

DATED

26 February

2024

THE COUNCIL OF THE BOROUGH OF HAVANT

and

VIVID HOUSING LIMITED

DEED OF VARIATION AND CONFIRMATION

pursuant to Sections 106 and 106A of the Town and Country Planning Act 1990
relating to development at land at
the former Dairy Crest Depot, Dunsbury Way, Havant

**Southampton, Fareham & Havant Legal Partnership
Southampton City Council
Civic Offices
Southampton
SO14 7LY**

Ref: HBC-053129

THIS DEED OF VARIATION AND CONFIRMATION is made the 26th day of February 2024

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza, Civic Centre Road, Havant PO9 2AX ("the Council"); and
- (2) **VIVID HOUSING LIMITED** a Community Benefit Society registered under the Co-operative and Community Benefit Societies Act 2014 with registration number 7544 whose registered office is at Peninsular House, Wharf Road, Portsmouth, PO2 8HB ("the Owner");

collectively "the Parties"

RECITALS

- (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 is the freehold owner of the Land registered with title absolute at HM Land Registry under Title Numbers HP9269, HP9619, HP25370 and HP394045 pursuant to a transfer dated 1 August 2022 made between Dunsbury Way Limited and the Owner. Southern Co-Operative Properties Limited transferred Title Numbers HP9269, HP9619, HP25370 to Dunsbury Way Limited by way of transfer dated 1 August 2022 and Southern Co-Operative Dairies Limited transferred Title Number HP394045 to Dunsbury Way Limited by way of transfer dated 1 August 2022.
- (C) The Council and Southern Co-Operative Properties Limited entered into the Principal Agreement in order to secure various planning obligations.

- (D) The Council is minded to grant Reserved Matters Approval subject to this Deed of Variation and the Parties have agreed to enter into this Deed of Variation to vary and supplement the terms of the Principal Agreement as set out below.
- (E) The Owner agrees to enter into this Deed to confirm and covenant that the obligations in the Principal Agreement as varied by this Deed shall bind the Land.

OPERATIVE PART

1. Statutory Powers

- 1.1 This Deed of Variation is made pursuant to Sections 106 and 106A of the Act and the Enabling Powers and contains amendments to the planning obligations contained in the Principal Agreement.
- 1.2 The obligations contained in this Deed are planning obligations for the purposes of those sections of the Act and are enforceable by the Council as local planning authority against the Owner its successors in title and any person deriving title in the Land or any part of it from the Owner.

2. Interpretation

- 2.1. In this Deed unless the context otherwise requires the following terms shall have the following meanings:

"Deed"	Means this deed of variation and confirmation
"Principal Agreement"	means the agreement dated 31 st March 2021 and made between the (1) Council and (2) Southern Co-Operative Properties Limited
"Reserved Matters Approval"	The application with reference APP/22/00829 for approval of reserved matters

- 2.2 The clause headings in this Deed are for reference only and do not affect its construction or interpretation.
- 2.3 Save where expressly stated otherwise the words and expressions used in this Deed shall have the meaning assigned to them in the Principal Agreement.

3. **Effect of the Deed**

3.1 This Deed shall come into effect from the date hereof.

4. **Local Land Charge**

4.1 This Deed is a local land charge and shall be registered as such by the Council.

5. **Variation to Principal Agreement**

5.1 The Principal Agreement shall from the date of this Deed be varied and interpreted in accordance with the following provisions in this clause 5.

5.2 The following definitions shall be inserted in clause 1 of the Principal Agreement:

“Affordable Housing” means Dwellings that:

- (a) meet the needs of Eligible Persons including availability at a cost low enough for them to afford determined with regard to the local incomes local house prices and local rents; and
- (b) includes provisions for the housing to remain at an affordable cost for future Eligible Persons.

“Affordable Housing Mix” means the mix of Affordable Dwellings, in terms of the number, size and tenure and set out at paragraph 2.2 of Schedule 1 or such other number, size and tenure as agreed in writing with the Council.

“Affordable Housing Provider” means either one or a combination of:

- (a) a body registered as a provider of social housing with the Social Housing Regulator under Part 2 of the Housing and Regeneration Act 2008 or such other class of body approved by the Council as may be constituted under any legislation replacing that provision; or
- (b) such other body eligible to receive grant monies from the Council or Homes England and able lawfully to own or manage housing for Eligible Persons and approved by the Council; or
- (c) any company or organisation specialising in the delivery of Affordable Housing and approved by the Council.

“Affordable Dwellings” means 22 of the Dwellings to be constructed on the Land and to be provided as units of Affordable Housing as part of the Development and in accordance with the Affordable Housing Mix.

"Affordable Rent"

means rent (inclusive of service charge) which does not exceed:

- a) 80% of the gross local market rent; and
- b) the local housing allowance rates, unless otherwise agreed in writing with the Council;

and shall only be increased annually in accordance with arrangements made for such rent increases established by Homes England.

