



Phase 2

PLANNING &
DEVELOPMENT
LIMITED

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Date: 02/02/2022

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Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY D & K CONTRACTING SERVICES LIMITED; REF: APP/X1735/W/21/3279615

SITE ADDRESS: LAND BETWEEN 26-32 PADNELL ROAD , COWPLAIN, WATERLOOVILLE, HAMPSHIRE , PO8 8DZ

Response to LPA Statement and Third-Party Representations

In response to the matters raised in correspondence and in the LPA Statement, the Appellant wishes to make additional comments on the matters raised below.

Presumption in Favour of Sustainable Development

As acknowledged in the LPA Statement, the Local Planning Authority (Havant Borough Council), are unable to demonstrate that there is a five-year supply of land for housing. The LPA state in Paragraphs 6.1 and 6.2 of their Statement that the current supply position is equivalent to 3.9 years (with the 20% buffer applied). As a result, Paragraph 11 d), of the NPPF is engaged and that as such planning permission for residential development should be granted unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

Part i. above is not relevant to the consideration of this appeal since this is not identified or designated as an area which merits specific protection on the basis of its value to conservation or heritage.

Part ii. above therefore represents the key starting point for considering whether the proposed development should be approved. The test is essentially whether the adverse impacts of granting planning permission for the development as proposed would have any adverse impacts which would significantly and demonstrably outweigh the benefits (in the form of housing provision), when assessed against the policies in the Framework as a whole.

In the context of a persistent and acknowledged under supply of housing, the LPA would need to be satisfied that the adverse impacts of development are such that these outweigh the provision of housing. This represents a high bar, which it is argued is not met by the reasons for refusal or the justification provided by the LPA as to why development should not be approved.

It is the Appellant's case that any adverse impacts as identified by the LPA in their assessment of the application do not significantly and demonstrably outweigh the benefits arising from the development proceeding. Indeed, the Appellant does not consider that there are any such adverse impacts when assessed against the policies in the NPPF (which is the only test set out in Paragraph 11 d, Part ii), or the policies in the Development Plan.

According to the LPA Statement, the LPA considers that policies CS16 and DM13 of the adopted Core Strategy are broadly consistent with the NPPF insofar as these relate to the consideration of matters relating to character and design. While this may be the case, the wording of Paragraph 11 d), Part ii does not make provision for the assessment against Development Plan policies, only relevant policies of the Framework. The relevant considerations are examined in greater detail below.

Housing Delivery Test.

It is also noted that Havant Borough Council is among the 51 Local Planning Authority areas which have failed to deliver 75% of the homes needed in the area over the three-year period up to 2021. The latest results, published in January 2022, confirm that the delivery of housing was substantially below the housing requirement over the previous three years, and that regardless of their consistency or otherwise with the NPPF, the relevant policies of the Development Plan must be considered out-of-date.

Notwithstanding the above, it is considered that the proposed development would be in accordance with Development Plan policy and that the new housing that it would provide would be an entirety appropriate addition to the housing supply of the Borough and once which represents sustainable development to which the presumption in favour is clearly applicable.

Specific Comments on the LPA Statement

Comments on Character of the Surrounding Area

Paragraph 7.2 – The LPA states that *“the essential point is that the southern side of Padnell Road is characterised by continuous residential development set in approximate linear fashion”*. This is intended to be a general description of the pattern and layout of the houses within the area.

It is acknowledged that there is a broadly linear alignment of what are mostly detached houses on the southern side of Padnell Road. The main dwellings, which the LPA notes should be distinct from any outbuildings deeper within the plot, do occupy a broadly similar position towards the front of the plots. The proposed development would also occupy a similar position in terms of the position and location of the building frontage. It addresses the fact that it sits at a 'junction' of two building lines, by reflecting the alignment of the houses to the east but the position of the buildings to the west.

