

DATED

18th AUGUST

2016

PORTSMOUTH CITY COUNCIL

(1)

and

THE COUNCIL OF THE BOROUGH OF HAVANT

(2)

DEED

Pursuant to (inter alia)

Section 106 of the Town and Country Planning Act 1990
Relating to land adjacent to 27 Holybourne Road, Havant
in Hampshire

Solicitor to the Council
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant
PO9 2AX

THIS DEED is made the 18th day of August 2016

BETWEEN

- (1) PORTSMOUTH CITY COUNCIL OF CIVIC OFFICES, GUILDHALL SQUARE, PORTSMOUTH, HANTS PO1 1JW ("the Owner")
- (2) THE COUNCIL OF THE BOROUGH OF HAVANT of Public Service Plaza Civic Centre Road Havant PO9 2AX ("the Council")

WHEREAS:

- (1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Land is situate
- (2) The Owner is the freehold owner of the Land being registered at the Land Registry under Title Number HP3734 and title entries and relevant documentation have been produced to the Council prior to the date hereof
- (3) The Council is the Local Authority for the purpose of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate be conducive and incidental to the Council's functions

NOW THIS DEED WITNESSETH as follows:

1. Interpretation

- 1.1 Reference in this Agreement to a Clause Schedule or Recital shall mean a clause schedule or recital to this Agreement
- 1.2 Headings in this Agreement are for ease of reference only and shall not affect construction or interpretation of any of the provisions of this Agreement
- 1.3 In this Agreement where the context so admits:
 - 1.3.1 words importing one gender shall include all other genders
 - 1.3.2 words importing the singular shall include the plural and vice versa
 - 1.3.3 A reference to writing or written does not include faxes or e-mail
 - 1.3.4 A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other document or deed as varied or novated (in each case other than in breach of the provisions of this deed) from time to time
 - 1.3.5 References to clauses plans schedules and appendices are to the clauses plans schedules and appendices of this deed
 - 1.3.6 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done

- 1.3.7 Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms

2. Definitions

In this Agreement the following expressions shall unless the context shall otherwise require have the following meanings:

"Agreement"	Shall mean this deed of agreement
"the Act"	Means the Town and Country Planning Act 1990 as amended
"the Application"	Shall mean the planning application submitted to the Council by the Owner given reference number APP/16/00465 for the Development and any subsequent application to vary the Planning Permission made pursuant to section 73 of the Act
"Common Parts"	means the parts of the Land which do not comprise a Dwellinghouse or the curtilage of a Dwellinghouse and which are intended to benefit the Occupiers of the Dwellinghouses as a whole or to enhance their Occupation and shall without prejudice to the generality thereof include the meadow area, un-adopted roads, communal parking areas, footways, footpaths, landscaped areas, amenity spaces, SUDS and drainage ditches
"Default Interest Rate"	interest at four per cent above the base lending rate of Barclays Bank Plc from time to time
"the Development"	means development authorised by the Planning Permission consisting of the

erection of 9 dwellings comprising of 5No. 3 bed houses, 2No.1bed flats and 2No. 2 bed flats with associated landscaping, car parking, bin and cycle storage

"Dwellinghouse"

means any unit of residential accommodation constructed pursuant to the Planning Permission and forming part of the Development for the sole use as a private residence of an Occupier

"Index Linked"

means increased in accordance with the following formula:

$$A \times \frac{C}{B}$$

Where: A = the contribution amount

B = the last figure published for the RPI immediately prior to the grant of Planning Permission

C = the last figure published for the RPI immediately prior to Implementation of Development

"Implementation"

means the Implementation of the Planning Permission by the carrying out of a material operation under Section 56(4) of the Act excluding operations consisting of site clearance, demolition work on the Land, archaeological investigations, investigations for the purpose of assessing contamination, remedial action in respect of contamination, diversion and laying of services and the erection of means of enclosure for the purposes of site security and/or the display of advertisements (and implement implements and implemented shall be construed accordingly)

"Indexation"	means the RPI from the date of this Agreement until payment
"the Land"	means land adjacent to 27 Holybourne Road, Havant shown edged red on the Plan
"the Management Plan"	proposals (to be agreed in writing by the Council) for arrangements to secure the future maintenance and management of the Common Parts and SUDS in perpetuity by the Owner
"the Monitoring and Administration Fee"	means the sum of £739.20 being a fee (applied at such time and in such manner as the Council shall in its absolute discretion determine) used towards the costs to be incurred by the Council in the provision of suitably qualified and experienced persons whose function is inter alia to monitor co-ordinate and enforce planning deeds
"Occupation"	means occupation of a Dwellinghouse for the purposes of a residential household (and "Occupy" "Occupies" "Occupiers" and "Occupied" shall be construed accordingly)
"Plan"	means the plan annexed hereto at Schedule 2
"the Planning Permission"	means the planning permission granted by the Council for the Development pursuant to the Application
"Practical Completion"	means the issue of a certificate of practical completion of the Development by the Owner's architect or in the event that the

Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect

"RPI"

means the Retail Prices Index as published by the Office of National Statistics or (in the event that the Office of National Statistics ceases to publish the RPI) such other similar index as determined by the Council

"Solent Recreation
Mitigation Project
Contribution"

means the sum of £1,584.00 (ONE THOUSAND FIVE HUNDRED AND EIGHTY FOUR POUNDS) being calculated as the sum of £176 for each Dwellinghouse in respect of the Special Protection Area mitigation measure delivered through the Interim Solent Recreation Mitigation Strategy

"SUDS"

means a sustainable urban drainage system for the Development in accordance with a specification agreed in writing by the Council and if statutorily empowered so to by Hampshire County Council

3. Statutory Powers

This Deed is made pursuant to:

- 3.1 Section 106 of the Town and Country Planning Act 1990
- 3.2 Section 111 of the Local Government Act 1972 to the intent that it shall bind the Owner and their successors in title to each and every part of the Land and its assigns

4. Planning Obligations

- 4.1 The obligations contained in this Agreement are planning obligations for the purposes of the Act and are enforceable by the Council

5. Conditionality

- 5.1 This Agreement is conditional upon
- (i) the grant and issue of the Planning Permission; and
 - (ii) Implementation of the Development
- save for the provisions of clauses 14, 17, 21 and 22 which shall come into effect immediately upon the date of this Agreement.

6. Covenants

- 6.1 The Owner covenants with the Council to observe and perform such of the covenants restrictions and obligations contained in Schedule 1

7. Exclusions of Liability

- 7.1 Notwithstanding any other provision of this Agreement the obligations contained within clause 6 shall not be binding upon or enforceable against the owners or occupiers of any Dwellinghouse nor any mortgagees of any owners or occupiers of any Dwellinghouse nor any providers of utility services

8. Indexation

- 8.1 The Solent Mitigation Strategy Contribution shall be Index Linked from the date that the Planning Permission is granted until the date of payment, provided that such indexation shall only be applied in circumstances where the RPI at the date of payment stands at a higher level than at the date of the Planning Permission for the Development

9. Release

- 9.1 No person (including any subsequent successors in title to the Land) shall be liable for any breach of 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

10. Determination of deed

- 10.1 The obligations in this Agreement shall cease to have effect if before the Implementation of Development the Planning Permission:
- (a) expires;
 - (b) is varied or revoked other than at the request of the Owner; or
 - (c) is quashed following a successful legal challenge

- 10.2 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted by the Council or by the Secretary of State upon appeal or reference to him after the date of this Deed

11. Local land charge

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

12. Interest on late payment

- 12.1 Where any sum or amount has not been paid to the Council by the date on which it is due the Owner shall pay to the Council interest at the Default Interest Rate on that amount for the period from the due date up to and including the date of payment

13. Reasonableness

- 13.1 Any approval consent direction authority agreement or action to be given by the Council under this Agreement shall not be unreasonably withheld or delayed

14. Disputes

- 14.1 If any dispute arises out of this Agreement the dispute shall be referred to an arbitrator appointed jointly by the parties if the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors
- 14.2 The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction then equally)

15. No fetter of discretion

- 15.1 Nothing (contained or implied) in this Agreement shall fetter or restrict the Council's statutory rights powers discretions and responsibilities

16. Waiver

- 16.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants

restrictions or obligations of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions contained in this Agreement or acting on any subsequent breach or default of this Agreement

17. Notices

- 17.1 Any notice or other communication required to be given under this Agreement shall be in writing and shall be delivered personally or sent by pre-paid first class post or recorded delivery or by commercial courier to any person required to receive the notice or communication at its address set out above or as otherwise specified by the relevant person by notice in writing to each other person
- 17.2 Any notice or other communication required to be given under this Agreement to the Owner shall be sent to the Owner at their address set out above or as otherwise specified by the Owner by notice in writing

18. Third party rights

- 18.1 No person other than a party to this deed shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed

19. Severance

- 19.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid illegal or unenforceable that provision or part-provision shall to the extent required be deemed to be deleted and the validity and enforceability of the other provisions of this deed shall not be affected
- 19.2 If any invalid unenforceable or illegal provision of this Agreement would be valid enforceable and legal if some part of it were deleted the parties shall amend such provision so that (as amended) it is legal valid and enforceable and to the greatest extent possible achieves the parties' original intention

20. Value added tax

- 20.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid
- 20.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that

VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly

21. Governing Law

- 21.1 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
- 21.2 This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

22. Costs

- 22.1 The Owner hereby covenants to pay to the Council on or before the date of this Agreement the sum of £665.00 in respect of the Council's legal costs together with all disbursements incurred in connection with the preparation and approval of this Agreement.

