

DATED 23rd December 2021

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) HAMPSHIRE COUNTY COUNCIL

and

(3) BDW TRADING LIMITED

DEED OF VARIATION PURSUANT TO
SECTION 106 AND 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO DEVELOPMENT AT FORTY ACRE FARM, HAVANT ROAD
BEDHAMPTON



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THIS DEED OF AGREEMENT is dated the 23rd day of December 2021
BETWEEN

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX ("**the Council**"); and
2. **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ ("**the County Council**"); and
3. **BDW TRADING LIMITED** (Company Reg. No. 03018173) whose registered office is at Barratt House Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ("**the Owner**")

RECITALS

- a) The Council and the County Council are the local planning authority for the area in which the Land is situated
- b) The County Council is also the Local Highway Authority for Hampshire (save for trunk roads and special roads) and the Transport Authority for Hampshire for the purpose of the Transport Act 1985 and 2000
- c) The Owner owns the Land.
- d) On 17 January 2020 the Original Agreement was entered into and the Original Planning Permission was issued.
- e) On 2 June 2021 the Original Agreement was varied by way of the First Deed of Variation.
- f) On 12 November 2021 the Original Agreement was varied by way of the Second Deed of Variation.
- g) This Deed is made pursuant to section 106 and 106A of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Council pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and all other powers so enabling.

OPERATIVE PROVISIONS

NOW THIS DEED WITNESSES as follows:

1. INTERPRETATION

1.1. In this Deed the following definitions shall apply

this Deed	means this deed of agreement
First Deed of Variation	means a deed of variation of the Original Agreement dated 2 nd June 2021 and made between the Council (1) the County Council (2) and the Owner (3)
Original Agreement	means the planning obligation under section 106 of the 1990 Act relating to land at Forty Acre Farm, Havant Road, Bedhampton dated 17 January 2020 entered into 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 (7) BDW Trading Limited as varied by the First Deed of Variation and the Second Deed of Variation

**Original
Permission**

Planning

means the planning permission issued by the Council dated 17 January 2020 for "the erection of 320 dwellings (including a 30% provision of affordable homes), 66 bed care home, provision of public open space, habitat mitigation zone, allotments, closure of existing access and creation of 2 new access points and associated infrastructure following demolition of existing buildings" and given the planning reference APP/18/00450 together with all variations thereto as registered and published on the Council's planning portal from the date of the Original Agreement until the date of this Deed

**Second
Variation**

Deed

of

means a deed of variation of the Original Agreement dated 12 November 2021 and made between the Council (1) the County Council (2) and the Owner (3)

- 1.2. In this Deed the words and expressions used shall have the meanings prescribed in Clause 1.1 of this Deed and/or in Clause 1 (Definitions) of the Original Agreement (as the case may be) unless as otherwise stated.
- 1.3. The headings in this Deed are for convenience only and shall not be deemed to be part of (or taken into consideration in the interpretation of) this Deed.
- 1.1. A person includes a natural person corporate or unincorporated body (whether or not having separate legal personality).
- 1.2. Unless the context otherwise require words in the singular shall include the plural and in the plural shall include the singular.
- 1.3. Unless the context otherwise requires a reference to one gender shall include a reference to the other genders.
- 1.4. A reference to any party shall include that party's personal representatives successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 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. Unless the context otherwise requires references to clauses schedules and appendices are to the clauses schedules and appendices of this Deed.
- 1.8. Any words following the terms including include in particular for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words description definition phrase or term preceding those terms.
- 1.9. Where an obligation falls to be performed by more than one person in respect of their interest the obligation can be enforced against every person so bound jointly and against each of them individually in respect of their interest.

1.10. Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction.

1.11. If any provision (or part thereof) of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed thereby to be affected impaired or called into question.

2. LEGAL EFFECT

2.1. This Deed is a planning obligation made pursuant to section 106 of the 1990 Act together with section 106A of the 1990 Act and its purpose is to vary the Original Agreement with the intention that the planning obligations contained in the Original Agreement shall continue to apply save for any variations contained within this Deed

2.2. To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Council and the County Council pursuant to the powers contained in section 111 of the Local Government Act 1972 section 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and any other enabling powers

2.3. The covenants obligations restrictions and requirements imposed upon the parties by this Deed are:

2.3.1. entered into pursuant to the provisions of section 106A of the 1990 Act

2.3.2. planning obligations for the purposes of section 106 of the 1990 Act

2.3.3. related to the Land

2.3.4. entered into with intent to bind the Owner's interests in the Land and each and every part thereof into whosoever hands the same may come (save for those excluded pursuant to clause 9 of the Original Agreement)

2.3.5. enforceable by the Council and the County Council as local planning authorities

2.3.6. executed by the respective parties as a deed.