"Affordable Rented Dwellings"

means any Affordable Dwellings let on a fixed term tenancy agreement at an Affordable Rent.

"Disposal"

means in relation to each Dwelling:

- (a) the first Occupation by anyone permitted or suffered to Occupy the Dwelling whether by a person who:
 - i. has acquired or has contracted to acquire any of the estates further defined in this definition at (b) (c) and (d) below in the Dwelling; or
 - ii. otherwise Occupies the Dwelling;
- (b) the creation of a legal term of years in respect of the Dwelling; or
- (c) the transfer of a freehold interest in respect of the Dwelling; or
- (d) the creation of a freehold interest in the Dwelling by constituting the Dwelling as commonhold land for the purposes of the Commonhold and Leasehold Reform Act 2002;

and/or whichever shall first occur and "Dispose" and "Disposed of" shall be construed accordingly save that this definition shall not apply in paragraph 4 of Schedule 1.

"Dwelling"

means a self-contained unit of residential accommodation (including houses, flats and maisonettes) constructed on the Land pursuant to the Planning Permissions and "Dwellings" shall be construed accordingly.

"Eligible Persons"

means persons with a Local Connection who are unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the Council and the expression "Eligible Person" shall be construed accordingly.

"Help to Buy Agent"

means the body nominated by the Homes England to be responsible for Low Cost Home Ownership nominations within the administrative area of the Council or in the event that nobody has been nominated such other body or organisation as the Council shall first approve in writing.

"Local Connection"

means a connection to the administrative area of the Council by virtue of:

- (a) existing or previous residence;
- (b) employment;

(c) close family links through parents, siblings or offspring; or

any other connection as agreed with the Affordable Housing Provider and the Council.

"Occupation"

means occupation for the purposes permitted by the Planning Permissions but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupiers" shall be similarly construed.

"Open Market Dwellings"	means Dwellings which are not Affordable Dwellings.
"Social Rented Dwellings"	means Dwellings which are let at a Social Rent
"Social Rent"	means rent that fully complies with all the requirements and expectations set out and referred to in paragraphs 3.2- to 3.5 (inclusive) of the Regulator of Social Housing's 'Rent Standard April 2023' or such other successor or replacement document

5.3 Schedule 1 to the Principal Agreement shall be amended as follows:

5.3.1 The heading "VIABILITY APPRAISAL" will be deleted and replaced with "AFFORDABLE HOUSING".

5.3.2 Paragraph 1.1 will be deleted and replaced with the following paragraph:

"1.1 To submit the Viability Appraisal to the Council prior to Commencement of Development together with a solicitor's undertaking that the Council's costs reasonably and properly incurred in verifying the Viability Appraisal shall be met in full and not to Commence Development unless the Viability Appraisal has been submitted to the Council for its written approval."

5.3.3 The following new paragraphs 1.5, 1.6, 2, 3, 4, 5 and 6 will be inserted:

"1.5 If prior to Commencement of Development the Owner confirms in writing to the Council that at least 30% of the Dwellings comprised in the Development shall be delivered as Affordable Housing then paragraph 1.1-1.4 of this schedule shall not apply.

1.6 In the event that the Owner has given the confirmation stated in paragraph 1.5 above then it shall provide at least 30% of the Dwellings as Affordable Housing in accordance with paragraphs 2 to 4 (inclusive) below.

2. AFFORDABLE HOUSING MIX

2.1 To provide the Affordable Dwellings as part of the Development in accordance with the Affordable Housing Mix and in accordance with the relevant Reserved Matters Approval relating to the design, siting and layout of the Affordable Dwellings.

2.2 That the Affordable Housing Mix shall reflect the mix of Dwellings in the Development

overall and shall consist of 22 Affordable Rented and/or Social Rented Dwellings or such other mix of type, tenure and numbers as may be first agreed in writing with the Council.

3 AFFORDABLE DWELLINGS

3.1 To ensure that the Affordable Dwellings within the Development will be integrated and compatible with the design of the Open Market Dwellings.

3.2 Not to Occupy nor Dispose of more than 25 Open Market Dwellings until 11 of the Affordable Dwellings:

3.2.1 are completed and are ready for Occupation; and

3.2.2 have been transferred to an Affordable Housing Provider;

by either a transfer or transfers of the freehold interest or the creation of a long leasehold interest with a term of not less than 125 years.

3.3 Not to Occupy nor Dispose of more than 30 Open Market Dwellings until 100% of the Affordable Dwellings:

3.3.1 are completed and are ready for Occupation; and

3.3.2 have been transferred to an Affordable Housing Provider;

by either a transfer or transfers of the freehold interest or the creation of a long leasehold interest with a term of not less than 125 years.

3.4 Not to Occupy any Affordable Rented Dwellings for any purpose other than as Affordable Rented Dwellings nor by any other persons other than Eligible Persons.

