

Dated:

17th October 2025

THE COUNCIL OF THE BOROUGH OF HAVANT

and

MARK RICHARD SMITH and KAREN LOUISE SMITH

AGREEMENT

pursuant to section 106 of the Town and Country
Planning Act 1990 and other powers relating to
37B Park Parade, Havant, PO9 5AA

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

Ref: HBC-067180

THIS DEED is made on

14th October 2025

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza, Civic Centre Road, Havant PO9 2AX ("the Borough Council")
- (2) **MARK RICHARD SMITH and KAREN LOUISE SMITH** whose address is at 69 Havant Road, Cosham, Portsmouth, PO6 2JB ("the Owner")

RECITALS

- A The Borough 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 the Land Registry under Title Number HP340190.
- C The Prior Approval Application has been submitted to the Borough Council for the change of use of the Land to use for residential purposes (Use Class C3) and the Borough Council has responded by either granting prior approval or determining that prior approval is not required.
- D The Development is subject to a deemed condition pursuant to regulation 75 of the Habitats Regulations that, where it is likely to have a significant effect on a European site (as defined in the Habitats Regulations) and is not directly connected with or necessary to the management of the European site, the Development must not be begun until the Owner receives written notification of the approval of the Borough Council under regulation 77 of the Habitats Regulations.
- E The Borough Council is of the view that without mitigation the Development is likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the European site.
- F The Borough Council and the Owner enter into this Deed in order to secure mitigation in respect of the nutrient load of the Development to enable the Borough Council to conclude that the Development will not have an adverse effect on the integrity of the European site and give its approval in discharge of the deemed condition as set out in recital D above.
- G The Borough Council is minded to make the Prior Approval Decision in light of the submission of this Deed.
- H The Owner has agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Deed.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

- 1.1 In addition to the definitions set out below, a series of specific definitions are included in each of the Schedules to this Deed giving further defined terms and expressions to facilitate interpretation and unless stated to the contrary the specific definitions in the Schedules shall apply throughout this Deed where the relevant terms and expressions are used.
- 1.2 In this Deed the following expressions shall have the meanings indicated:

"Act"	The Town and Country Planning Act 1990 (as amended)
"Borough Council's Legal Costs"	The Borough Council's legal costs in connection with the preparation and completion of this Deed
"Borough Council's Monitoring Charge"	The sum of £1102.92 (One thousand one hundred and two pounds and ninety two pence) towards the costs incurred by the Borough Council in the provision of a suitably qualified and experienced person whose function is to monitor and enforce compliance with the terms of this Deed
"Commence"	The commencement of any works in connection with the Development including works to facilitate the change of use of the Land and which for the avoidance of doubt are not limited to "development" as defined in section 55 of the Act
"Contributions"	Any one or number of the financial contributions required to be made pursuant to this Deed (including, for the avoidance of doubt the Borough Council's Monitoring Charge) each of which shall be Index Linked
"Deed"	This agreement made by deed
"Development"	The development of the Land in accordance with the details set out in the Prior Approval Application
"Enabling Powers"	Section 111 of the Local Government Act 1972 (as amended) Section 1 of the Localism Act 2011 and all other enabling powers which may be relevant for the purpose of giving validity to or facilitating the enforcement of the obligations created by this Deed
"Habitats Regulations"	The Conservation of Habitats and Species Regulations 2017 (as amended)
"Index Linked"	For the purposes of any payment or financial contribution due under this Deed means adjusted in accordance with the Inflationary Index by multiplying in each case the payment due by a fraction whose denominator shall be the last Inflationary Index monthly figure published before the date of this Deed and whose numerator shall be the last published Inflationary Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure

"Inflationary Index"	For the purposes of the CPI the Retail Prices Index all items excluding mortgage interest payments (RPIX) issued by the Office for National Statistics or during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as the Council shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation For the purposes of the Borough Council's Monitoring Charge the Consumer Prices Index issued by the Office for National Statistics or during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as the Borough Council shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation
"Interest"	Interest at 4 per cent above the base lending rate of Barclays Bank Plc (calculated on a daily basis from the date on which it fell due until the actual date of payment)
"Land"	The land known as 37B Park Parade shown edged with a red line on Plan 1
"Plan 1"	The plan annexed hereto and marked "Plan 1"
"Prior Approval Decision"	The decision of the Borough Council in response to the Prior Approval Application to either grant prior approval or determine that prior approval is not required
"Prior Approval Application"	An application made to the Borough Council to determine whether prior approval is required and, if so, for such prior approval pursuant to Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 allocated reference number APP/25/00432 for a proposed change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3) (the conversion of the first floor to seven apartments, comprising a mixture of 1 bed, 2 bed and 3 bed dwellings).
"Statutory Undertakers"	Organisations licensed by the government which include (but not limited to) all utilities electricity, gas, water, telephone, cable telephone and television and other telecommunication companies
"Working Days"	Any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

2 INTERPRETATION

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.

