

DATED

11 April

2013

TERENCE FREDERICK MOSS

and

COMMERCIAL INVESTMENTS LTD

and

THE COUNCIL OF THE BOROUGH OF HAVANT

DEED

Pursuant to Section 106 of the Town and Country
Planning Act 1990 (as amended)

relating to land at

19-23 and 29-31 Creek Road Hayling Island Hampshire

Jo Barden-Hernandez
Solicitor to the Council
Public Service Plaza
Civic Centre Road
Havant
Hants
PO9 2AX

THIS DEED is made the
BY

11th day of April

2013

- (1) MR TERENCE FREDERICK MOSS of 29 Creek Road Hayling Island Hampshire PO11 9QZ ("The First Owner")
- (2) COMMERCIAL INVESTMENTS LTD (Incorporated in The Seychelles) C/o 29 Creek Road Hayling Island Hampshire PO11 9QZ ("The Second Owner")
- (3) THE COUNCIL OF THE BOROUGH OF HAVANT of Public Service Plaza Civic Centre Road Havant Hampshire PO9 2AX ("The Council")

WHEREAS:

- (1) The Council is the local planning authority for the purposes of the Act and a local housing authority for the purposes of the Housing Act 1985 for the area within which the Land is situate
- (2) The First Owner is the entitled to be registered as the freehold owner of the Land and a certificate from the Solicitor to the First Owner has been produced to the Council that the First Owner is immediately entitled to possession and no other person having an interest therein at law or in equity other than as set out below.
- (3) The Second Owner is the entitled to be registered as the freehold owner of the Land and a certificate from the Solicitor to the Second Owner has been produced to the Council that the Second Owner is immediately entitled to possession and no other person having an interest therein at law or in equity other than as set out above.
- (4) The Council is the Local Authority for the purpose of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate be conducive and incidental to the Council's functions

NOW THIS DEED WITNESSETH as follows:

1. Statutory Powers

This Deed is made pursuant to:

- 1.1 Section 106 of the Town and Country Planning Act 1990
- 1.2 Section 111 of the Local Government Act 1972 to the intent that it shall bind the First Owner and Second Owner and their successors in title to each and every part of the Land and its assigns

2. Interpretation

2.1 Reference in this Agreement to a Clause Schedule or Recital shall mean a Clause Schedule or Recital to this Agreement

2.2 Headings in this Agreement are for ease of reference only and shall not affect construction or interpretation of any of the provisions of this Agreement

2.3 In this Agreement where the context so admits:

2.3.1 words importing one gender shall include all other genders

2.3.2 words importing the singular shall include the plural and vice versa

3. Planning Obligations

The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Town and Country Planning Act 1990 and are enforceable by the Council

4. In this Deed the following expressions shall unless the context shall otherwise require have the following meanings:

"the Act" means the Town and Country Planning Act 1990 as amended

"Application" means the application for planning permission in respect of the Land given a reference number which is set out in paragraph Three of the Schedule which Application to carry out the Development has been made to the Council as appropriate local planning authority.

"the Council" means the Council of the Borough of Havant being the local planning authority by whom the within written Obligations are enforceable

"the County Council" means Hampshire County Council being the local planning authority by whom the within written Obligations are enforceable

"the Development" means the development described in paragraph Four of the Schedule

"the Hampshire County Council Transport Contribution" means the sum of money specified in Paragraph Six of the Schedule being a contribution (being applied at such time and in such manner as the County Council shall in its

absolute discretion determine) to the costs to be incurred by the Council or Hampshire County Council in the provision, improvement and maintenance of Hampshire County Council and Havant Borough Council's local transport improvement list.

"the Land" means the land described at paragraph One of the Schedule and any buildings structures or erections at any time thereon

"the Monitoring/Legal Costs Fees" means the sum of money specified in Paragraph Six of the Schedule being Fees (being applied at such time and in such manner as the Council shall in its absolute discretion determine) used towards the costs to be incurred by the Council in the provision of suitably qualified and experienced persons whose function inter alia is to draft monitor coordinate and enforce section 106 Obligations.