3.5 Not to Occupy any Social Rented Dwellings for any purpose other than as Social Rented Dwellings nor by any other persons other than Eligible Persons.

3.6 Not to let any Affordable Rented Dwellings nor any Social Rented Dwellings to persons other than persons nominated by the Council.

3.7 That any deed of transfer or lease (as applicable) to an Affordable Housing Provider of the Affordable Dwellings shall contain the following (or such other alternative provisions as the Council may agree in writing):

3.7.1 a covenant not to use the Affordable Dwellings otherwise than for the provision of Affordable Housing (subject to provisions equivalent to those in paragraphs 4 and 5 of this Schedule 1); and

3.7.2 a covenant not to Dispose of any of the Affordable Dwellings other than for the purpose of providing Affordable Housing to Eligible Persons (subject to provisions equivalent to those in paragraphs 4 and 5 of this Schedule 1); and

3.7.3 a covenant requiring the Affordable Housing Provider to enter into an agreement with the Council granting the Council the right to nominate 100% of the Occupiers of the Affordable Rented Dwellings and the Social Rented Dwellings when initially let and 100% of all subsequent true voids.

3.8 For the avoidance of doubt the obligations in this Schedule 1 are not intended to prevent the Owner or the Affordable Housing Provider providing additional Affordable Housing in the Development over and above the 22 Affordable Dwellings and further such additional Affordable Housing will not be subject to the terms of this schedule.

4 CHARGE IN POSSESSION

- 4.1 Schedule 1 of this Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- 4.1.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing to another

registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- 4.1.2 if such disposal has not completed within the three-month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing free from the obligations contained in Schedule 1 this Agreement which provisions shall determine absolutely

- 4.2 For the avoidance of doubt in respect of the relevant Affordable Dwelling(s) Disposed of in accordance with paragraph 4.1 above the purchaser shall not be subject to the obligations of Schedule 1 to this Agreement."

5. RIGHT TO BUY / RIGHT TO ACQUIRE

- 5.1 The provisions in paragraphs 3 of Schedule 1 shall cease to have effect in respect of any Affordable Dwelling where the occupier has exercised a statutory right to buy or a right to acquire in respect of such Affordable Dwelling including any successor in title.

6. AFFORDABLE HOUSING ADDITIONALITY

- 6.1. For the avoidance of doubt any Dwellings which are not Affordable Dwellings for the purposes of this Agreement may be provided as Affordable Housing and those Dwellings will not be bound by the obligations contained in this Schedule 1.

- 5.4 The definition of "Nutrient Mitigation Contribution" in clause 1 of the Principal Agreement shall be deleted and replaced with the following:

""Nutrient Mitigation Contribution"

means the sum of £64,220 payable to the Council towards the costs to be incurred by the Council in providing measures to offset the nutrient load of the Development as mitigation against the water quality impacts arising from the Development on the Solent European Protected Sites.

- 5.5 The definition of "Nutrient Mitigation Contribution Formula" in clause 1 of the Principal Agreement and Appendix 3 to the Principal Agreement shall be deleted.

- 5.6 Paragraph 5.2 of schedule 5 to the Principal Agreement shall be deleted.
- 5.7 Except as provided in this Deed it is agreed between the Parties that this Deed is supplemental to and not in substitution for the Principal Agreement, and that the terms of the Principal Agreement will continue in full force and effect, subject only to the provisions of this Deed.

6. Confirmation of obligations in Principal Agreement

6.1 It is hereby agreed between the Parties that the Principal Agreement is supplemented such that the operative provisions agreements, covenants, undertakings and obligations on the Parties contained in the Principal Agreement shall apply to and bind the Owner's freehold interests in the Land.

6.2 To the extent that any covenants and obligations in the Principal Agreement have already been satisfied in accordance with the terms of the Principal Agreement, such covenants and obligations shall be deemed to be similarly so satisfied under the terms of this Deed.

6.3 Save as expressly supplemented by this Deed the Principal Agreement shall remain in full force and effect.

6.4 The Owner covenants to the Council to comply, observe and perform the obligations in the Principal Agreement, as varied pursuant to clause 5 of this Deed.

7. Legal Costs

7.1 The Owner agrees to pay the reasonable and proper legal costs of the Council in connection with this Deed upon the date of this Deed.

8. Jurisdiction

8.1 This Deed shall be governed and interpreted in accordance with the laws of England.

8.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed.

In Witness whereof the parties have executed this Deed as a deed on the date written above



EXECUTED as a **DEED** by affixing
The Common Seal of **THE COUNCIL**
OF THE BOROUGH OF HAVANT

in the presence of:

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Authorised Signatory

Executed as a deed by

as attorney for VIVID HOUSING
LIMITED
under a power of attorney dated 21
March 2023

FOR FOOT ANSTEY LLP

Attorney

Signature of Witness:

Name:

Address:

Occupation:

