

DATED

31st March

2021

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) TRISTMIRE SUB LIMITED

and

(3) BARCLAYS BANK PLC

AGREEMENT

Under Section 106 Town and Country Planning Act 1990
relating to land at North Street Arcade, Havant PO9 1PX

THIS AGREEMENT is made on

31st March

2021

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);
2. **TRISTMIRE SUB LIMITED** (Co. Regn. No. 10852229) of Unit 7, Horizon Business Park, 1 Brooklands Road, Weybridge KT13 0TJ (**Owner**); and
3. **BARCLAYS BANK PLC** (Co. Regn. No. 01026167) of 1 Churchill Place, London E14 5HP (**Mortgagee**).

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated.
- (B) The Owner is the freehold owner of the whole of the Land.
- (C) The Mortgagee is the proprietor of a registered charge dated 9 April 2019 referred to in entry numbers 6 and 7 of the charges register of title number HP30850 and has agreed to enter into this Agreement to give its consent to the terms of this Agreement.
- (D) The Application has been submitted on behalf of Owner to the Council for permission to develop the Land in accordance with the Planning Permission.
- (E) The Owner and the Mortgagee enter into this Agreement in anticipation of the grant of Planning Permission by the Council subject to the Owner and the Mortgagee entering into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (F) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and the Mortgagee and their successors in title.

The parties agree as follows:

1 DEFINITIONS

From the date of this Agreement unless the context otherwise requires, the following definitions apply:

- | | |
|-----------------------------|--|
| "the Act" | means the Town and Country Planning Act 1990. |
| "Affordable Housing" | means Dwellings that: <ol style="list-style-type: none">(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 Contribution"	means the sum that may be payable by the Owner to the Council in lieu of the provision of Affordable Housing in accordance with paragraph 3.5 of the Schedule.
"Agreement"	means this deed of Agreement.
"Application"	means the application submitted on behalf of the Owner to the Council for planning permission to carry out the Development and given the Council's reference number APP/20/00251.
"Benchmark Land Value"	means the aggregate of: a) the Existing Use Value, which is the value of the Land in its existing use together with the right to implement any development for which there are policy compliant extant planning consents, including realistic deemed consents, but without regard to alternative uses; and b) the Premium, which is a premium (not exceeding 20% of the gross development value of the Land) for the landowner as seller; and such Benchmark Land Value shall be determined in accordance with the PPG Viability.
"Bond"	means a bond issued by a Surety in the form appended to Appendix 3 of this Agreement (or such other form as the Council shall approve) for the Bond Amount.
"Bond Amount"	means 10% of the open book construction costs for the SuDs as approved in accordance with paragraph 4 of the Schedule.
"Cash Deposit"	means a lump sum payment in cash of a sum being 10% of the open book construction costs for the SuDs as approved in accordance with paragraph 4 of the Schedule.
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of: site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services on the Land and "Commence", "Commencement" and similar expressions shall be construed accordingly.
"Completed"	means the issue of a certificate by Hampshire County Council pursuant to a Highways Agreement to denote completion to its satisfaction of the Highways Works to the stage at which such works are practically completed.

"CPI"	means the Consumer Price Index as published by the Office of National Statistics.
"Development"	means the construction of 29 one and two bed Dwellings in a part 2 and a half/ part 4 storey extension fronting onto Prince George Street, together with the provision of infill flexible use (Classes A1/A2/A3) town centre commercial units to North Street frontage, following the demolition of the existing 1 and 2 storey retail development.
"Disposal"	means in relation to each Dwelling means: a) Occupation by anyone permitted or suffered to Occupy the Dwelling whether by: i. a person who 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. who otherwise occupies the Dwelling; b) the grant and/or assignment of a leasehold interest 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 for the avoidance of doubt, such Occupation shall not include occupation for the purpose of constructing fitting out decoration, marketing, display or occupation in relation to security operations for the Development and "Dispose" and "Disposed of" shall be construed accordingly.
"Dwelling"	means a self-contained unit of residential accommodation (and for the avoidance of doubt this definition shall include houses, flats and maisonettes) comprised within the Development and "Dwellings" shall be construed accordingly.
"Expert"	means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification experience with; (a) expertise of development viability and finance for the purposes of paragraph 3.4 of the Schedule and/or (b) expertise relevant to the dispute where appointed in accordance with the provisions of clause 12 to determine a dispute.
"External Elements"	those parts of the Development which comprise the external faces, walls and roofs of any of the Dwellings comprising the Development.

