

Dated the 26th day of September 2016

THE COUNCIL OF THE BOROUGH OF HAVANT (1)

And

R O'DELL (HOLDINGS) LIMITED (2)

DEED OF AGREEMENT UNDER SECTION 106 TOWN AND
COUNTRY PLANNING ACT 1990 relating to land at 36,38 and 40
Station Road and 1 West Lane Hayling Island Havant

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

This DEED is made the 26th day of SEPTEMBER 2016

BETWEEN

(1) THE COUNCIL OF THE BOROUGH OF HAVANT of Public Service

Plaza, Civic Centre Road Havant, PO9 2AX ("the Council")

(2) R O'DELL HOLDINGS LIMITED (Company Registration Number

03043018) whose registered office is situated at 1 Hill Place The Woodhouse

Bursledon Southampton SO31 8AE ("the Owner")

Pinkmead, Werran Lane, Newport, Isle of Wight PO30 5TU.

WHEREAS

(1) The Council is a local planning authority for the purposes of section 106 of the Act for the area in which the Land is situated

(2) The Owner is the Registered Proprietor of the Land which is registered at HM Land Registry under title numbers HP234955 HP371235 and HP461913 and shown edged red on Plan 1

(3) The Owner has submitted the Application to the Council

(4) The Council has resolved to grant planning permission subject to the Owner entering into the obligations contained in this deed

(5) The parties consider that the matters contained in this deed are

a) necessary to make the development acceptable,

b) directly related to the Development and

c) fairly related in scale and kind to the Development

and therefore meet the three tests for planning obligations as set out in

Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

NOW THIS DEED WITNESSES AS FOLLOWS:

1 Interpretation

1.1 In this Deed (including the Schedules) the following words and expressions shall have the following meanings:

"the Act"	means the Town and Country Planning Act 1990
"the Application"	means the planning application for the Development submitted to the Council under reference number 16/00060
"Commencement of Development"	means the carrying out on the Land of a material operation pursuant to the Planning Permission as defined in Section 56 of the Act save for the purpose of determining whether or not a material operation has been carried out there shall be disregarded such operations as marking out surveying ground investigations archaeological investigations demolition site clearance site preparation and ecological mitigation works and "Commence" shall be construed accordingly.
"the Development"	Means Demolition of existing buildings (shop, 1 no. flat, workshop, associated compound and 2 no. dwelling houses) and construction of 18 no. new build flats and 3 no. shop units (planning class A1) with associated bin store, cycle store, vehicle parking and landscaping
"Dwelling"	Means a flat or a house forming part of the Development
"Index Linked"	any sum expressed in this Agreement to be Index Linked shall be increased in line with the formula $C = \text{£Y} \times (B / A)$ Where: A is the value of the Index for the month immediately preceding the date of this Deed B is the value of the Index for the month preceding the date of payment of a Contribution pursuant to the provisions of this Deed £Y is the Contribution C is the level of the Contribution after the application of the indexation formula proportionately in line with the amount (if any) by which the Index for the month preceding the date on which any sum is required by this Agreement to be paid exceeds the Index for the month preceding the date hereof
"the Land"	Means the land edged red on Plan 1
"Monitoring and Administration Fee"	Means the sum of ONE THOUSAND THREE HUNDRED AND TWENTY POUNDS (£1,320) being a fee (and to be 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 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 for security purposes and "Occupy" and "Occupied" shall be construed accordingly
"Planning Permission"	means the planning permission for the Development granted pursuant to the Application or any new planning permission granted subsequently pursuant to an application under section 73 of the Act where the obligations contained herein are considered necessary to make the development under the new permission acceptable in planning terms
"RPI"	the All Items Index of Retail Prices published by the Office for National Statistics or any amendment or replacement thereof
"Solent Disturbance Mitigation Project Contribution"	means the sum of TWO THOUSAND SEVEN HUNDRED AND SEVENTY TWO POUNDS (£2772) (Index Linked) in respect of the Special Protection Area avoidance and mitigation measures delivered through the Solent Interim Planning Framework.
"TRO Contribution"	Means such sum as the Council may reasonably require for the purpose of implementing (which reference 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 THREE THOUSAND POUNDS (£3,000)

2 Construction of this Deed

- 2.1 Reference in this Deed to a Clause Schedule or Recital shall mean a Clause Schedule or Recital to this Deed
- 2.2 Headings in this Deed are for ease of reference only and shall not affect construction or interpretation of any of the provisions of this Deed
- 2.3 In this Deed where the context so admits:
 - 2.3.1 words importing one gender shall include all other genders
 - 2.3.2 words importing the singular shall include the plural and vice versa
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can

be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament shall include any modification, extension or re enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions unless there is an express provision otherwise

3 Statutory Powers

3.1 This deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers which may be relevant for the purpose of giving validity to and enforcing the obligations contained in this Deed.

