

DATED 31st OCTOBER 2019

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) D K & R PROPERTIES LIMITED

AGREEMENT

Under Section 106 Town and Country Planning Act 1990
relating to land at 157 Milton Road, Cowplain, Waterlooville

THIS AGREEMENT is made on

31st OCTOBER

2019

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);
2. **D K & R PROPERTIES LIMITED** (Co. Regn. No. 07307410) of Unit 5, Frobisher Industrial Centre, Budds Lane, Romsey SO51 0EZ (**the Owner**);

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 land registered under title number HP549041.
- (C) The Owner has submitted the Application to the Council for permission to develop the Land in accordance with the Planning Permission.
- (D) The Owner enters into this Agreement in anticipation of the grant of Planning Permission being made subject to the Owner entering into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (E) 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 Owners 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 to this Agreement and Background:

"Act"	the Town and Country Planning Act 1990
"Agreement"	this deed of Agreement
"Application"	the application submitted by the Owner to the Council for planning permission to carry out the Development and given the Council's reference number APP/19/00394
"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, and "Commence" and "Commencement" and similar expressions shall be construed accordingly

"Common Parts"

means the parts of the Land which are intended to benefit the occupiers of the Dwellings as a whole or to enhance their occupation and shall without prejudice to the generality thereof include the unadopted roads, communal parking areas, footways, footpaths, landscaped areas, street lighting and amenity spaces;

but excluding:

- (a) a Dwelling or the curtilage of a Dwelling;
- (b) internal communal areas forming part of any residential block of flats, such as stairwells, lifts, lighting etc; and

"CPI"

means the consumer prices index published by the Office of National Statistics

"Development"

means the erection of 9 no.2 bed flats in two blocks with associated parking, boundary treatment, landscaping, cycle and refuse storage in accordance with the Planning Permission

"Dwelling"

means a self-contained unit of residential accommodation (including houses, flats and maisonettes) constructed on the Land pursuant to the Planning Permission 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 in the area of expertise relevant to the dispute and appointed in accordance with the provisions of clause 11 to determine a dispute

"Index"

means either:

- (a) CPI; or
- (b) as specified in accordance with clause 12;

and where no index is specified CPI shall apply

"Index Linked"	means increased in accordance with the following formula: Amount payable = the payment specified in this deed 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 known as land at 157 Milton Road, Cowplain, Waterloooville, shown edged red on the Plan and registered at the Land Registry with title number HP549041
"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
"Open Market Dwellings"	means Dwellings which are not Affordable Dwellings
"Plan"	means the site location plan attached on the Appendix to this Agreement with drawing number 2019/04
"Planning Permission"	means the conditional planning permission that may be granted in pursuance of the Application
"Practical Completion"	means the issue of a certificate of practical completion of the Dwellings by the Owner's architect or in the event that Dwellings are constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect.
"TRO"	means a traffic regulation order made pursuant to the Road Traffic Regulation Act 1984

"TRO Contribution"

means such sum as the Council may reasonably require for the purpose of implementing (which references shall include all connected administration, supervision and the carrying out of) such traffic management measures as they consider appropriate to ensure that any overspill parking from the Development does not interfere with the capacity, operation or safety of the adjoining local highway network providing such sum shall not exceed FIVE THOUSAND POUNDS (£5,000) plus the costs of advertising the proposals and any works.

"Working Day"

a day other than a Saturday or 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 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.

- 2.13 Whenever this Agreement requires the agreement approval confirmation or consent of the parties such approval or consent is not to be unreasonably withheld or delayed and the parties shall take a reasonable approach.

3 STATUTORY PROVISIONS

- 3.1 This Agreement is made by deed pursuant to sections 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 those sections 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

- 4.1 This Agreement shall have effect from the date that it is entered into.

5 OWNER COVENANTS

The Owner covenants with the Council to comply, observe and perform the obligations as set out in this Agreement.

6 REGISTRATION

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

7 RELEASE

- 7.1 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.
- 7.2 No planning obligation contained in this Agreement shall be binding on any land held by any of the statutory undertakers for their statutory functions.

8 NOTICES

- 8.1 The Owner agrees with the Council to give the Council written notice within 10 Working Days of any change in Ownership of any of its interests 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

8.1.1 registered office where the transferee Owner is a company

8.1.2 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.

8.2 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.

8.3 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.

8.4 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:

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

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

8.5 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.

8.6 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.

9 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.

10 DETERMINATION OF DISPUTES

10.1 Subject to clause 10.6, 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 ten Working Days' written notice requiring the dispute to be determined under this clause 10. 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.

10.2 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.