Paragraph 7.4 – This refers to the depth of the proposed building and the fact that this would result in the provision of two-storey development beyond the rear of the main dwellings in the vicinity. The main point of contention on the part of the LPA is that *“introducing primary two storey accommodation deep into the site [would be] at variance with the established pattern and layout of the area.”*

The LPA cite Paragraph 130 of the NPPF in requiring that development must be sympathetic to local character. They consider that as a result of the scale, footprint, siting and layout of the proposal, this would be out of character with the area. The Appellant does not consider that this is the case, and that while the footprint and depth of the proposed building are *greater* than those of the neighbouring properties and the majority of the residential buildings in the vicinity, it does not necessarily follow that this is either harmful or unsympathetic to the local character. A key determinant of this is arguably how the proposed development would relate to the street scene. As is evident from the elevational drawing included in Drawing no: 2020/02 Rev D, the building frontage would not represent a significant departure from the local character.

Indeed, this is considered to represent an entirely appropriate form of development with the north elevation incorporating building elements of the houses on either side. Sitting as it does at a point in Padnell Road where there are differences in building style and alignment in the properties to the east and those to the west, this approach is considered to represent a positive response to this context and where elements of the different building styles are incorporated into the design of the frontage. A flatted development and a building which differs in its depth and overall extent to the majority of others is not necessarily harmful to the character of the area. Indeed, as is evident from its frontage which closely reflects the proportions of other buildings in the vicinity, the proposed building is considered to be an appropriate response to the context. It incorporates elements of nearby buildings and does not depart significantly from the established pattern of development evident in the frontages of properties to the south of Padnell Road.

It is important to note that Paragraph 130 of the NPPF also requires that developments will function well and add to the quality of the area. It is clearly the case that the proposed development makes effective use of what is currently a vacant site within an established residential area that can be regarded as under-utilised. In the context of a predominantly residential suburban area of Cowplain, new residential development can be complementary to the area where its presence will infill an incongruous gap in an otherwise continuous frontage.

It is also notable that Part e) of Paragraph 130 requires that development should 'optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development. As outlined above, it is considered that this would be achieved through the provision of flats which makes effective use of land, and introduces a greater range of dwellings into an area where semi detached and detached houses predominate. The density of dwelling provision is entirely appropriate in an area which is in close proximity to a range of amenities and services, including schools and shops within easy walking distance. This is consistent with the definition of sustainable development and contributes towards achieving this objective while also addressing the shortfall evident in housing provision in the Borough.

Indeed, it is noted and acknowledged that the provision of six additional units in the built-up area would be an appropriate density, and that this represents a benefit of the scheme.

Comments on Impact on Amenity of Adjoining Properties

At Paragraph 7.8, the LPA state that they strongly contend the Appellant's position that the impacts of the proposed development on the immediate neighbours would not be excessive or result in any loss of privacy, light or other harm to amenity. The reasons given for this finding are that the two-storey projection beyond the rear elevation of the neighbouring properties at 26 and 32 Padnell Road would have an overbearing and dominant presence and that this would result in adverse impacts on outlook, light and privacy. It is reasoned that the sloping site is in part responsible for creating an overbearing nature of the proposed development. In practice, while there is a modest slope from north to south (from the front to rear of the site), this does not significantly affect or exacerbate the impact of built development further into the site than at either of the neighbouring buildings..

The potential impact on the neighbouring property to the west (26 Padnell Road), will be more limited due to the orientation of the site, with the southerly aspect of all properties to the south of Padnell Road meaning that they will continue to benefit from sunshine and experience good levels of sunlight and daylight at all times. While it is acknowledged that there is greater scope for harm to amenity at 32 Padnell Road as a result of the proposed development.

It is important to note that the current spacing between residential properties in this area is particularly generous, and that the neighbouring residential properties to either side of the Appeal Site benefit from a wide, open rear view and southerly aspect. While the proposed development would result in the presence of a two-storey building projecting further back into the site than these existing properties, this would not be to the detriment of the amenity of the neighbouring dwellings. As is evident from the proposed site plan, there would be a substantial gap maintained between the proposed building and 32 Padnell Road. At its closest point this would be a minimum of 5.5 metres which is equivalent to the entire width of some properties.

The relationship between the proposed building and 26 Padnell Road is more substantial still, while its position (to the east), and orientation mean that the gap between the two properties would be such that any prospect of unneighbourly impacts would be extremely limited.

It is acknowledged that the prospect of harm to the amenity of neighbouring residential properties is greater at 32 Padnell Road. However, owing to the presence of the easement which prevents any building work in the area closest to the eastern boundary of the site, a substantial gap would be maintained which would prevent or at worst limit the prospect of any impacts on the amenity of the property.