3. COMMENCEMENT

3.1. This Deed shall take effect on the date set out above.

4. VARIATION

4.1. All the terms definitions conditions and obligations in the Original Agreement (including for the avoidance of doubt any recitals and any schedules and appendices referred to therein) are incorporated in full in this Deed and nothing in this Deed shall vary or alter the Original Agreement save where expressly stated otherwise in this Deed

4.2. From the date of this Deed the Original Agreement shall be varied and construed as follows:

4.2.1. In Clause 1 of the Original Agreement the definition of "Affordable Dwellings" shall be deleted and replaced with the following:

"Affordable Dwellings" means 106 Dwellings to be constructed on the Land to be provided as units of Affordable Housing as part of the Development and in accordance with the Affordable Housing Mix and the Affordable Housing Plan and any reference to "Affordable Dwelling" will be interpreted accordingly

- 4.2.2. In Clause 1 of the Original Agreement the definition of "Affordable Housing Plan" shall be deleted and replaced with the following:

"Affordable Housing Plan" means the plan titled "affordable housing plan" with drawing number N81:2393 205 identifying the siting of the Affordable Dwellings at Appendix 2 to this Agreement or such alternative plan as may be agreed in writing with the Council

- 4.2.3. In Clause 1 of the Original Agreement the definition of "Application" shall be deleted and replaced with the following:

"Application" means the application submitted by the Developer to the Council for planning permission to carry out the Development and given the Council's reference number APP/18/00450 and APP/21/00605

- 4.2.4. In Clause 1 of the Original Agreement the definition of "Community Project Worker Contribution" shall be deleted and replaced with the following:

"Community Project Worker Contribution" means the sum of £88,500 as a contribution towards the provision of a suitably qualified and experienced person employed by the Council to assist in the establishment of a successful and cohesive local community within the Development and to promote integration with existing communities in the vicinity of the Development

- 4.2.5. In Clause 1 of the Original Agreement the definition of "Development" shall be deleted and replaced with the following:

"Development" means the erection of 354 Dwellings, a 66-bed care home together with the provision of Open Space Land, Allotment Land, Wintering Bird Mitigation Area and the creation of two new access points following the closure of the existing access and the demolition of existing buildings and associated infrastructure works in accordance with the Planning Permission

- 4.2.6. In Clause 1 of the Original Agreement the definition of "Health Contribution" shall be deleted and replaced with the following:

"Health Contribution" means the sum of £61,040 payable to the Council as a contribution towards increasing the capacity of existing health care facilities being The Portsdown Group Practice, The Bosmere Medical Practice and Homewell Curlew Practice or such other health care facilities in the vicinity of the Land to accommodate the increased demand for such services as a result of the Development

- 4.2.7. In Clause 1 of the Original Agreement the definition of "Land" shall be deleted and replaced with the following:

"Land" means the freehold property known as land at Forty Acre Farm, Havant Road, shown edged red on the Plan and registered at the Land Registry with title number SH55541

- 4.2.8. In Clause 1 of the Original Agreement the definition of "Monitoring Fee" shall be deleted and replaced with the following:

"Monitoring Fee" means the sum of £12,916.03 as a contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person whose function is to monitor, coordinate and enforce the obligations contained within this Agreement

- 4.2.9. In Clause 1 of the Original Agreement the definition of "Open Space Land" shall be deleted and replaced with the following:

"Open Space Land" means the public open space land and amenity spaces (but excluding the Allotment Land, Community Orchard and LAP) provided as part of the Development having an area of approximately 22 acres and shown coloured green on drawing number N81:2393 215 titled 'S106 Illustrative Open Space Re-Plan' at Appendix 4 to this Agreement

- 4.2.10. In Clause 1 of the Original Agreement the definition of "SRMS Contribution" shall be deleted and replaced with the following:

"SRMS Contribution" means the sum of £227,125.40 payable to the Council as a contribution towards measures to mitigate against the impact of the Development to the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy

- 4.2.11. In Clause 1 of the Original Agreement the following new definition shall be added in the appropriate place to maintain alphabetical order:

"Affordable Housing Contribution" means the sum of £17,814.90 as a contribution in lieu of the fact that the total number of affordable housing units being provided as part of the Development is 0.6% lower than that required by the Council in order to grant planning permission for the Development

- 4.2.12. Schedule 1 Paragraph 1.2 of the Original Agreement shall be deleted and replaced with the following:

1.2 *That the Affordable Housing Mix shall consist of:*

1.2.1 *74 Affordable Rented Dwellings; and*

1.2.2 *32 Shared Ownership Dwellings; or*

1.2.3 *such other mix of type, tenure and numbers as may be agreed in writing with the Council at its absolute discretion.*