10.3 The Expert shall act as an independent expert and:

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

10.3.2 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;

- 10.3.3 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;
 - 10.3.4 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;
 - 10.3.5 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
 - 10.3.6 the Expert shall use all reasonable endeavours to publish his decision within thirty Working Days' of his appointment.
- 10.4 Responsibility for the costs of referring a dispute to an Expert under this clause 10, 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.
- 10.5 This clause 10 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.
- 10.6 The provisions of this clause 10 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.
- 11 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.
- 12 INDEXATION**
- 12.1 The TRO Contribution payable pursuant to this Agreement shall be Index Linked.
- 12.2 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 deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council (as appropriate) shall advise the Owner in writing.
- 13 INTEREST**
- If any financial contribution due under this Agreement is paid late Interest will be payable from the date payment is due until the date of payment.
- 14 VAT**
- The parties to this Agreement acknowledge and agree the financial contributions in this Agreement are not subject to VAT and no VAT should be charged or recoverable in addition to the amount of the financial contributions specified in the Agreement.
- 15 WAIVER**

No failure or delay by the Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligation contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16 TERMINATION

16.1 The obligations in this Agreement (with the exception of clause 9) shall cease to have effect if before the Commencement of Development, the Planning Permission:

16.1.1 expires;

16.1.2 is varied or 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 (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 document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

SCHEDULE

The Owner covenants with the Council as follows:

1 COMMENCEMENT

- 1.1 To give to the Council not less than ten Working Days written notice of their intention to Commence Development

2 TRO CONTRIBUTION

- 2.1 To pay the Council on Commencement of Development.

EXECUTED as a DEED by affixing

THE COMMON SEAL of the COUNCIL OF THE
BOROUGH OF HAVANT

in the presence of:



[Redacted signature]

Authorised Signatory

Executed as a Deed by D & K
Contracting Services Ltd in the
presence of:

)
)
)
)

[Redacted signature]

OWNER

Witness

Name:

Address:

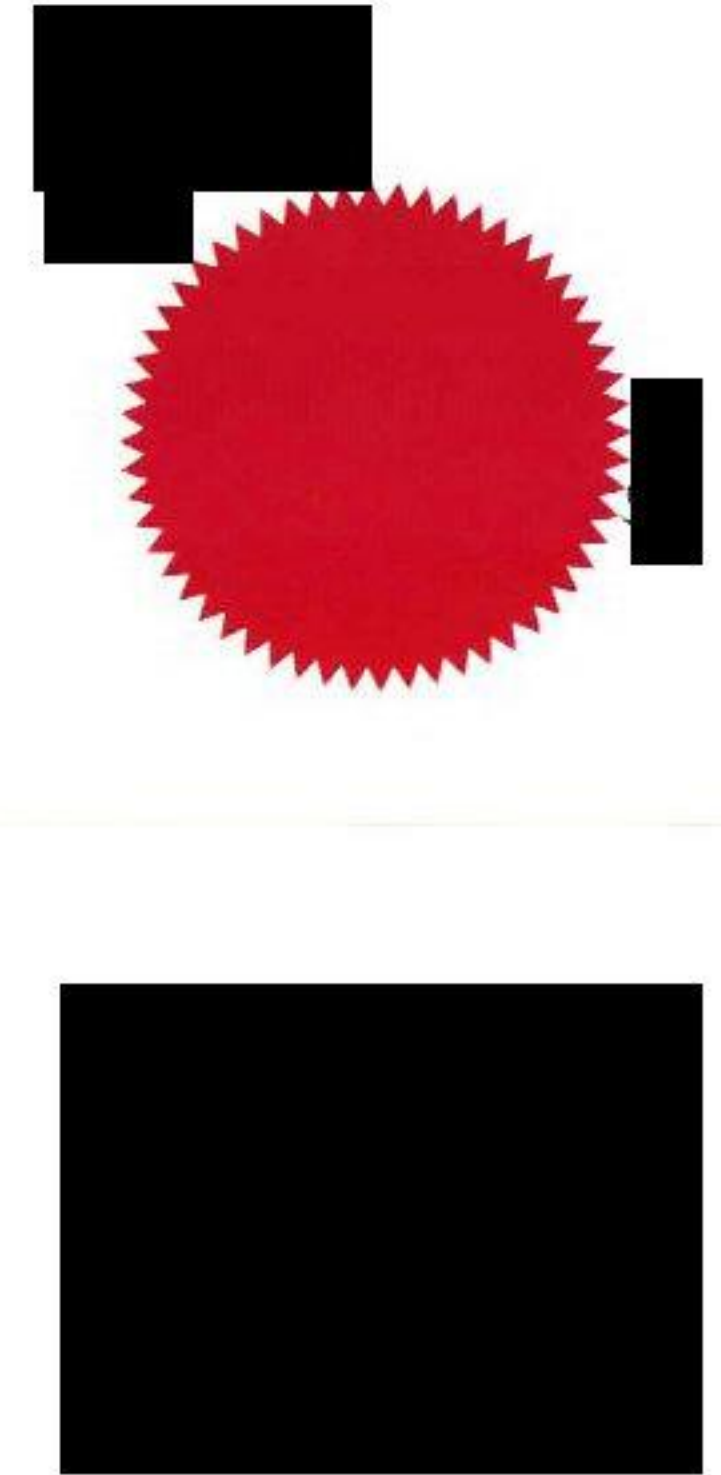
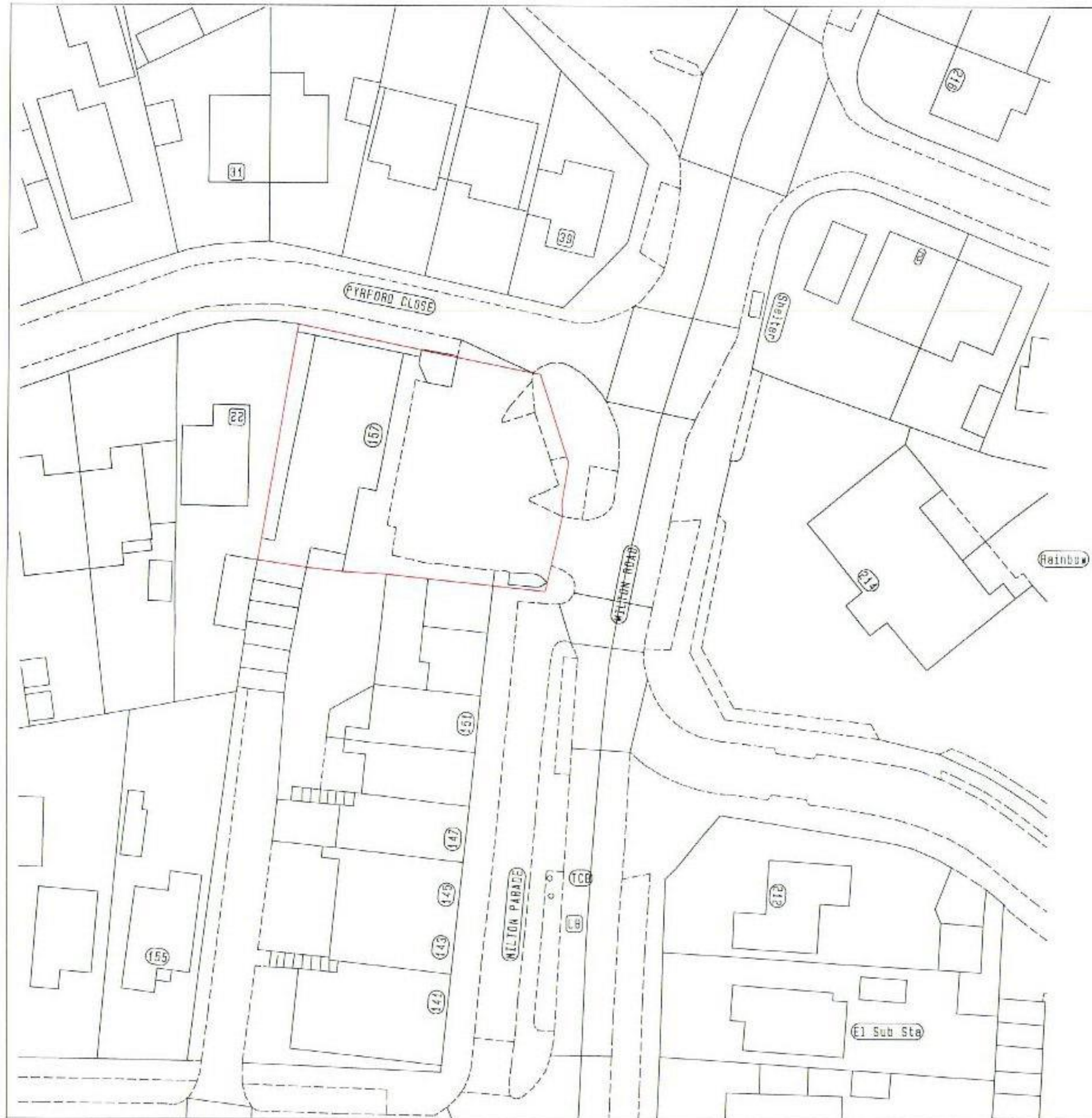
Occupation:

P. L. SLADE FCIL EX
KIRKLANDS SOLICITORS LLP
STRONG HOUSE
THE HORSEFAIR, ROMSEY
HAMPSHIRE, SO51 8EZ

[Redacted signature]

WITNESS

APPENDIX



D & K Contracting Services Ltd Unit 5, Frobisher Industrial Centre Buddle Lane, Romsey SO51 0EZ Tel: 01794 519500 Mobile: 07836 388488 Email: dkcountrysides@aol.com	
Client D & K	
Project Title 157 Milton Road, Cowplain Waterlooville, PO8 8HE	
Drawing Title Location Plan	
Scale 1:500 On A3 Paper	Drawn By AC
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