Paragraph 7.9 refers to the use of the 45-degree line in the rear elevation of 32 Padnell Road. As is well-established in planning practice. While this is relevant, its use is primarily as a 'rule of thumb' and it does not necessarily determine whether development has a material impact on the amenity of the neighbouring residential properties. The relevant BRE guidance for existing buildings states that the vertical sky component (VSC), at the mid-point of a window from an overcast sky should not fall below 27%, and that development should not result in daylight levels at the centre of the window which are less than 80% of the existing levels. Although a full technical analysis has not been undertaken to demonstrate that this is achieved, reference to best practice guidance confirms that south-facing windows, particularly where there is an absence of other built form in a direct line of sight from the window, are unlikely to experience an unacceptable reduction in daylight levels as a result of new development.

While it is not possible to determine this with reference to the rear elevation, the diagram below demonstrates that a 45-degree angle drawn from the equivalent position on the street scene elevation would not be intersected by the new built development.



Figure 1 – Illustration of the relationship between the existing and proposed building.

While Figure 1 provides a somewhat crude illustration, it demonstrates that the relationship between the proposed development and the neighbouring property to the east would not cause there to be unacceptable impacts on the amenity of the existing occupants.

It is clearly the case that the separation between the two buildings is a significant factor in ensuring that despite the fact the proposed building would extend significantly beyond the rear elevation of the neighbouring properties, it would not result in overshadowing or any material harm to the amenity of the occupants of the dwellings.

As far as the impact on amenity is concerned, the BRE guidance recognises that sunlight is less important than daylight in the amenity of a room and is heavily influenced by orientation. There is clearly no prospect of the proposed development resulting in a loss of sunlight at the neighbouring properties that would in itself represent unacceptable harm to the amenity of residential properties.

Paragraph 7.10 of the LPA Statement highlights the presence and proximity of the neighbouring properties and in particular the private sitting out areas to the rear of the houses. The Statement suggests that the height of the proposed building would be overwhelmingly oppressive and dominant, completely dwarfing the side of the chalet style property to the east.

Paragraph 7.11 suggests that the proposed building would also have an (overly) dominant relationship with the property to the west. It suggests that the two-storey building would tower above the single storey extension to the rear of Number 26, and the sitting out area. However, the Appellant contends that this would not be the case, particularly since the proposed building would be angled away from the existing dwelling, with the gap between the two becoming more pronounced further to the rear. What is evidently (as shown in the street scene elevation), an already substantial gap between the two buildings at the front of the property increases still further towards

the rear, maintaining a sense of spaciousness and preventing any adverse impacts on the amenity of the existing dwelling.

Paragraph 7.12 of the LPA Statement suggests that the fact that side windows in the proposed extension would be obscured does not mitigate against their presence. The Appellant disagrees with this suggestion and disputes the proposition that the mere presence of obscure-glazed windows creates a perception of overlooking that results in harm to amenity. It is not the case that the presence of obscure glazed windows in the east and west elevations of the proposed dwelling would result in harm to the amenity of the residents. Obscure glazing is a well-established means of preventing overlooking from new development which is equally applicable in suburban settings such as this, as it is in a more urban context where there is often much greater proximity between dwellings than is the case here.

Paragraph 7.13 of the LPA Statement questions whether the presence of existing views over the garden of number 32 Padnell Road is a relevant factor in the consideration of whether the proposed development results in harm to amenity. Specifically, it questions whether the statement put forward in the Appellant's Statement of Case that there would only be a limited prospect of the proposed development causing direct overlooking of the existing garden space. The LPA's position appears to be that the presence of window openings, even though these are obscure glazed and secondary windows for the living areas they relate to, causes significant harm to amenity through the perception of overlooking. It is important to note that it is only the perception of overlooking that is cited as harmful to amenity. There is clearly no actual harm to amenity by reason of overlooking of the neighbouring gardens on either side of the Appeal Site and, as a result of the use of obscure glazing (which may quite reasonably and quite effectively be required as a condition of planning permission to prevent overlooking where it is necessary to do so), this situation would not arise as a result of the proposed development.

