

DATED

3rd December

2013

RICHARD MARK WARDLE

(1)

and

BANK OF SCOTLAND PLC

(2)

and

THE COUNCIL OF THE BOROUGH OF HAVANT

(3)

**DEED OF VARIATION
AND PLANNING OBLIGATION**

Pursuant to (inter alia)
Section 106 and Section 106A of the Town and Country Planning Act 1990
Relating to land at North Farm Cottage, Northney Lane, Hayling Island
in Hampshire PO11 0SE

Mrs J Barden-Hernandez
Solicitor to the Council
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant, Hampshire
PO9 2AX

THIS DEED OF VARIATION is made the 3rd day of December 2013
BETWEEN

- (1) RICHARD MARK WARDLE of North Farm Cottage, Northney Lane Hayling Island in Hampshire PO11 0SE ("the Owner")
- (2) BANK OF SCOTLAND PLC (Company Registered Number SC327000) whose registered office is at The Mound, Edinburgh EH1 1YZ ("the Mortgagee")
- (3) THE COUNCIL OF THE BOROUGH OF HAVANT of Civic Offices Civic Centre Road Havant Hampshire PO9 2AX ("the Council")

WHEREAS:

1. This Deed is supplemental to a Deed of Planning Obligation by Undertaking dated 13 November 2003 made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and Section 111 of the Local Government Act 1972 by the Owner to the Council in relation to the development of land at North Farm Cottage, Northney Lane Hayling Island in Hampshire ("the Section 106 Undertaking")
2. The Owner is the freehold owner of the land shown edged Black on the Plan subject to a mortgage in favour of the Mortgagee dated 26 April 2002.
3. The Parties hereto agree and consent to the terms of the Section 106 Undertaking being varied in respect of the site as hereinafter provided.
4. the Owner has made an application under reference APP/13/00495 to vary the Section 106 Undertaking so as to permit use of the Development for uses ancillary or incidental to the use of North Farm Cottage as a single dwelling house.

NOW THIS DEED WITNESSETH as follows:

PRELIMINARY AND RECITALS

A Definitions

- A.1 Words and phrases used in this Deed are defined at Clause 1.1. Save as otherwise provided words and phrases in this Deed shall have the meanings contained in the Section 106 Undertaking.

B Purpose of Deed

- B.1 This Deed is supplemental to and varies certain of the obligations contained in the Section 106 Undertaking.
- B.2 The provisions of this Deed bind the Land (and each and every part of it) the parties and their successors in title save where this Deed expressly provides to the contrary

C Statutory Authorities

- C.1 The Council is for the purposes of Sections 106 and 106A of the Act the authority which can enforce the terms of this Agreement
- C.2 This Deed is made pursuant to the provisions Section 106 and 106A of the 1990 Act Section 111 of the Local Government Act 1972 the Housing Acts and Section 2 of the Local Government Act 2000 and all other powers enabling

D Planning

- D.1 This Deed is supplemental to the Section 106 Undertaking which is varied by the provisions of this Deed

E Liability for this Deed

- E.1 The Planning Obligations restrictions covenants limitations and obligations in this Deed relating to clauses within the Section 106 Undertaking and this Deed of Variation relate to and are binding in their entirety upon the Owner and their successors in title and assigns and their interest in the Land save as otherwise provided shall bind and run with the land and each and every part of it.
- E2 The Mortgagee consents to the completion of this Deed of Variation and declares that its interest in the Land shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of their interest in the Land.
- E3 The Mortgagee joins in and executes this Unilateral Undertaking so as to show its consent to its terms and on the understanding that they will only be liable for any breach of the covenants restrictions or obligations contained in this Unilateral Undertaking during such periods (if any) as it is a mortgagee in possession of the Land and then only if it shall have caused such breach to be occasioned, and provided, for the avoidance of doubt, that it shall not in any

^{be}
event liable for any breach of this Unilateral Undertaking arising prior to it becoming mortgagee in possession of the Land, regardless of whether or not such pre-existing breach shall continue for any period during which it is mortgagee in possession of the Land.