- 2.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all words shall be construed interchangeable in that manner.
- 2.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.4 Any reference to an act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.
- 2.5 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Borough Council the successors to their respective statutory functions.
- 2.6 References to "the parties" shall mean the parties to this Deed and reference to a "party" shall mean any one of the parties.
- 2.7 The headings are for reference only and shall not affect construction.
- 2.8 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.9 Obligations not to do something under this Deed shall be deemed to be obligations not to permit or suffer such thing to be done.

3 STATUTORY AUTHORITY

- 3.1 This Deed is made pursuant to section 106 of the Act and the Enabling Powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Borough 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.

4 EFFECT OF THE AGREEMENT

- 4.1 This Deed shall take effect on the day and year first before written.

5 THE OWNER'S COVENANTS

- 5.1 The Owner hereby covenants with the Borough Council that it will observe and perform the covenants on its part contained in Schedule One.

6 THE BOROUGH COUNCIL'S COVENANTS

- 6.1 Subject to the performance by the Owner of their obligations under this Deed the Borough Council hereby covenants with the Owner that it will observe and perform the covenants on its part set out in Schedule Two.

7 RELEASE AND LAPSE

- 7.1 It is hereby agreed that the Owner shall not be liable for a breach of any of their obligations under this Deed (save for antecedent breaches) after they shall have parted with all of their respective interests in the Land.
- 7.2 It is further agreed that this Deed shall lapse and be of no further effect if:
- 7.2.1 the Prior Approval Decision expires; or
 - 7.2.2 the Prior Approval Decision shall be varied or revoked other than with the consent of the Owner; or
 - 7.2.3 the Prior Approval Decision is quashed following a successful legal challenge.
- 7.3 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 Prior Approval Decision) granted (whether or not on appeal) after the date of this Deed.
- 7.4 This Deed shall not be enforceable against Statutory Undertakers who have an interest in or arising purely in connection with their apparatus or operational land situated within the Development.

8 LOCAL LAND CHARGE

- 8.1 This Deed is a local land charge and shall be registered as such by the Borough Council.
- 8.2 Upon the full satisfaction of all the terms of this Deed the Owners may request that the Borough Council procure that all entries in the register of local land charges relating to it other than those obligations which are of continuing effect be removed as soon as reasonably practicable.

9 DUTY TO ACT REASONABLY

- 9.1 All parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any deed consent approval or expression of satisfaction is due from one party to another under the terms of this Deed the same shall not be unreasonably withheld or delayed.

10 NO FETTER ON DISCRETION OR WAIVER

- 10.1 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Borough Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 10.2 Nothing in this Deed shall impose any contractual or other obligations on the Borough Council to make the Prior Approval Decision.

- 10.3 No waiver (whether express or implied) by the Borough Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Borough Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

11 COVENANT AS TO TITLE

- 11.1 The Owner hereby covenants with the Borough Council that no person other than the parties to this Deed has any interest in the Land for the purposes of section 106 of the Act.

12 SEVERABILITY

- 12.1 It is agreed that if any part of this Deed shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Deed shall continue in full force and effect.

13 THE BOROUGH COUNCIL'S COSTS

- 13.1 The Owner hereby covenant with the Borough Council that it will on or before the date of this Deed pay the Borough Council's Legal Costs to the Borough Council.
- 13.2 The Owner hereby covenants with the Borough Council:
- 13.2.1 that prior to the Commencement of the Development it will pay the Borough Council's Monitoring Charge to the Borough Council; and
 - 13.2.2 not Commence the Development unless the Borough Council's Monitoring Charge has been paid to the Borough Council.

14 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 14.1 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and for the avoidance of doubt the terms of this Deed may be varied by Deed between the parties and the Borough Council without the consent of any such third party.

15 NOTIFICATION OF COMMENCEMENT

- 15.1 The Owners covenant with the Borough Council that they will:
- 15.1.1 notify the Borough Council in writing of the date of Commencement of the Development within ten Working Days of it occurring; and
 - 15.1.2 pay to the Borough Council upon written demand its reasonable fees for additional monitoring caused by the Owner's non-compliance with clause 15.1.1.

16 NOTICES

- 16.1 Any notices required to be served by one party on another under this Deed shall be served by First Class prepaid post or by email in the following manner:

16.1.1 on the Borough Council at the address shown above or by email to cil@havant.gov.uk marked "for the attention of the Executive Head of Place" and bearing the reference "s106- APP/25/00432-37B Park Parade"; and

16.1.2 on the Owner at the address as detailed above or as notified by the Owner in writing to the Borough Council.