Furthermore, through a combination of the use of obscure glazing, maintaining a degree of separation between the side elevations and the neighbouring properties, and the setting-in of the rear part of the building from the site boundaries, the impact of the proposed development on the neighbouring properties is limited and the design of the proposal provides significant mitigation against any potential harm that might otherwise be considered to have arisen from the presence of built form in this location.

Paragraph 7.14 goes on to raise issues with the presence of balconies at the rear elevation of the proposed flats. Specifically, it relates to the prospect of overlooking of the areas at the far end of the gardens from the houses themselves, which it describes as the most private, while also noting that the balconies would be adjacent to the most private parts of the gardens. It is unclear from this which part of the garden that the LPA considers to be the most private parts of the garden, but regardless of this, it is not considered that the presence of balconies would necessarily result in harmful impacts on the amenity of any of the neighbouring properties. The Appellant would also contend that the size of these balconies is limited and broadly similar to the minimum that would be required for new dwellings in areas where minimum standards for external amenity spaces are set in policy (e.g. the London Plan). Any increase in activity at first floor level that may result from their presence will necessarily be limited by the size of the external spaces that would be created.

As with many aspects of the LPA Statement, the Appellant contends that assumptions have been made that the change to the relationship between the Appeal Site and the adjacent dwellings result in harm to amenity in the form of overlooking, noise and loss of privacy. As per the above, there is no actual overlooking of internal areas of the neighbouring residential properties arising from the proposed development, while any views of the gardens would also be limited, with a significant degree of privacy retained in all of the neighbouring properties.

Paragraph 7.15 refers to the excessive depth of the proposed development which it considers will result in an unacceptable overbearing and enclosing effect on the neighbouring properties. However, as a result of the

consideration that has been given to mitigating against the potential impacts of the proposal inherent in the design it is not considered that either the depth or the height (or a combination of these and/or other factors), of the built form that is proposed at the Appeal Site, would result in harmful impacts on the amenity of the neighbouring residential properties.

While there may be a limited degree of overshadowing of some external areas of the neighbouring property at 32 Padnell Road, this would be limited to the areas of the rear garden in the immediate vicinity of the house, and only then at times later in the day. The rear of the house itself has a width in excess of 10 metres and would retain a wide, southerly aspect at all times of the day and throughout the year. As depicted on Drawing Number: 2020/02 Rev D, the 45-degree line drawn from the centre of the rear, ground-floor window, intersects with an area of the Appeal Site where the use of a pitched roof further limits and mitigates against the prospect of any harm to amenity.

It is important to reiterate that notwithstanding the Appellant's position as expressed above that there would not in fact be any adverse impacts or harm to residential amenity as a result of the proposed development, in the context of the five-year housing land supply position in the Borough, the appropriate test (as established above), is whether the impact of the development would significantly and demonstrably outweigh the benefits associated with the provision of housing.

It is evident that should the Inspector conclude that there would be actual harm to amenity as a result of the proposed development, this would not be harmful to either character or amenity to such a degree that it would outweigh the substantial benefits arising from the provision of much-needed housing in what is a highly sustainable location in the context of the Borough. In this context, substantial weight must be given to the provision of these new dwellings and in the absence of significant or demonstratable harm to the character of the area or to the amenity of neighbouring residential properties, there should be no reason why planning permission should not be granted for the scheme to which this appeal relates.

Other Matters

The comments in the LPA Statement in relation to parking provision are not considered to require a detailed response. It is sufficient to reiterate the position set out in the Appendix 4 of the Appellant's Statement of Case, provided by DM Mason Engineering Consultants Ltd. It is sufficient that Paragraph 111 of the NPPF states that: Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Since the County Highways Authority have not raised any objection and do not consider that the impact of the proposed development would be severe, there should not (despite the contention of the LPA to the contrary), be any reason to withhold planning permission on the basis of an alleged shortfall in parking provision.

The content of third-party representations submitted by residents of Padnell Road have also been noted and although it is perhaps understandable that strong opinions have been raised about aspects of the proposed development, it is not considered that any points raised require a specific response over and above the comments made above in response to the LPA Statement.