"Health Contribution"		means the sum of £4,800 payable to the Council as a contribution towards increasing the capacity of existing health care facilities in the vicinity of the Development to accommodate the increased demand for such services as a result of the Development.
"Highways Agreement"		means an agreement made under section 278 and/or section 38 of the Highways Act 1980 or any other relevant legislation to secure the Highway Works.
"Highway Works"		means the highways works to provide a layby on Prince George Street as shown in principle on drawing number 045.0006.0002 attached as Appendix 2 to this Agreement.
"Index"		means CPI in respect of all financial contributions payable to the Council (except for the SRMS Contribution where RPI shall apply).
"Index Linked"		means increased in accordance with the following formula: Amount payable = the payment specified in this Agreement x (A/B) where: A= the last figure published for the Index that applied immediately preceding the date that payment was due B= the last figure published for the Index that applied immediately prior to the date of this Agreement.
"Interest"		means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time
"Land"		means the freehold property being land known as 1-13 North Street Arcade, Havant PO9 1PX and registered at the Land Registry with title number HP30850 and shown edged red on the Plan but excluding the land forming part of the public highway.
"Leasehold Interests"		means all such leasehold or tenant interests in the Land as are subsisting at the date of this Agreement and for the avoidance of doubt including the leasehold land registered under title numbers HP243927, SH18393 and SH20914 at the Land Registry.
"Monitoring Fee"		the sum of £1968 as a contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person(s) whose function is to monitor, coordinate and enforce the obligations contained within this Agreement.
"Nutrient Contribution"	Mitigation	means the sum of £27,934 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.

"Occupation"	means occupation for the purposes permitted by the Planning Permission 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" shall be similarly construed.
"PPG Viability"	Planning Practice Guidance on Viability dated 24 July 2018 as amended on 1 September 2019.
"Plan"	the site location plan attached to Appendix 1 of this Agreement with drawing number 16 _ 2199 _103 revision P3.
"Planning Permission"	the conditional planning permission that may be granted in pursuance of the Application in the form annexed at Appendix 4.
"Residual Land Value"	the amounts described as such in the Viability Appraisal.
"RPI"	means the Retail Price Index published by the Office of National Statistics.
"Solent Recreation Mitigation Partnership"	means the partnership of local planning authorities bordering the Solent formed to develop the Solent Recreation Mitigation Strategy.
"Solent Recreation Mitigation Strategy (SRMS)"	means the framework to mitigate potential impacts on the Solent Special Protection Area from increased visitor pressure arising from housebuilding adopted by the Solent Recreation Mitigation Partnership in December 2017 which came into effect on 1 April 2018.
"Solent Special Protection Areas"	means the Special Protection Areas (designated under the Wildlife and Countryside Act 1981) in the Solent covered by the Solent Recreation Mitigation Strategy
"SRMS Contribution"	means the sum of £11,692.70 payable as a contribution towards measures to mitigate against the impact of the Development on the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy.
"SuDs"	means a sustainable drainage system for the Development in accordance with a specification agreed in writing by the Council.
"Surety"	means a bank or financial institution as may be nominated by the Owner and approved by the Council for the Bond.
"TRO"	means a traffic regulation order made pursuant to the Road Traffic Regulation Act 1984.
"TRO Contribution"	means the sum of £5000 payable to the Council to be applied towards the implementation (which reference shall include all connected administration, supervision and the

carrying out) of a TRO(s) to alter the existing yellow lines on Prince George Street to ensure that any parking or traffic generated from the Development does not interfere with the capacity, operation and/or safety of the local highway network.

"Viability Appraisal"

a viability appraisal to be completed at the expense of the Owner to assess the viability of the Development in accordance with the Planning Permission such Viability Appraisal shall be in accordance with the PPG Viability and otherwise in a format equivalent to the existing viability appraisal dated 19 February 2020 prepared by Simon Corp of S106 Affordable Housing.

"Working Day"

a day other than a Saturday, Sunday or public holiday in England.

2 INTERPRETATION

2.1 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.

2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.

2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.

2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.

2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.

2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.

2.7 References to the Land include any part of it.

2.8 References to any party in this Agreement include the successors in title of that party and any references to the Council include any successor local planning authority exercising planning powers under the Act.

2.9 References to "including" mean "including, without limitation".

2.10 Any covenant by the Owner or the Mortgagee not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.

- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.

3 STATUTORY PROVISIONS

- 3.1 This Agreement is made by deed pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 To the extent that they fall within the terms of Section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of that section of the Act and are enforceable by the Council.
- 3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT OF AGREEMENT

This Agreement shall have effect from the date hereof.

