direct trips to the Property to the overall benefit of Waterloooville town centre.

Procedure

It is proposed that the variation to the Agreement is secured through a Deed of Variation as a private contract between the relevant parties.

The owner is willing to discuss the process with the Council's solicitor and agree the most appropriate method during the course of the application.

Summary and Conclusion

This application seeks a formal variation to the Agreement to allow greater flexibility in respect of charging for the use of the car park by visiting members of the general public.

As demonstrated above, the obligation imposed on the owner of the Property is no longer considered to serve a useful purpose. Conversely, the obligation is now considered to be harmful to the successful operation of Dukes Walk and is limiting the scope for further growth at the site and within WaterlooVille as a whole. This is contrary to the objectives of the development plan.

The applicant has provided empirical evidence that demonstrates that there is not a consistent charging rate for Council owned car parks within the town centre. Furthermore, it is noted that privately owned car parks which serve WaterlooVille Retail Park and the Sainsbury's Superstore on Hambledon Road (both located within the town centre) are permitted to operate without charge for a maximum stay of 3 hours. Such provisions are not consistent with the restrictions imposed at Dukes Walk.

It follows that a standardised car parking regime would help to achieve a more effective and balanced use of the existing facilities and help to deliver further growth and development in line with the aspirations of the Local Plan.

We trust the information provided above and within the enclosed documents are sufficient for the Council to consider the request for a formal variation to the Agreement.

Subject to agreement in principle, the applicant will instruct its legal representative to draft the proposed Deed of Variation which will be issued to the Council for review by its solicitor at the earliest opportunity.

In the meantime, should you require any clarification or additional information, please do not hesitate to contact either Chris Moore or Matthew Sobic at these offices.

Yours faithfully

A handwritten signature in black ink, appearing to read "Savills", written in a cursive style.

Savills (UK) Ltd

cc. M Finch - Columbia Threadneedle Investments