Unilateral Undertakings

As confirmed by the LPA in their Statement, the Appellant has previously entered into and provided signed copies of Unilateral Undertakings relating to financial contributions towards mitigation against the impact on the Solent Special Protection Area (as required by the Solent Recreation Mitigation Strategy, April 2018), and toward measures

to mitigate the water quality impacts of the Development on the Solent. Copies of the two signed undertakings are included as Appendix F and Appendix H of the LPA Statement. While the signatures are redacted, the presence of the redaction is in itself confirmation that the agreements have been completed and that these oblige the Appellant to make the requisite contributions towards the mitigation measures detailed in the Undertakings. The sums of £2,488 and £7,321.90 have been paid by the Appellant, along with the associated legal and administration fees. The Appellant has confirmed that these have not been refunded and it is our understanding that these would continue to be applicable and provide the necessary mitigation in the event that the appeal is allowed.

On this basis, it is our understanding that it is not in fact necessary to provide additional Unilateral Undertakings relating to the mitigation measures outlined above, and the agreements entered into in March and April 2021 (as enclosed at Appendix F and Appendix H of the LPA Statement), will remain applicable. **The absence of any new or separate agreements or new Unilateral Undertakings relating to these measures would not therefore prevent the approval of planning permission.** Should this not be the case and if any additional documentation relating to this is in fact required before the Inspector can grant planning permission (should they be minded to allow the appeal), then the Appellant would be happy to provide this as required and will respond positively to any such request and/or clear direction as to what would be required in the event that additional Planning Obligations are required.

Conclusion

On the basis that all of the relevant matters raised in the LPA Statement and Third-Party Representations have been addressed by the above and in the original appeal submission (in the form of the Appellant's Statement of Case and associated appendices), it is not considered that there are significant or demonstrable reasons why the presumption in favour of sustainable development set out in the NPPF should not apply. In the context of both a persistent under supply of land for housing and the latest Housing Delivery Test findings, it is respectfully requested that the appeal is allowed and that planning permission for a scheme providing new housing in a highly sustainable location should be approved without delay.

Yours sincerely

Mike Spurgeon

Mike Spurgeon Bsc (Hons), MSc, MRTPI
Associate

Enc. Copies of Unilateral Undertakings relating to the provision of financial contributions towards Solent Recreation Mitigation Strategy and mitigation against any potential impacts of development on Water Quality.

APPENDIX F

THIS **UNILATERAL UNDERTAKING** is made by **DEED** on the (to be inserted by Havant Borough Council 31st of March 2021)

AND GIVEN BY

D K & R Properties Ltd incorporated and registered in England and Wales with company number 7307410 whose registered office is at Unit 5, Frobisher Industrial Centre, Budds Lane, Romsey SO51 0EZ

Alwyn DeSouza of Fishlake, Greatbridge Road, Romsey SO51 0HB **Owner**

TO

The Council of The Borough of Havant of Public Service Plaza Civic Centre Road
Havant PO9 2AX

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (B) The Owner owns the Land and has made the Planning Application and is proposing to carry out the Development.
- (C) The Owner gives this undertaking to perform the obligations set out in this deed.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Act: the Town and Country Planning Act 1990

Administration Fee: the sum of £23

Commencement of Development: the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development is begun save that (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, site survey works, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" and similar expressions shall be construed accordingly

Contribution: the sum of £2,488.00 as a contribution towards measures to mitigate the impacts of the Development on the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy dated 1 April 2018.

Development: the development of the Land described in the Planning Application.

Land: the freehold land at Land between 26-32 Padnell Road, Waterloooville.

Monitoring Fee: the sum of £124.40 (calculated as 5% of the Contribution).

Planning Application: an application for planning permission registered by the Council on 21 January 2021 under reference number APP/21/00024.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.5 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 References to clauses are to the clauses of this deed.
- 1.8 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.

2. STATUTORY PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972 and any other enabling powers.

2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns.

2.3 This deed shall have effect from the date hereof.

2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the Act.

3. COVENANTS WITH THE COUNCIL

The Owner covenants with the Council to pay the Contribution, Administration Fee and Monitoring Fee to the Council on the date of this deed.

4. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

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

5. FUTURE PERMISSIONS

5.1 Nothing in this deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

5.2 This deed shall apply to any planning permission subsequently granted under Section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

[FOR INDIVIDUALS]

Executed and delivered as a

deed by **[INSERT NAME]**

Signature:

in the presence of:

Witness signature

Witness name

Witness address

Witness occupation

[FOR COMPANIES OPTION 1]

Executed and delivered as a deed by
acting by two directors

.....
Director

.....
Director

[FOR COMPANIES OPTION 2]

Executed and delivered as a deed by D K &
R Properties Ltd acting by Alwyn DeSouza by
a director



Director

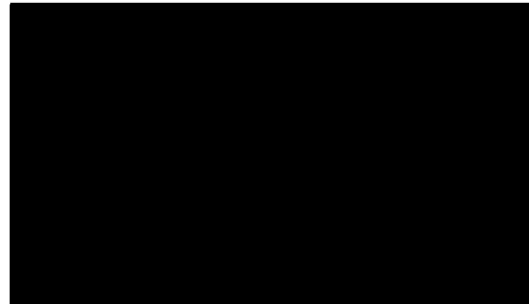
in the presence of:

Witness signature

Witness name

Witness address

Witness occupation



APPENDIX H

THIS **UNILATERAL UNDERTAKING** is made by **DEED** on the 29th of April 2021

AND GIVEN BY

D K & R Properties Ltd incorporated and registered in England and Wales with company number 7307410 whose registered office is at Unit 5, Frobisher Industrial Centre, Budds Lane, Romsey SO51 0EZ (Owner)

Alwyn DeSouza of Fishlake, Greatbridge Rpad, Romsey SO51 0HB (Owner)

TO

The Council of the Borough of Havant of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**)

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (B) The Owner owns the Land and has made the Planning Application and is proposing to carry out the Development.
- (C) The Owner gives this undertaking to perform the obligations set out in this deed.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Act: the Town and Country Planning Act 1990.

Administration Fee: the sum of £23.

Commencement of Development: the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development is begun save that (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, site survey works, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services and "Commence Development" and similar expressions shall be construed accordingly.

Contribution: the sum of £7321.90 as a contribution towards measures to mitigate the water quality impacts of the Development on the Solent European Sites.

Development: the development of the Land described in the Planning Application.

Land: the freehold land at Land between, 26-32 Padnell Road, Waterloooville, Erection of block of 6 flats with associated parking and bin/cycle storage.

Planning Application: an application for planning permission registered by the Council on 21 January 2021 under reference number APP/21/00024.

Planning Permission: the planning permission granted/to be granted by the Council in respect of the Planning Application.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.5 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 References to clauses are to the clauses of this deed.
- 1.8 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.

2. STATUTORY PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by the Owner in the Land and their respective successors and assigns.
- 2.3 This deed shall have effect from the date hereof.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the Act.

3. OWNERS COVENANTS WITH THE COUNCIL

- 3.1 The Owner covenants to pay the Contribution and Administration Fee to the Council on the date of this deed.
- 3.2 Subject to clause 3.4, the Owner covenants that clause 3.1 shall apply to any subsequent planning permission that is granted by the Council under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission or any subsequent permission granted under such powers ("Subsequent Permission") and the Planning Permission and the Development shall be construed to include the development as granted under a Subsequent Permission.
- 3.3 Where clause 3.3 is engaged, the Owner agrees and acknowledges that the Council may treat the Contribution and Administration Fee as having been made under any Subsequent Permission.
- 3.4 For the avoidance of doubt, clause 3.3 shall not be construed as to require the Owner to fulfil the covenant provided at clause 3.1 more than once.

4. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is revoked; or
- (c) is quashed following a successful legal challenge.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

[FOR INDIVIDUALS]

Executed and delivered as a

deed by [INSERT NAME]

.....

in the presence of:

Witness signature

.....

Witness name

.....

Witness address

.....

.....

Witness occupation

.....

[FOR COMPANIES OPTION 1]

Executed and delivered as a deed by

[COMPANY NAME]

acting by two directors

.....

[INSERT DIRECTORS NAME]

Director

[INSERT DIRECTORS NAME]

.....

Director

[FOR COMPANIES OPTION 2]

Executed and delivered as a deed by
D K & R Properties Ltd acting by **Alwyn**
DeSouza, by a director



.....

Director

in the presence of:

Witness signature

Witness name

Witness address

Witness occupation