- 4.2.13. Schedule 1 Paragraph 2 of the Original Agreement shall be deleted and replaced with the following:

2. PROVISION OF AFFORDABLE DWELLINGS

2.1 *Not to Dispose nor permit Disposal of more than 240 Open Market Dwellings until a contract for the sale of the Affordable Housing Land has been entered into with an Affordable Housing Provider.*

2.2 *Not to Dispose nor permit Disposal of more than 240 Open Market Dwellings until the Affordable Housing Land has been transferred (by either a transfer or transfers of the freehold interest or long leasehold interest with a term of not less than 125 years) to an Affordable Housing Provider.*

2.3 *Not to Dispose nor permit Disposal of more than 240 Open Market Dwellings until the Affordable Dwellings have been constructed and are ready for Occupation.*

- 4.2.14. A new Paragraph 6 shall be added to Schedule 4 of the Original Agreement as follows:

6 Affordable Housing Contribution

The Affordable Housing Contribution shall be paid by the Owner to the Council by no later than 15th January 2022.

- 4.2.15. At Appendix 2 of the Original Agreement the plan titled "affordable housing plan" with drawing number PL09 Rev N identifying the siting of the Affordable Dwellings shall be deleted and replaced with the plan at Appendix 1 to this Deed
- 4.2.16. At Appendix 4 of the Original Agreement the plan titled "S106 Illustrative Open Space Re-Plan" with drawing number 215 Revision 12 shall be deleted and replaced with the plan at Appendix 2 to this Deed
- 4.3. The parties agree that with effect from the date hereof the Original Agreement shall be varied and read and construed as being subject to the terms of this Deed and as having been amended by the terms of this Deed and the terms of the Original Agreement shall continue in full force and effect
5. **COVENANTS**
- 5.1. The Parties hereby agree that:
- 5.1.1. performance or part performance of any covenant obligation or restriction pursuant to the Original Agreement shall be deemed also to have been performed or part performed for the purposes of the satisfaction of the covenant obligation or restriction in this Deed
- 5.1.2. non-performance of any covenant obligation or restriction in the Original Agreement shall be deemed also to be non-performance for the purposes of compliance with the covenant obligation or restriction in this Deed
- 5.1.3. the Parties covenant to observe and perform the covenants restrictions and obligations contained in the Original Agreement as varied by this Deed
6. **LOCAL LAND CHARGE**
- 6.1 This Deed is a local land charge and shall be registered as such by the Council.
- 6.2 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the Council for confirmation to that effect and (subject to the payment of the Council's reasonable costs and charges in connection therewith) upon the Council being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Council shall as soon as is reasonably practicable issue a written confirmation to such effect to the Owner
- 6.3 The Council shall upon the written request of the Owner (and subject to the payment of the Council's reasonable costs and charges in connection therewith) at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Council being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable cancel all entries made in the local land charges register in respect of this Deed
7. **COSTS**
- 7.1. The Owner covenants to pay on or before completion of this Deed the Council's reasonable legal and administrative costs in connection with the negotiation preparation completion and registration of this Deed whether or not this Deed is delivered in accordance with clause 11
- 7.2. The Owner covenants to pay on or before completion of this Deed the County Council's reasonable legal costs in connection with the negotiation preparation completion and registration of this Deed whether or not this Deed is delivered in accordance with clause 11

8. **THIRD PARTY RIGHTS**

- 8.1. The Parties to this Deed intend that no terms of this Deed may be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Deed **SAVE FOR** the successors in title to the Parties to this Deed (save for those excluded pursuant to clause 9 of the Original Agreement) and in the case of the Council the successor to its statutory functions

9. **AGREEMENTS AND DECLARATIONS**

- 9.1 The Parties agree that

- 9.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission and
- 9.1.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function

10. **GOVERNING LAW**

- 10.1 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
- 10.2 It is hereby agreed that the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales

11. **DELIVERY**

- 11.1. This Deed is delivered on the date written at the start and the provisions of this Deed shall be of no effect until this Deed has been dated

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

APPENDIX 1
Affordable Housing Plan

Key

- AFFORDABLE RENT
- SHARED OWNERSHIP



DO NOT SCALE
All dimensions to be checked on site and amended to be
in line of any discrepancies prior to construction

DESIGNER'S RISK ASSESSMENT
To be completed by the Designer

RESIDENTIAL RISK



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idPARTNERSHIP
NORTH LONDON
ARCHITECTURE | MASTERPLANNING | URBAN DESIGN