5 OBLIGATIONS OF THE PARTIES

The Owner and the Council covenant with each other to comply, observe and perform the obligations as set out in the Schedule to this Agreement.

6 MORTGAGEE'S CONSENT

- 6.1 The Mortgagee consents to the completion of this Agreement and declares that their interest in the Land shall be bound by the terms of this Agreement as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Land.
- 6.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Agreement unless such breach is committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land in which case the Mortgagee shall be bound by the obligations in this Agreement as if Mortgagee had been the Owner at the time that it was executed.

7 LEASEHOLD INTERESTS

Not to Commence or permit Commencement of Development until the Leasehold Interests have been surrendered and the Owner has submitted to the Council a certified copy of the deed of surrenders relating to the each Leasehold Interest and an application is made to the Land Registry immediately thereafter in Form AP1 to close that leasehold title at the Land Registry and subsequently as soon as practicable thereafter provides evidence from the Land Registry that the leasehold title for the Leasehold Interests have been closed at the Land Registry.

8 REGISTRATION

This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

9 RELEASE

9.1 No party shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all of its interest in the Land except in respect of any breach subsisting prior to parting with such interest.

9.2 No planning obligations contained in this Agreement shall be binding on any freehold or leasehold owners or occupiers of individual Dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or on any part of the Land held by any statutory undertakers for their operational purposes.

10 NOTICES

10.1 The Owner agrees to give the Council immediate written notice of any change in ownership of its interest in the Land occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and

10.1.1 registered office where the transferee is a company

10.1.2 usual address where the transferee is not a company

together with details of the area of the Land or unit of occupation transferred by reference to a plan

10.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.

10.3 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council shall be marked for the attention of the Head of Legal.

10.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

10.4.1 if delivered by hand, at the time of delivery; or

10.4.2 if sent by recorded delivery, at the time delivery was signed for.

10.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

10.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

11 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Owner shall pay to the Council their reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement.

12 DETERMINATION OF DISPUTES

12.1 Subject to clause 12.6, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other not less than 10 Working Days written notice

requiring the dispute to be determined under this clause 12. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

- 12.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.

- 12.3 The Expert shall act as an independent expert and:

12.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

12.3.2 each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;

12.3.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

12.3.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

12.3.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and

12.3.6 the Expert shall use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.

- 12.4 Responsibility for the costs of referring a dispute to a Expert under this clause 12, including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.

- 12.5 This clause 12 does not apply to disputes touching or concerning the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

- 12.6 The provisions of this clause 12 shall not affect the ability of the Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this Agreement and consequential and interim orders and relief.

13 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to his Agreement and their successors in title.

14 INDEXATION

- 14.1 All financial contributions payable to the Council shall be Index Linked.

- 14.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a

fair and reasonable manner to the periods before and after rebasing under this Agreement) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

15 INTEREST

If any financial contribution due under this Agreement is paid late then Interest will be payable from the date payment is due until the date of payment.

16 TERMINATION

16.1 The obligations in this Agreement (with the exception of clause 11) shall cease to have effect if before the Commencement of Development, the Planning Permission:

16.1.1 expires;

16.1.2 is revoked other than at the request of the Owner; or

16.1.3 is quashed following a successful legal challenge.

17 FUTURE PERMISSIONS

17.1 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

17.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission or any other planning permission granted under such powers (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council or the circumstances in clause 16.1.2 arise.

18 JURISDICTION

18.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.

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

IN WITNESS of which this Agreement has been duly executed as a deed and delivered on the date stated at the beginning of this Agreement.

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

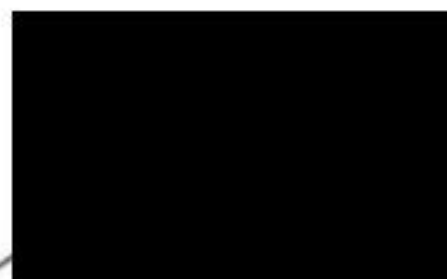


Authorised Signatory

EXECUTED as a DEED by
TRISTMIRE SUB LIMITED
acting by a Director in the
presence of:



SIGNED as a DEED by *TREVOR LACEY*
attorney for and on behalf of
BARCLAYS BANK PLC