17 INDEX LINKING

17.1 Each and every one of the Contributions which are to be paid under the terms of this Deed shall be Index Linked.

18 PAYMENT OF THE CONTRIBUTIONS

18.1 The Contributions shall be payable to the Borough Council by either:

18.1.1 BACS or telegraphic transfer; or

18.1.2 cheque made payable to Havant Borough Council.

18.2 All payments must state the Application reference number and the address to which this Deed relates.

18.3 Payment by cheque shall be sent to the Borough Council in accordance with the details set out in clause 16.1.1 identifying the obligation to which the payment relates.

19 INTEREST ON LATE PAYMENTS

19.1 Any amount due from the Owners under this Deed which is not paid on the due date shall be payable with Interest.

20 MORTGAGEE CLAUSE

20.1 Notwithstanding clause 3.2, no obligation in this Deed shall be binding on or enforceable against any other chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Land or any receiver appointed by such chargee or mortgagee or any person deriving title through such charge, mortgage or receiver unless and until such chargee, mortgagee, receiver or person has entered into possession of the Land or part thereof to which such obligation relates.

21 NOTIFICATION OF SUCCESSORS IN TITLE

21.1 The Owners covenants with the Borough Council that they will give immediate written notice to the Borough Council of any change of ownership of the Land if at such time the obligations contained within this Deed have not fully been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan.

22 VAT

22.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

23 DISPUTE RESOLUTION

- 23.1 Where it is provided in this Deed that a matter is to be approved (or another cognate expression is used) by the Borough Council and such approval has been refused or given conditionally in accordance with the provisions of this Deed and the Owner wishes to dispute such refusal or conditions, then the Owner may notify the Borough Council as appropriate that the matter is in dispute and:
- 23.1.1 the parties to the dispute shall first attempt to resolve that dispute or difference amicably including holding a meeting attended by at least one senior representative from each party within 10 Working Days of receipt of notice that a matter is in dispute;
 - 23.1.2 if after a further 5 Working Days the parties are unable to resolve the dispute amicably pursuant to clause 23.1.1, one party may serve notice on the other party or parties (as the case may be) to the dispute of their intention to refer the dispute in accordance with clause 23.2 specifying in such notice:
 - 23.1.2.1 the nature, basis and brief description of the dispute; and
 - 23.1.2.2 the clause or paragraph of this Deed pursuant to which the dispute has arisen; and
 - 23.1.2.3 a written request to concur as to the appropriateness of the professional qualifications of the person (or body) they propose to be appointed pursuant to clause 23.2.
- 23.2 Any such dispute or difference notified pursuant to clause 23.1.2 shall be referred to an independent and suitable person holding appropriate professional qualifications, in light of the subject matter in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 23.3 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 23.2 or as to the appropriateness of the professional body within 10 Working Days after any party has given the other parties to the dispute or difference a written request to concur as to the appropriateness of the professional qualifications of the person (or body) to be appointed pursuant to clause 23.2 then such question may be referred by any party to the president for the time being of the Law Society for them to appoint a solicitor to determine the appropriate professional body or person to resolve the dispute such solicitor acting as an expert and their decision shall be final and binding on all parties in the absence of manifest error and their costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 23.4 Any expert howsoever appointed ("the Expert") shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than twenty Working Days after the conclusion of any hearing that takes place or twenty Working Days after they have received any final written representation pursuant to clause 23.5.
- 23.5 The Expert shall be required to give notice to any of the said parties requiring them to submit to the Expert within 10 Working Days of notification of the Expert's appointment written submissions and supporting material and the other parties will be entitled to make a counter written submission within a further 10 Working Days.
- 23.6 Nothing in this clause 23 shall be taken to fetter the ability of the Borough Council to carry out its statutory functions as local planning authority with power to enforce any breach of the obligations entered into by the Owners in this Deed or any other planning breach in respect of the Development.

24 JURISDICTION

- 24.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

25 DELIVERY

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

SCHEDULE ONE

HABITATS CONTRIBUTION

DEFINITIONS

In this Schedule the following terms have the following meanings:

"Nutrient Mitigation Contribution"	The sum of £22,083.40 (twenty-two thousand and eighty three pounds and forty pence) towards the costs to be incurred by the Borough Council in providing measures to offset the nutrient load of the Development as mitigation against the water quality impacts arising from the Development on European sites
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The Owner covenants with the Borough Council as follows:

1 Nutrient Mitigation Contribution

- 1.1. To pay the Nutrient Mitigation Contribution in full to the Borough Council prior to the Commencement of Development.
- 1.2. Not to Commence the Development unless the Nutrient Mitigation Contribution has been paid to the Borough Council.