1 DEFINITIONS AND INTERPRETATION

- 1.1 The definitions contained in the Section 106 Undertaking apply unless the context otherwise requires
- 1.2 The provisions of this Deed shall unless the context otherwise requires be construed as follows:
 - 1.2.1 Words importing one gender shall include all other genders
 - 1.2.2 The singular includes the plural and vice versa
 - 1.2.3 Reference to a statute includes any amendment, modification, extension consolidation or re-enactment of it and any statutory instrument, regulation or order made under it which is for the time being in force
 - 1.2.4 References to any "Clause" or "Sub-Clause" (or any part of them) shall (unless the context otherwise requires) be references to a Clause Sub-Clause (or any part of them) of this Deed
 - 1.2.5 Headings to clauses of this Deed do not affect the interpretation or construction of this Deed

2 EFFECT OF AGREEMENT

- 2.1 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Owner and their successors in title.
- 2.2 This Deed also varies and supplements certain of the provisions of the planning obligations contained in the Section 106 Undertaking.

3 LAND BOUND AND ENFORCING AUTHORITY

- 3.1 The provisions of this Deed and the covenants restrictions limitations and obligations given by the Owner shall bind and run with the Land and each and every part of it and shall be binding against the Owner and its successors in title and assigns to the Land and each an every part of it save as provided elsewhere in this Deed.

4 LOCAL LAND CHARGE REGISTRATION

- 4.1 This Deed is registerable by the Council as a local land charge in the Register of Local Land Charges kept by the Council.

5 THE OWNER'S COVENANTS

- 5.1 The Owner for themselves and their successors in title to the Land and each and every part of it hereby covenants in favour of the Council to observe perform and abide by the obligations restrictions limitations and covenants contained in this Deed and in the Section 106 Undertaking as varied by this Deed and the said obligations restrictions limitations and covenants shall run with and bind with the Land and each and every part of it as set out below.

6 VARIATIONS TO THE SECTION 106 UNDERTAKING

- 6.1 The variations set out in the Schedule hereto shall have effect from the date of this Deed.

7 AGREEMENTS AND DECLARATIONS

It is hereby agreed and declared by the parties hereto that:

- 7.1 Except in so far as legally or equitably permitted this Deed shall not prejudice fetter or affect the exercise of any statutory power duty or discretion of the Council
- 7.2 The terms of the Section 106 Undertaking except as varied by this Deed are confirmed as if the same were set out in this Deed in full and that such terms as so varied shall for all purposes be deemed incorporated in this Deed.
- 7.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

IN WITNESS whereof this Deed has been executed as a Deed by the parties hereto the day and year first before written

Signed as a DEED by me)
the said)
RICHARD MARK WARDLE)
in the presence of:)
name of witness: TIM WALLACE

address of witness: 33 PIPIT CLOSE
505 POET
PO12 4JE

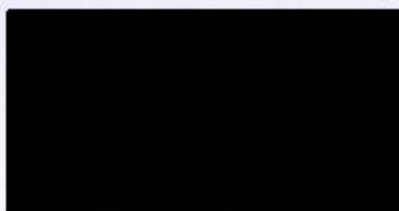
EXECUTED as a DEED
For and on behalf of

BANK OF SCOTLAND PLC

by its authorised signatory

BANK OF SCOTLAND
PENTLAND HOUSE
8 LOCHSIDE AVENUE
EDINBURGH PARK SOUTH GYLE
EDINBURGH EH12 9DJ

EXECUTED as a DEED by affixing)
THE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH)
OF HAVANT)
in the presence of:)



Authorised Signatory



Authorised Signatory

SCHEDULE

Variation of Section 106 Undertaking

1 Definitions

- 1.1 The following definitions in Clause 1 of the Section 106 Undertaking shall be amended as set out below:-

Defined Term in Section 106 Undertaking	Amended Defined Term	Amendment to definition
Planning Application	Planning Applications	The planning applications made on 10 th June 2003 and the 24 May 2013 made by Richard Wardle for the Development and the variation to the Section 106 Undertaking

2 Other Variations

- 2.1 Where a defined term which is amended in 1.1 above appears in the Section 106 Undertaking it shall be deemed to include a reference to the amended defined term as set out in 1.1 above.

- 2.2 Schedule 2 shall be amended to delete the words

"Not at any time to use (or cause or suffer or permit the use of) any building constructed or to be constructed pursuant to and in reliance upon the Planning Permission other than as a garage workshop study or store incidental to the use of North Farm Cottage as a single dwelling house unless any variation is first agreed in writing by the Council"

and replaced by the insertion of the words

"Not at any time to use (or cause or suffer or permit the use of) any building constructed pursuant to and in reliance upon the Planning Permission other than as ancillary or incidental to the use of North Farm Cottage as a single dwelling house."