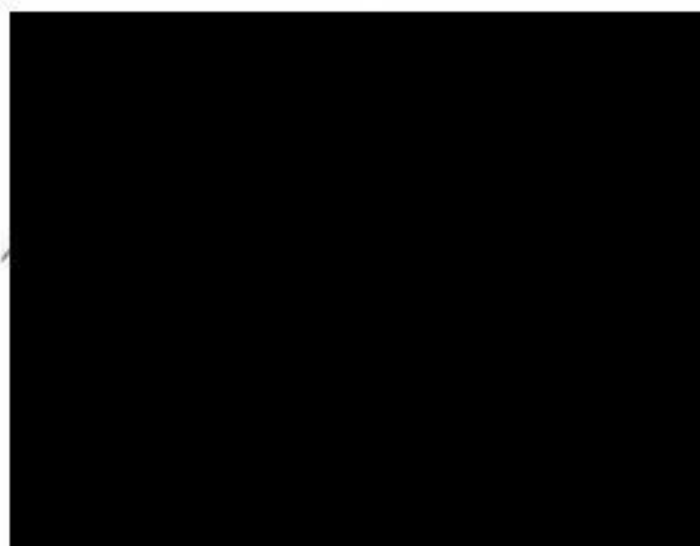


in the presence of:

Witness Signature:

Witness Name:

Witness Address:



THE SCHEDULE

Owner's covenants

The Owner (and the Council where stated) covenants as follows:

1. Commencement

To give to the Council not less than 10 Working Days written notice of their intention to Commence Development.

2. Contributions and Monitoring Fee

2.1 Not to Commence or permit Commencement of Development until it has paid the Monitoring Fee to the Council.

2.2 Not to Commence or permit Commencement of Development until it has paid the SRMS Contribution to the Council.

2.3 Not to Commence or permit Commencement of Development until it has paid the TRO Contribution to the Council.

2.4 Not to Occupy or permit Occupation of the Development until it has paid the Health Contribution to the Council.

2.5 Not to Commence or permit Commencement of Development until it has paid the Nutrient Mitigation Contribution to the Council.

2.6 The Council covenants that following receipt of a written request to do so to repay to the person who paid the SRMS Contribution, the TRO Contribution and the Health Contribution such amount of those contributions which remain unspent or is not committed for expenditure (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) on the tenth anniversary of the date of receipt by the Council of the relevant contribution.

3. Viability Appraisal

3.1 To complete all External Elements of the Development within 18 months of the date of this Agreement.

3.2 In the event that not all External Elements of the Development have been completed within 18 months of the date of this Agreement that they shall undertake a Viability Appraisal for the Development and such Viability Appraisal shall be undertaken in accordance with the PPG Viability.

3.3 Where paragraph 3.2 applies, to submit the Viability Appraisal to the Council within 10 Working Days of the expiration of that 18 month period 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.

3.4 The Council shall submit the Viability Appraisal for independent verification by the Expert following receipt of the costs referred to at paragraph 3.3.

3.5 If the Viability Appraisal (as independently verified) demonstrates that the Residual Land Value exceeds the Benchmark Land Value of the Land on the date of the Viability Appraisal then the

Affordable Housing Contribution shall fall due as set out in paragraph 3.6 and shall be an amount equal to the difference between the two said values.

- 3.6 If the Affordable Housing Contribution becomes payable in accordance with paragraph 3.5 of this Schedule the Affordable Housing Contribution shall be paid to the Council before the Disposal of not more than 10 Dwellings.
- 3.7 In the event that the Viability Appraisal is required to be undertaken in accordance with paragraph 3.2 and 3.3 above none of the Dwellings shall be disposed of until the Viability Appraisal has been verified by the Expert and the Affordable Housing Contribution has been assessed or determined in accordance with this Schedule.
- 3.8 The Council covenants that following receipt of a written request to do so to repay to the person who paid the Affordable Housing Contribution such amount of those contributions which remain unspent or is not committed for expenditure (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) on the tenth anniversary of the date of receipt by the Council of the, together with any interest at the base rate for Barclays Bank Plc from the date of payment of the contribution until the date of request for refund.

4. SuDs

- 4.1 Not less than two months prior to Commencement of Development to submit to the Council for its approval a bill of quantities detailing the open book construction costs for the SuDs.
- 4.2 The Council covenants that it shall within ten Working Days notify the Owner that it either approve the open book construction costs as submitted or proposes such reasonable amendments as are considered necessary. In the event that the Council fails to respond to the open book construction costs within ten Working Days of receipt, the open book construction costs as submitted are to be deemed approved.
- 4.3 Where reasonable amendments to the bill of quantities are proposed by the Council, the Owner shall not more than ten Working Days after receiving the Council's proposed amendments revise the bill of quantities in accordance with the proposed amendments.
- 4.4 On or before Commencement of Development to:
- 4.4.1 provide to the Council a Bond for the Bond Amount; or
 - 4.4.2 pay the Cash Deposit.
- 4.5 The Bond shall endure, or the Cash Deposit shall be retained by the Council until the earlier of:
- 4.5.1 the SuDS is adopted by a statutory undertaker; or
 - 4.5.2 the date of completion of construction of the SuDS to the reasonable satisfaction of the Council.
- 4.6 If:
- i) the Owner fails to construct the SuDs in accordance with the details as approved by the Council in writing; or