23. Council Successors

- 23.1 The expression "the Council" shall include successors to its functions as Local Planning Authority for the purposes of the Act

IN WITNESS whereof the parties hereto have caused this document to be executed
as a deed the day and year first before written



THE COMMON SEAL of)
PORTSMOUTH CITY COUNCIL)
was hereunto affixed in pursuance of a)
resolution of the Council passed at a)
meeting duly convened and held:)

Autho

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

Autho

Schedule 1

Owner's covenants

1. Implementation

- 1.1 The Owner shall give to the Council not less than 14 days written notice of its intention to Implement the Development in accordance with the Planning Permission.

2. Contributions

- 2.1 The Owner covenants not to Implement or to cause or permit Implementation of the Development permitted by the Planning Permission until it has paid or caused to be paid to the Council the Solent Mitigation Strategy Contribution subject to Indexation in accordance with the figures supplied to the Council by the Solent Recreation Mitigation Partnership towards the Solent Recreation Mitigation Strategy such sum to be collected by the Council on behalf of the Solent Recreation Mitigation Partnership
- 2.2 The Owner covenants not to Occupy or to cause or permit the Occupation of the Development permitted by the Planning Permission until it has paid or caused to be paid to the Council the Monitoring and Administration Fee

3. SUDS

- 3.1 Prior to Implementation the Owners shall submit to and obtain the approval of the Council to a plan for the management and maintenance for the lifetime of the Development of the SUDS which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangement to secure the operation of the SUDS the lifetime of the Development.
- 3.2 The Owner covenants not to Occupy or cause or permit Occupation of the Development unless and until the SUDS have been constructed to the satisfaction of the Council (acting reasonably and without delay) and in accordance with the specification previously agreed in writing by the Council in accordance with the above paragraph 3.1 of this Schedule 1 such agreement not to be unreasonably withheld or delayed

4. Management Plan

- 4.1 Prior to Implementation the Owners shall prepare and submit to the Council for written approval (such approval not to be unreasonably withheld or delayed) the Management Plan containing proposals for arrangements to secure the future maintenance of the Common Parts in perpetuity by the Owners so as to ensure that the Common Parts are properly maintained for the lifetime of the Development such proposals to include details of how the costs of street lighting charges (if relevant) and costs of cleaning and maintaining the Common Parts shall be met (by residents of the Development or otherwise) and proposals for arrangements to secure appropriate future access for the public to any open space provided within the Land unless otherwise agreed subject to appropriate rules and regulations.
- 4.2 Following completion of the Development the Owners shall maintain the Common Parts in perpetuity in accordance with the agreed Management Plan and to the reasonable satisfaction of the Council.
- 4.3 The Council may approve changes to the Management Plan if proposed by the Owners from time to time.

Schedule 2

The Plan

GENERAL NOTES:

1. This drawing is to be used in conjunction with all relevant architect, structural engineers, mechanical & electrical engineers and specialists drawings / specifications.
2. Any discrepancies in dimensions at detail between the various drawings should be reported immediately.
3. All dimensions are in millimetres and call levels are in metres.

(Do not scale from this drawing.) E:\m\01678.DWG

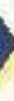
Base	Description	Date	Dim	Chrd
A	Parking amended.	03.08.16	R1	DE
B	Colours and elements shown	15.04.16	R1	DE
C	Allocations due to planning committee	29.06.16	R1	DE
D	Changes to boundary treatments	30.06.16	R1	DE
E	Changes to boundary treatments	01.07.16	R1	DE

SCHEDULE OF ACCOMMODATION	
5	no. 3B/AP Houses @ 10B/m ²
9	no. 2B/AP Flats @ 71.8m ²
2	no. 1B/2P Flats @ 52.3-57.8m ²
9	no. Units total
PARKING	
10	no. Allocated parking spaces
10	no. Unallocated parking spaces
20	no. Total spaces

5	no. 3B/AP Houses @ 108m ²
2	no. 2B/AP Flats @ 71.8m ²
2	no. 1B/2P Flats @ 52.3-57.8m ²
9	no. units total
PARKING	
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20	no. Total spaces



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SITE LOCATION PLAN SCALE 1:1250



Portsmouth
CITY COUNCIL

 kenn scaddan
associates
architects

architects
CONCEPT HOUSE, 35 KINGSTON GATES, NORTH END, PORTSMOUTH, HAMPSHIRE, PO2 0AA
T - 023 9247 3618 F - 023 9247 98 99 www.kholid.co.uk info@kholid.co.uk

HOLYBOURNE ROAD

DRAWING TITLE
SITE PLAN

Date	Drawn by	Scale	Drawing No.	Rev.
JAN. 15	PJ/RL	1/200	1103-PD101	E

Architecture planning design production management



Site Plan 1:200



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