SCHEDULE TWO

BOROUGH COUNCIL'S COVENANTS

The Borough Council covenants with the Owner as follows:

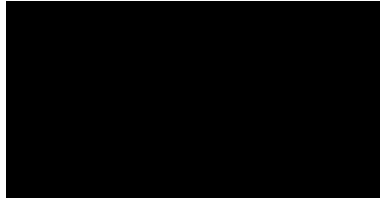
- 1 Where any payment referred to in this Deed is paid for a particular purpose it will not be used by the Borough Council otherwise than for that purpose or for such other purpose for the benefit of the Development as the Owner and the Borough Council shall agree in writing.
- 2 In the event that the Contributions or any element or part of the Contributions remains unspent or not committed to be spent within 10 years after the date on which it is paid to the Borough Council then the Borough Council shall on written demand return to the Owner the unexpended or uncommitted (as the case may be) part of the Contributions.

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

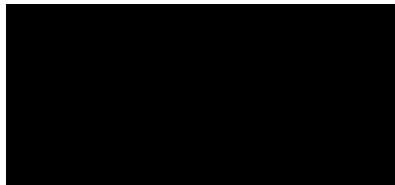
**THE COMMON SEAL OF
THE COUNCIL OF THE BOROUGH
OF HAVANT**

was affixed in the presence of:

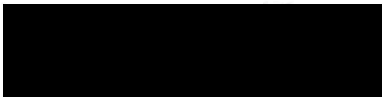
Authorised Signatory:



SIGNED as a deed by)
MARK RICHARD SMITH)
In the presence of:)

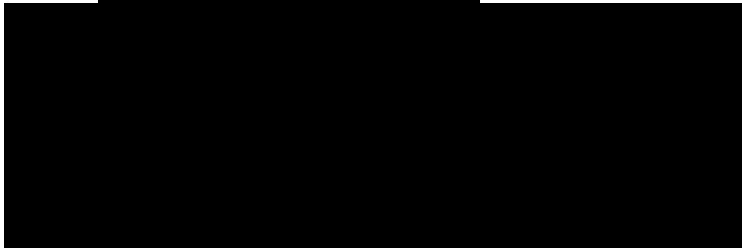


Witness Signature:



Name:

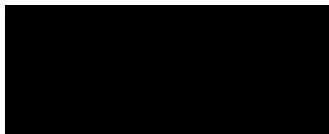
Address:



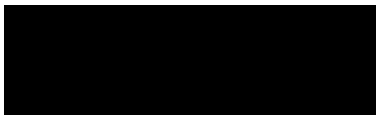
Occupation

DEVELOPMENT MANAGER

SIGNED as a deed by)
KAREN LOUISE SMITH)
In the presence of:)

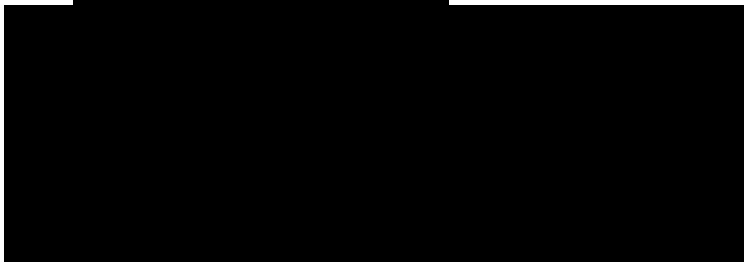


Witness Signature:



Name:

Address:



Occupation

DEVELOPMENT MANAGER



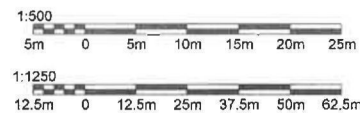
Block Plan
Proposed at 1:500



Location Plan
Proposed at 1:1250

**AUTHORISED
SIGNATORY**

WITNESS SIGNATURES



notes
this drawing is the copyright of the pdp architecture llp and must not be reproduced in whole or in part or used for the execution of works without their permission.
all drawings are to be checked on site prior to commencement of construction works and the architect notified of any discrepancy.
figured dimensions are to be used in preference to scaled dimensions
no deviation from this drawing will be permitted without prior consent of the architect.
all drawings are prepared subject to a full measured and structural survey of the buildings and site.
an architect's work is subject to the appointment of a structural engineer to confirm and agree the structural proposals
or planning licence no. 100020469

health & safety
encompasses all relevant specific methods of construction or exceptional measures which can be found within the designers risk assessment.

scale with 50 mm @ 1" - 25 mm @ 1/4"

revision notes date drawn checked

client

Kingfisher Properties Ltd.

PLANNING



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project 37b Park Parade
Havant
client Proposed
Block & Location Plan
drawn MP checked HM
date May '25 status Planning
a1 scale as shown a2 scale 28191-PD02