- ii) prior to completion of the SuDs the Owner is adjudicated bankrupt or goes into liquidation voluntarily or otherwise; or
- iii) has executed a deed of assignment for the benefit of or otherwise compound with its creditors (except for the purpose of reconstruction or amalgamation)

the Council may (without prejudice to the Council's other rights remedies and powers against the Owner):

- by written notice require the Surety to pay for; or
- the Cash Deposit may be applied to:

any expenditure (including legal costs) which the Council may incur in carrying out the construction of the SuDs to its own design or the Owner's design to return the Land to the level of hydrological response as existed before the Commencement of Development.

5. Highway Works

- 5.1 Not to Commence or permit Commencement of Development until the Owner has entered into a Highways Agreement(s) with the County Council for the Highway Works.
- 5.2 That it shall carry out and complete the Highway Works in accordance with the Highways Agreement(s).
- 5.3 Not to Occupy or permit Occupation of any Dwelling until the Highway Works have been Completed in accordance with the Highways Agreement(s).

APPENDIX 1

Plan

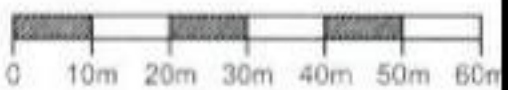
NOTES

GENERAL NOTES:
1 THIS DRAWING IS TO BE READ IN CONJUNCTION WITH THE OTHER PLANS
2 UNLESS OTHERWISE SPECIFIED, ALL DIMENSIONS ARE TO THE CENTRE OF THE BUILDING
3 DIMENSIONS TO A SEPARATE ELEMENT FOR THE BUILDING ARE APPROXIMATE
4 ALL DIMENSIONS OF MATERIALS ARE TO THE EXTERIOR FACE OF THE MATERIAL
5 THE LATEST RELEVANT BRITISH STANDARDS AND GUIDANCE MUST BE FOLLOWED
6 WITH THE BRITISH STANDARD CODES OF PRACTICE OR PRACTICES
7 INSTEAD OF THE ASSOCIATION RECOMMENDATIONS AND PUBLICATIONS



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1:1250 scale



1371

P3 April 2018 Planning Application

PLC ARCHITECTS
Landmark House
25-26 Hampshire Terrace
Portsmouth PO1 2DF
Hampshire England
Tel: (023) 92 755 333
E-Mail: admin@plcarchitects.com
Web: www.plcarchitects.com

Project:
North Street Arcade
North Street
Havant

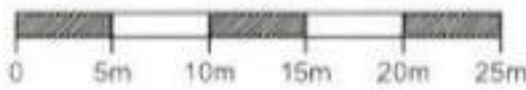
Drawing Title:
Location plan
Block plan

Drawn by: TH	Date: Jan17	Checked by: Date:	Approved by: Date:
Drawings: 16 - 2199 - 103	Revision: P3	Drawn by: As Shown @ A3	

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NOT TO BE SCALED. DIMENSIONS TO BE CHECKED ON SITE.
BOUND ONLY FOR LOCAL AUTHORITY PURPOSES



1:500 scale



APPENDIX 2

Highway Works

Drawing No. 0456.0006.002

APPENDIX 3

Form of Bond

This Bond is made as a deed **between** the following parties whose names and addresses are set out in the Schedule to this Bond (the 'Schedule'):-

- (1) The 'Contractor' as principal
- (2) The 'Guarantor' as guarantor, and
- (3) The 'Employer'

Whereas

- (1) By a contract (the 'Contract') entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the 'Works') upon and subject to the terms and conditions therein set out.
- (2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Bond subject to the limitation set out in clause 2.