City Area Plan for North London			
Affordable Housing Plan			
NO	MP		
1500 at A0			
05.05.21	N81 2393	205	
© 2021 ID PARTNERSHIP			

APPENDIX 2

Open Space Plan

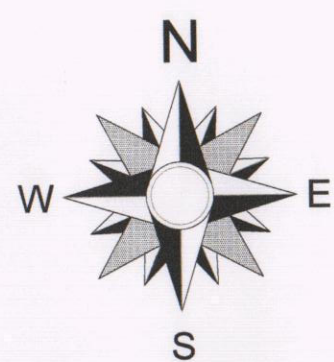
DO NOT SCALE
All dimensions to be checked on site and Architect to be notified of any discrepancies prior to commencement

DESIGNER'S RISK ASSESSMENT

Construction (Design and Management) Regulations 2015

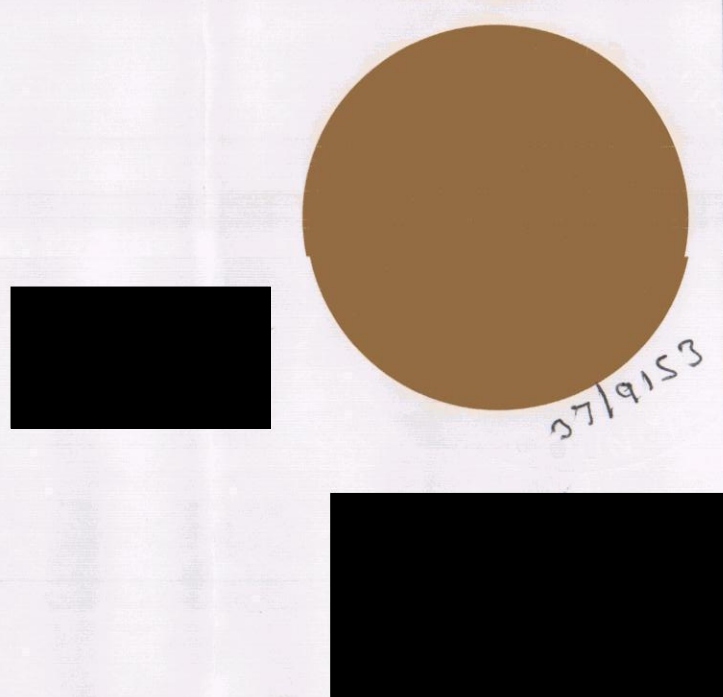
RESIDUAL RISKS:

REF.	DESCRIPTION	DATE
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KEY

- MANAGEMENT COMPANY AREAS
- OTHER AREAS INCLUDING RESIDENTIAL DEVELOPMENT, SUDs AND HABITAT MITIGATION



DRAFT

REVISION	DATE	DESCRIPTION	CHECKED
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idpARTNERSHIP
NORTHERN

ARCHITECTURE | MASTERPLANNING | URBAN DESIGN

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JOB / CLIENT
Forty Acre Farm
for BDW Southampton

DRAWING TITLE
S106 Illustrative Open Space Re-Plan

PROJECT ARCHITECT	KD	DRAWN BY	KT	CHECKED	
SCALE	1:1000 at A0	PROJECT NO.	N81:2393	DRAWING NO.	215
DATE	November 2019				
DRAW STATUS	DRAFT	CONSTRUCTION	TENDER	CONSTRUCTION	RECORD

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Executed as a deed by Juan David Jorda

and Jonathan Edward Green

as attorneys pursuant to a Power of Attorney
dated 14 June 2021 for and on behalf of

BDW TRADING LIMITED

[Redacted Signature]

Attorney

[Redacted Signature]

[Redacted Signature]

Signature of Witness

Name of Witness

Address

[Redacted Address]

[Redacted Signature]

Signature of Witness

[Redacted Signature]

Attorney

Name of Witness

Address

[Redacted Address]

THE COMMON SEAL OF THE COUNCIL
OF THE BOROUGH OF HAVANT

was hereunto affixed in the
presence of:



Authorised Officer Signatory

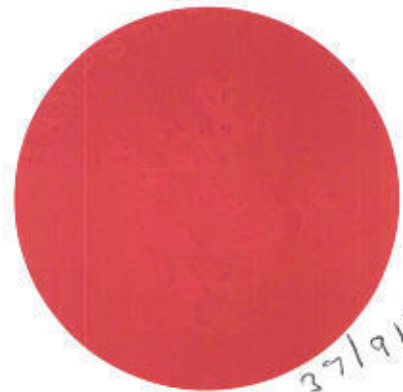


1326)

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



Authorised Signatory



37/9/53

Name PAUL HODGSON

Position DEPUTY HEAD OF LEGAL