"Obligations" and "OBLIGATIONS" means those planning obligations (being restrictions requirements covenants agreements obligations or any of the foregoing) enforceable at law and in particular (but without prejudice to the availability to any enforcing authority of any power which may be available to it for the purposes of the enforcement of this Deed) under the authority of the statutory provision referred to in clause 7 of this Deed and which are set out in paragraph Seven of the Schedule

"First Owner and Second Owner " means the owner and in the case of two or more owners each or all of them as owners of any or all parts of the Land and as parties to this Deed acting and being obliged by this Deed jointly and severally who is (or are) described at paragraph Two of the Schedule being a person or persons identified in accordance with Section 106(9)(c) of the Act

"the Permission" means the grant of planning permission made in response to the Application including where appropriate any grant of approval in respect of matters reserved by the said grant of planning permission or any subsequent grant of planning permission for the Development or for such other development on the Land as is not materially different from the Development (the determination of materiality being solely at the discretion of the Council)

"the Plan" means the plan attached to this Deed

"the Schedule" means the Schedule to this Deed being an integral part of this Deed

"the Solicitor" means the solicitor giving the certificate at paragraph Five of the Schedule

- 5.1 With the intention and so as permanently to bind the Land and all parts thereof so far as lawfully may be effected and into whomsoever hands the same may come and so that the Obligations hereby created shall be enforceable both against the First Owner and Second Owner and their successors First Owner and Second Owner (should it or they take possession of any part of the Land or exercise powers of sale under its security) HEREBY SEVERALLY COVENANT AND UNDERTAKE AS A PLANNING OBLIGATION TO COMPLY FULLY WITH THE OBLIGATIONS
- 5.2 This instrument or document hereby expresses itself as executed as a Deed
6. The First Owner and Second Owner (and each of them acting in concert in the case of more than one joint owner) has produced at Paragraph Five of the Schedule a certificate of the Solicitor with the intention that the Council may and shall rely upon the truth of the matters therein certified namely that;
 - 6.1 the First Owner and Second Owner is immediately entitled to possession and occupation of a freehold estate in the Land
7. This Deed is made pursuant to Section 106 of the Act with the intent that it shall bind the First Owner, Second Owner and The Council and be enforceable against them and the persons deriving title under them and shall be a planning obligation for the purposes of the Act
8. This Deed shall have effect from the date of this Deed.
9. In the event of any difference between the description of the Development in this Deed and the terms of the grant of permission issued by the Council in response to the Application the text of the grant of planning permission only shall be deemed to express the permission granted by the Council in response to the Application
10. The obtaining consequent upon the provisions of this Deed of expressions of acceptance or satisfaction on the part of the Council with things done in discharge of Obligations or determinations of materiality for the purposes of

clause 4 shall be ineffective and not relied upon by any person unless in writing by the Council's Executive Head of Planning and Built Environment for the time being or such other officer who may be identified in writing by the Council for this purpose

11. In the event that any provision of this Deed is held to be invalid or unenforceable the remaining provisions of this Deed shall remain in full force and effect

THE SCHEDULE

1. The Land

The land known as 19-23 and 29-31 Creek Road Hayling Island in Hampshire shown edged with a heavy black line on the Plan.

2. the Owner(s):

MR TERENCE FREDERICK MOSS of 29 Creek Road Hayling Island Hampshire PO11 9QZ ("The First Owner")

COMMERCIAL INVESTMENTS LTD (Incorporated in The Seychelles) C/o 29 Creek Road Hayling Island Hampshire PO11 9QZ ("The Second Owner")

3. the Council's planning application reference number:

APP/13/00002

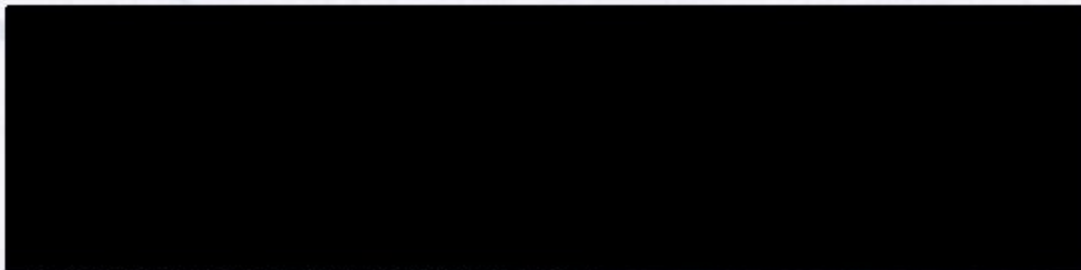
4. the Development

Construction of a 3rd storey to both buildings, to provide 2No. 2 bed flats at 19-23 Creek Road and installation of new external staircase from existing first floor level and 1No. 2 bed flat at 29-31 Creek Road together with 2nd floor terrace.

5. Solicitors' Certificate

Certificate of Title

As Solicitor for the First Owner and Second Owner we hereby certify that on



2 of

FIVE PROPERTY LAWYERS LIMITED
3 SEAGRUE AVENUE
HAYLING ISLAND
HAMPSHIRE PO11 9EU

6. Contributions

Cost Code	Contribution	Amount
B100 7209	the Hampshire County Council Transport Contribution	£11,235 (indexed)
2875 4411	Monitoring Fee	£337.05
4220 4355	Legal Costs Fee	£663
Total		£12,235.05

7. the Obligations

- 7.1 The First Owner and Second Owner covenant to notify the Council and the County Council in writing at least 14 days before commencing a Material Operation on the Land.
- 7.2 The First Owner and Second Owner covenant to pay the Hampshire County Council Transport Contribution to the Council on or before the date of this Undertaking.
- 7.3 The First Owner and Second Owner covenant to pay the Monitoring/Legal Costs Fees to the Council on or before the date of this Undertaking.
- 7.4 The Council shall pay the Hampshire County Council Transport Contribution within 28 days of receipt to the County Council.

- 7.5 The First Owner and Second Owner hereby acknowledges that the Hampshire County Council Transport Contribution and the Monitoring/Legal Costs Fees are lawfully due to the Council.
- 7.6 In Paragraphs 7.1 of this Schedule "Material Operation" means:
- 7.6.1 any work of construction in the course of the erection of a building;
 - 7.6.2 any work of demolition of a building;
 - 7.6.3 the digging of a trench which is to contain the foundations or part of the foundations of a building;
 - 7.6.4 the laying of any underground main or pipe to the foundations or part of the foundations of a building or to any such trench as is mentioned in paragraph 7.6.3;
 - 7.6.5 any operation in the course of laying out or constructing a road or part of a road;
 - 7.6.6 any change in the use of the Land which constitutes material development as defined in the Act
- 7.7 The Council covenants with First Owner and Second Owner upon written request to use best endeavours to procure the repayment of any unexpended balance of the Hampshire County Council Transport Contribution to the First Owner and Second Owner on the expiry of 10 years from the date of Completion of the Development.

- 7.5 The First Owner and Second Owner hereby acknowledges that the Hampshire County Council Transport Contribution and the Monitoring/Legal Costs Fees are lawfully due to the Council.
- 7.6 In Paragraphs 7.1 of this Schedule "Material Operation" means:
- 7.6.1 any work of construction in the course of the erection of a building;
 - 7.6.2 any work of demolition of a building;
 - 7.6.3 the digging of a trench which is to contain the foundations or part of the foundations of a building;
 - 7.6.4 the laying of any underground main or pipe to the foundations or part of the foundations of a building or to any such trench as is mentioned in paragraph 7.6.3;
 - 7.6.5 any operation in the course of laying out or constructing a road or part of a road;
 - 7.6.6 any change in the use of the Land which constitutes material development as defined in the Act
- 7.7 The Council Covenants with the First Owner and The Second Owner upon written request to use best endeavours to procure the repayment of the Hampshire County Council Transport Contribution to the First Owner and Second Owner in the event; either
- a) the Permission is not commenced by the carrying out of a Material Operation within the 3 years from the grant of permission; or
 - b) the repayment of any unexpended balance of the Hampshire County Council Transport Contribution to the First Owner and Second Owner on the expiry of 10 years from the date of completion of the Development.

IN WITNESS whereof the parties
or document as a Deed the day at

Signed as a DEED by
COMMERCIAL INVESTMENTS
LTD (Seychelles)

acting by
a director and its secretary /
two Directors

Signed as a DEED by me
the said
TERENCE FREDERICK
MOSS
in the presence of:

Name

Address

EXECUTED as a DEED

by affixing

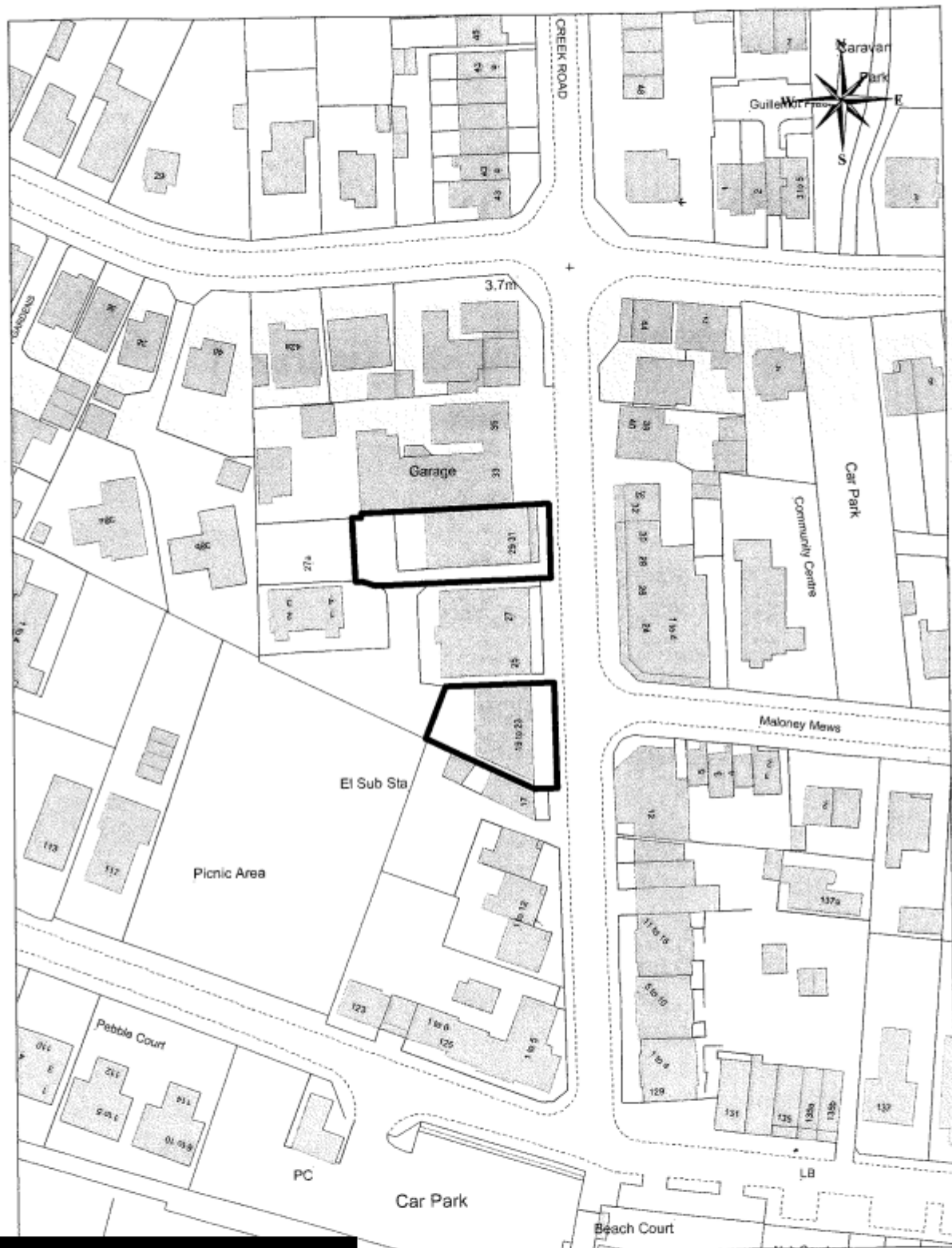
THE COMMON SEAL of

THE COUNCIL OF THE BOROUGH

OF HAVANT

in the presence of:

Solicitor to the Council



Public Offices
Civic Centre Road
Havant
Hampshire PO9 2AX

tel 023 9247 4174 fax 023 9248 0263
www.havant.gov.uk



Havant
BOROUGH COUNCIL

Town and Country Planning Act 1990
S106 Agreement
19-23 and 29-31 Creek Road,
Hayling Island
APP/13/00002

Drawn By:

GE

Scale:

1:1250

Drawing No:

PC44/0538

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