Now this deed witnesses as follows:-

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor the Guarantor shall subject to the provisions of this Bond satisfy and discharge any damages sustained by the Employer ("the Damages") which relate to the obligation to carry out the Works.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Bond shall not exceed the sum set out in the Schedule (the 'Bond Amount').
- 3 Unless the Employer expressly agrees, the Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Bond.
- 4 Whether or not this Bond shall be returned to the Guarantor the obligations of the Guarantor under this Bond shall be released and discharged absolutely upon the Expiry Date (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach and stating that the amount being demanded has been established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and takes into account all sums due or to become due to the Contractor has been made upon and received by the Guarantor before the Expiry Date.
- 5 The Contractor having requested the execution of this Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

- 6 This Bond and the benefit thereof shall not be transferred or assigned without the prior written consent of the Guarantor and the Contractor.
- 7 The parties to this Bond do not intend that any of its terms will be enforceable, by virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
- 8 This Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

The Schedule

The Contractor: [Developer's details];

The Guarantor: [Bank's details];

The Employer: **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant Hampshire PO9 2AX;

The Contract: means the section 106 agreement dated [] 2020 and entered into by (1) the Council of the Borough of Havant, (2) []

The Works the construction of a sustainable drainage system in accordance with paragraphs 4.1 to 4.6 of the Schedule to the Contract;

The Bond Amount: the sum of (£xxxxxxx) xxxxxxxx pounds sterling only

The Expiry Date: this Bond will expire on the date of completion of the Works and upon receipt of a written notice confirming that the Borough Council is reasonably satisfied with the Works.

In witness whereof the Contractor and the Guarantor have executed and delivered this Bond as a Deed this day of 202[]

EXECUTED as a DEED by **DEVELOPER**)
in the presence of: -



Director

Director/Secretary

EXECUTED as a DEED by affixing the)
COMMON SEAL of xxxxxxxxxx)
BANK)
in the presence of: -)

Director

Director/Secretary

APPENDIX 4
Draft Planning Permission

Mr Pickup
Pickup Town Planning
57 Sea View Road
Drayton
Portsmouth
PO6 1EW

For: Ms Atkins
Zionstone Limited

The Town and Country Planning (Development Management Procedure) (England) Order
2015
Grant of Planning Permission

Application Number: APP/20/00251

Site Address: North Street Arcade, North Street Arcade, Havant

Proposal: (AMENDED PROPOSAL) Construction of 29 No. one and two bedroom apartments in a part 2 and a half / part 4 storey extension fronting onto Prince George Street together with the provision of infill flexible use (Classes A1/A2/A3) town centre commercial units to North Street frontage following the demolition of existing 1 and 2 storey retail development to rear.

Further to your application received on 20 March 2020 (which was valid from 27 March 2020) Havant Borough Council, as Local Planning Authority **Grants Planning Permission** for the above proposal in accordance with the submitted plans and particulars as detailed below.

This permission is subject to compliance with:

- (i) The plans and other documents submitted with regard to your application; and
- (ii) The following conditions:

Conditions:

- 1 The development must be begun not later than three years beginning with the date of this permission.
Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

REVISED PROPOSED FLOOR PLANS 16-2199-154_P14
REVISED PROPOSED ELEVATIONS 16-2199-155_P11
MATERIAL DETAIL PLAN 19.3166.157_P2

Planning Statement
Design and Access Statement
Transport Statement prepared by PBA
Drainage strategy - March 2020
Flood Risk Assessment

Reason: - To ensure provision of a satisfactory development.

- 3 In the event that public sewers are found at any time when carrying out the approved development which were not previously identified, development shall STOP until details of the measures which will be undertaken to protect the public sewer have been submitted to and approved in writing by the Local Planning Authority. Following approval, such measures shall be implemented on site in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure the adequate protection of infrastructure having due regard to Havant Borough Local Plan (Core Strategy) policies CS19 and DM10 and the National Planning Policy Framework."

- 4 No above ground development hereby permitted shall commence until a specification of the materials to be used for the surfacing of all open parts of the site proposed to be hardsurfaced has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall not occupied until the implementation of all such hardsurfacing has been completed in full accordance with that specification.

Reason: In the interests of the amenities of the locality and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 5 No above ground construction works hereby permitted shall be commenced until a more detailed soft landscaping scheme for all open parts of the site not proposed to be hardsurfaced has been submitted to and approved in writing by the Local Planning Authority. Such scheme shall specify the distribution and species of ground cover to be planted, the positions, species and planting sizes of the trees and shrubs to be planted and/or retained, and timing provisions for completion of the implementation of all such landscaping works. The implementation of all such approved landscaping shall be completed in full accordance with such approved timing provisions. Any tree or shrub planted or retained as part of such approved landscaping scheme which dies or is otherwise removed within the first 5 years shall be replaced with another of the same species and size in the same position during the first available planting season.

