

Deed of Variation

Pursuant to Section 106A of the Town and Country Planning Act 1990

In respect of: Land at Forty Acre Farm Bedhampton Havant

Between: BDW Trading Limited (1)
The Council Of The Borough Of Havant (2)
Hampshire County Council (3)

Dated *2nd August* 2023

Osborne Clarke LLP

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THIS DEED of VARIATION is made on the 2nd of August 2023

BETWEEN

- (1) **BDW TRADING LIMITED** (Co. Reg. No. 3018173) of Barratt House Cartwright Way Forest Business Park Bardon Hill Coalville Leicestershire LE67 1UF ("the Owner")
- (2) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Services Plaza Civic Centre Road Havant PO9 2AX ("the Council")
- (3) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ ("the County Council")

WHEREAS:

1. The Council and the County Council are the local planning authorities for the purposes of the Act for the area within which the Land (as defined in the Original Agreement) is situated and is the authority by whom the planning obligations contained in this Deed are enforceable.
2. The Owner is the freehold owner of the Land which is registered at the Land Registry under Title Number SH55541.
3. The Original Agreement was entered into on 17 January 2020.
4. The Original Agreement was varied by way of the First Deed of Variation on 2 June 2021.
5. The Original Agreement was varied by way of the Second Deed of Variation on 12 November 2021.
6. The Original Agreement was varied by way of the Third Deed of Variation on 23 December 2021.
7. The parties to this Deed being the parties that are interested in the land for the purposes of section 106 and 106A of the Act at the date of this Deed have agreed pursuant to section 106A of the Act to vary the Original Agreement on the terms set out in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

- 1.1 In this Deed where the context so admits all expressions shall have the meanings given to them by the Original Agreement save that the following expressions shall have the following meanings:

"the First Deed of Variation"	the agreement made under Section 106A of the Act dated 2 June 2021 and made between (1) the Council (2) the County Council and (3) the Owner
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"the Land"	has the same meaning as in the Original Agreement
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"the Original Agreement"	the agreement made under Section 106 of the Act dated 17 January 2020 and made 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 and (7) the Owner as amended by the First Deed of Variation, the Second Deed of Variation and the Third Deed of Variation
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"the Second Deed of Variation"	the agreement made under Section 106A of the Act dated 12 November 2021 and made between (1) the Council (2) the County Council and (3) the Owner
"the Third Deed of Variation"	the agreement made under Section 106A of the Act dated 23 December 2021 and made between (1) the Council (2) the County Council and (3) the Owner

2 CONSTRUCTION OF THIS DEED

- 2.1 The definitions and rules of interpretation in this Clause apply in this Deed.
- 2.2 All references in this Deed to Clauses in the Original Agreement are to Clauses within the Original Agreement.
- 2.3 Clause headings shall not affect the interpretation of this Deed.
- 2.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.5 A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7 A reference to a party shall include that party's representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 2.8 A reference to a statute or statutory provisions is a reference to it as it is in force at the date of this Deed and shall include any subordinate legislation made under the statute or statutory provision.
- 2.9 References to clauses, schedules and plans (unless the context otherwise requires) are to clauses, schedules and plans of this Deed.
- 2.10 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to all powers enabling the parties and in particular Section 106 and 106A of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling acts with the intention that it binds all owners' interests in the Land and their successors in title.
- 3.2 The obligations imposed upon the Owner contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council in the manner set out in the Original Agreement.
- 3.3 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its function and its rights, powers, duties and obligations under all public private statutes, byelaws and regulations may be as fully and effectively exercised as if they were not a party to this Deed.

3.4 The parties agree that the Original Agreement shall remain in full force and effect save as expressly varied by this Deed.

3.5 It is hereby agreed by the parties that the variation contained at Clause 4 of this Deed shall take effect from the date of this Deed as though it had originally been contained in the Original Agreement.

4 VARIATION TO THE ORIGINAL AGREEMENT

4.1 Paragraph 1.4 of Schedule 7 shall be added to read as follows:

1.4 *To allow the grant of a licence to occupy the Wintering Bird Mitigation Area to the Management Body prior to the transfer of the Wintering Bird Mitigation Area for the purpose of carrying out the works in accordance with the approved Wintering Bird Mitigation Area Creation Strategy*

4.2 Paragraph 3.1 of Schedule 7 shall be deleted in its entirety and replaced as follows:

3.1 *Not to Dispose or permit Disposal of the final Dwelling until the Wintering Bird Mitigation Area has been transferred either by way of a transfer of the freehold interest or the creation of a long leasehold interest to the Management Body*

5 REGISTRATION

This Deed shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council.

6 COSTS

On execution of this Deed the Owner shall pay the Council's and the County Council's reasonable legal costs in connection with the negotiation and completion of this Deed.

7 GOVERNING LAW

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 and Wales.

8 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

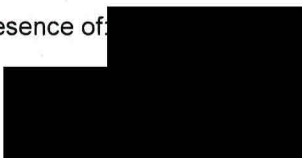
The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

IN WITNESS whereof this instrument has been executed as a Deed the date and year first before written

13486

EXECUTED AS A DEED by affixing
THE COMMON SEAL of
THE COUNCIL OF THE BOROUGH OF HAVANT

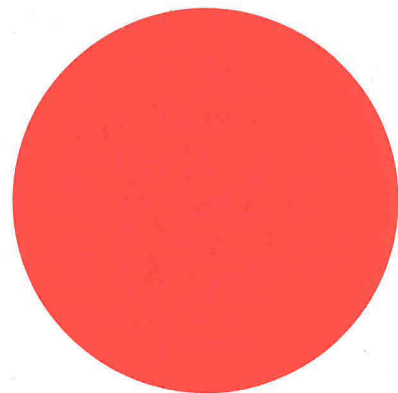
In the presence of



.....
Authorised Signatory

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

in the presence of



371100816.

Authorised Signatory

Name



Position

Legal Team leader

EXECUTED AS A DEED by

BDW TRADING LIMITED

acting by

[Redacted]

and

as the Attorneys in the name of BDW Trading Limited in exercise of the power

Conferred upon them by a Power of Attorney dated

In the presence of:

[Redacted]

SIGNATURE OF ATTORNEY

[Redacted]

[Redacted]

SIGNATURE OF WITNESS

Witness Name:

Witness Address:

Witness Occupation:

[Redacted]

[Redacted]

SIGNATURE OF ATTORNEY

[Redacted]

SIGNATURE OF WITNESS

Witness Name:

Witness Address:

Witness Occupation:

[Redacted]