Reason: To ensure the appearance of the development is satisfactory and having due regard to policies CS11 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 6 Notwithstanding any description of materials in the application no above ground construction works shall take place until the following matters have been submitted to and approved in writing by the Local Planning Authority:

- (i) samples and / or a full specification of the materials to be used externally on the buildings;
- (ii) a sample panel of brickwork, to be constructed on site;
- (iii) window details and sections; and
- (iv) the siting and design of any proposed external meter boxes/metal ducting/flues.

Only the materials so approved shall be used, in accordance with any terms of such

approval.

Reason: To ensure the appearance of the development is satisfactory and having due regard to policies CS11 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 7 The car and cycle parking, servicing and other vehicular access arrangements shown on the approved plans to serve the development hereby permitted shall be made fully available for use prior to the development being first brought into use and shall be retained thereafter for their intended purpose.

Reason: In the interests of highway safety and having due regard to policy DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 8 No development hereby permitted, nor any related site clearance shall commence until a plan and particulars specifying the provision to be made within the site and/or on other land nearby for the parking (throughout the clearance and construction period) of construction vehicles and of other vehicles delivering/removing materials and other items to/from the development site have been submitted to and approved in writing by the Local Planning Authority. Thereafter, throughout such site clearance and implementation of the development hereby permitted, all such temporary parking provision shall be provided and used only as such.

Reason: To safeguard the amenities of the locality and/or in the interests of traffic safety and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011.

- 9 The housing (C3 use) element of the development hereby permitted shall not be occupied until:

(a) A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the Local Planning Authority; and

(b) All measures necessary to meet the approved water efficiency calculation have been installed.

Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011, and Policy E14, EX1 and E12 of the Pre-Submission Havant Borough Local Plan.

- 10 At all times following occupation of the Housing (C3) element of the development hereby approved, all measures necessary to meet the approved water efficiency calculation shall be maintained so as to ensure that no more than 110 litres per person per day shall be consumed in the development in perpetuity.

Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011, and Policy E14, EX1 and E12 of the Pre-Submission Havant Borough Local Plan'.

- 11 Prior to the occupation of the Housing (C3) element details of the acoustic mitigation measures to be employed with regard to the building envelope, including fenestration and ventilation, as to how the development will meet BS8223:2014 standards as recommended for indoor ambient noise levels for dwellings, especially in relation to living rooms and bedrooms i.e. during the day (07:00 to 23:00) 35 dB L Aeq,16 hour and at night (23:00 to 07:00) 30 dB L Aeq,8 hour for bedrooms shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall be retained at all times, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure the residential amenity of the residents of the properties are not impacted upon by any external noise levels and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 12 Should any of the commercial units require the installation of plant or machinery for the purposes of ventilation or air extraction or for any other such purpose, a noise assessment shall be submitted to and approved in writing by the Local Planning Authority prior to the occupancy of the individual unit concerned. The noise assessment needs to demonstrate that noise output would be at least 5 dB below the existing background levels. The assessment shall be carried out by a suitably qualified acoustic consultant / engineer and be in accordance with BS4142: 2014 Methods for rating and assessing industrial and commercial sound. The development shall be carried out in accordance with the approved details at all times, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure the residential amenity of the residents of the properties are not impacted upon by any external noise levels and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 13 No floodlighting or other form of external lighting scheme shall be installed unless it has been approved by the Local Planning Authority. Such details shall include, Location, height, type and direction of light sources and intensity of illumination. Any lighting scheme agreed in writing by the Local Planning Authority shall not thereafter be altered without prior consent other than for routine maintenance, which does not change its details.

Reason: To protect the occupants of nearby properties, on and off site, from light disturbance / nuisance having due regard to policy CS16 of the Havant Borough Local

- 14 Prior to the commencement of development hereby approved (other than any site clearance, demolition of above ground structures, and consequential works for the purpose of ensuring structural stability of adjacent buildings to be retained), an assessment of the nature and extent of contamination at the site shall be submitted to and approved in writing by the Local Planning Authority. The assessment shall be undertaken by competent persons, and the findings presented as a written report. The assessment may comprise separate reports as appropriate, but unless specifically excluded in writing by the Local Planning Authority, shall include;
- 1) Site investigation appropriate to both the previous & approved use of the site, to provide sufficient data and information to adequately identify & characterise any physical contamination on or affecting the site, and to inform an appropriate assessment of the risks to future occupants & controlled waters.
 - 2) The results of an appropriate risk assessment based upon (1), and where unacceptable risks are identified, a Remediation Strategy that includes;
 - o appropriately considered remedial objectives,
 - o an appraisal of remedial &/or risk mitigation options, having due regard to sustainability, and;
 - o clearly defined proposals for mitigation of the identified risks.
 - 3) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out any Remediation Strategy required under (2) are complete, identifying any requirements for longer-term monitoring of pollutant linkages, maintenance of engineered mitigation measures, and arrangements for contingency action.
- All elements shall be adhered to unless agreed in writing by the Local Planning Authority.

Reason: Contamination may be present at the site as a result of both previous & current land uses (&/or activities) that could pose a risk both to future occupants of ground floor residential units and to the culverted river channel. Contaminants may also be present which pose a risk to construction personnel. This condition is in line with DM10 of the Havant Borough Local Plan (Core Strategy) 2011, DM17 of the Havant Borough Local Plan (Allocations) [2014], and paragraphs 178-180 of the National Planning Policy

- 15 Prior to the occupation of any relevant part of the permitted development, any verification report required in accordance with condition 14 shall be submitted to and approved in writing by the Local Planning Authority.

The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan and must demonstrate that site remediation criteria have been met. Where longer-term monitoring of pollutant linkages is identified as being necessary, the report shall clearly set out plans for monitoring, provision for maintenance, relevant triggers and contingency actions (a "long-term monitoring and maintenance plan").

The long-term monitoring and maintenance plan shall be implemented as approved.

Reason: Contamination may be present at the site as a result of both previous & current land uses (&/or activities) that could pose a risk both to future occupants of ground floor residential units and to the culverted river channel. Contaminants may also be present which pose a risk to construction personnel. This condition is in line with DM10 of the Havant Borough Local Plan (Core Strategy) 2011, DM17 of the Havant Borough Local Plan (Allocations) [2014], and paragraphs 178-180 of the National Planning Policy Framework."

Other Important Information:

- (1) This notice only relates to the decision of Havant Borough Council as Local Planning Authority under the Town and Country Planning Acts. It does not relate to any other application that may be required under the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) Your attention is drawn to the attached information regarding firstly your right to appeal to the Planning Inspectorate, if you are aggrieved by the Council's decision, and secondly the rights of an owner to, in certain circumstances serve a purchase notice on the Council. See www.planningportal.gov.uk/pcs.
- (3) Any failure to adhere to the details of the approved plans, and other documents or to comply with any conditions listed above may lead to enforcement action being taken by the Council. If you wish to depart from the approved details or conditions in any way you should contact the Planning and Development service at the Plaza or by telephoning 023 9244 6015.
- (4) In accordance with paragraphs 38-50 of the NPPF Havant Borough Council (HBC) takes a positive and proactive approach and works with applicants/agents on development proposals in a manner focused on solutions by:
 - Offering a pre-application advice service, and
 - Updating you of any issues that may arise in the processing of your application and where possible suggesting solutions, and,

In this instance:

You were updated about issues after the initial site visit, and amended plans were submitted to address concerns raised the LPA.

Simon Jenkins

Simon Jenkins
Director of Regeneration and Place

23 December 2020

TOWN AND COUNTRY PLANNING ACT 1990

NOTIFICATION TO BE SENT TO AN APPLICANT WHEN A LOCAL PLANNING AUTHORITY REFUSE PLANNING PERMISSION OR GRANT IT SUBJECT TO CONDITIONS

- These notes are for information only and do not purport to set out the law on the subject.
- Only the applicant possesses the right of appeal.

Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice and you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months [12 weeks in the case of a householder appeal] of the date of this notice, whichever period expires earlier.
- If this is a decision to refuse planning permission for a householder application and you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.
- If this is a decision to refuse planning permission for a minor commercial application and you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.
- If this is a decision to refuse express consent for the display of an advertisement and you want to appeal against your local planning authority's decision then you must do so within 8 weeks of the date of receipt of this notice.
- If this is a decision to refuse consent to work on a tree which is subject to a Tree Preservation Order and you want to appeal against your local planning authority's decision then you must do so within 28 days of the date of this notice.
- If this is a decision to refuse any other type of application and you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- **Appeals can be made online at: <https://www.gov.uk/planning-inspectorate>.**
If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

If you intend to submit an appeal that you would like examined by inquiry, then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

IMPORTANT NOTICE FOR APPLICANTS WITH REGARD TO BUILDING REGULATIONS

This notice only relates to the decision of Havant Borough Council under the Town and Country Planning Acts. It does not relate to any other application that may be required any other Act, Regulation, Byelaw or Order where the Council's approval may be needed.

For further guidance as the need for consent under the Building Regulations, please telephone Havant Borough Council's Building Control team on:

023 9244 6571