3.2 This deed creates planning obligations under section 106 of the Act which bind the Land and are enforceable by the Council against the Owner and the Developer and their successors in title and assigns

4 Conditionality

4.1 This Deed shall have full force and effect from the date hereof save that the Planning Obligations shall be conditional upon the issue of Planning Permission

5 Planning Obligations

5.1 The Owner covenants with the Council that it will perform the Planning Obligations set out in Schedule 1 to this Deed and all other restrictions covenants limitations and obligations contained in this Deed.

6 Indexation

6.1 In respect of the Council Contributions indexation shall be applied from the date of this Deed to the date the Council Contributions are due using RPI

7 Use of Contributions

7.1 If prior to the receipt of any contributions payable under the term of this Deed the Council incurs any expenditure in providing facilities or

services to which this Deed authorises contributions to be applied then the Council may immediately following receipt of such contributions deduct therefrom sums equivalent to such expenditure, and it is hereby agreed and acknowledged that the Council shall not subsequently be required to repay any contributions set against such expenditure

8 Interest on Late Payments

- 8.1 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 rate of 4% above the base lending rate from time to time of National Westminster Bank plc (calculated on a daily basis from the date on which it fell due) on that amount for the period from the due date up to and including the date of payment

9 Notices

- 9.1 Any notice or other written communication to be served upon or given to one party by any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose of notice in writing
- 9.2 The address for service on each party is as follows:
- 9.2.1 Havant Borough Council, Public Service Plaza, Civic Centre Road, Havant, PO9 2AX for the attention of the Head of Planning
- 9.2.2 R O'Dell Holdings Limited: the company's registered office

unless and until any party notifies the other parties in writing of an alternative address for service which shall be in England.

10 Local Land Charge

- 10.1 This deed shall be registered as a local land charge in the register of local land charges maintained by the Council.

11 Third Party Rights

- 11.1 Nothing in this deed will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

12 Disputes

- 12.1 Without prejudice to the rights of any party to this Agreement to take alternative action save for matters of construction (which shall be matters for the Courts) any dispute or disagreement arising under this Agreement including any question of reasonableness may be referred at the instance of any party for determination by a single expert whose decision shall be final and binding on the parties (except in the case of manifest error or fraud).
- 12.2 The following provisions and terms of appointment shall apply to such disputes or disagreements and questions:
 - 12.2.1 The expert shall have at least 10 years post qualification experience in the subject matter of the dispute.
 - 12.2.2 The expert shall be agreed between the parties or appointed by the President of the Royal Institute of Chartered Surveyors at the request of any party to the dispute.
 - 12.2.3 The persons calling for the determination shall make written submissions to the expert and the other parties within 10 working days of his appointment.
 - 12.2.4 The other parties shall have 21 working days from the receipt of such written submission or such extended period as the expert shall allow to respond.
 - 12.2.5 The expert shall disregard any representations made out of time and shall make his decision within 21 working days of receipt of the representations under 12.2.4 above or if none the expiry of the period referred to in 12.2.4 above.
 - 12.2.6 The expert's decision shall be in writing and give reasons for his decision.
 - 12.2.7 The expert's fees shall be in the award of the expert.

13 Costs

- 13.1 The Owner shall pay to the Council on completion of this deed the reasonable legal and professional costs of Council incurred in the negotiation preparation and execution of this deed.

14 Governing Law

- 14.1 This Deed is governed by and interpreted in accordance with the laws of England.

14.2 Insofar as any clauses of this deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed

15 Delivery

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

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

Schedule 1

Owner's covenants with the Council

1 Progress of Development --

- 1.1 The Owner covenants to advise the Council of the anticipated occurrence of the following events not less than 14 days before anticipated occurrence and to further advise the Council of the actual date of occurrence within 14 days thereafter:

1.1.1 Commencement of Development

1.1.2 First Occupation of any part of the Development

1.1.3 First Occupation of the first Dwelling

2 Parking Arrangements

- 2.1 Prior to first Occupation of any Dwelling the Owner shall obtain the Council's written approval to a parking management plan covering the arrangements for the parking of residents' and visitors vehicles on the Land

3 Solent Disturbance and Mitigation Project

- 3.1 The Owner covenants not to Occupy any part of the Development until it has paid the Solent Disturbance and Mitigation Project Contribution to the Council
- 3.2 The Solent Disturbance and Mitigation Project Contribution shall be Index Linked in accordance with the figures supplied to Havant Borough Council by the Solent Recreation Mitigation Partnership

4 Traffic Regulation Order

- 4.1 The Owner covenants to pay or cause to be paid to the Council at the written request of the Council at any time during the period beginning from the Commencement Date and ending 3 years from practical completion of the Development the TRO Contribution

5 Monitoring and Administration Fee

- 5.1 The Owner covenants to pay or cause to be paid to the Council on or before Implementation of the Planning Permission the Monitoring and Administration Fee

- 5.2 The Owner covenants not to Implement or to permit Implementation of the Planning Permission until it has paid or caused to be paid to the Council the Monitoring and Administration Fee

Schedule 2

Council's covenants

- 1 The Council covenants with the Owner as follows:
 - 1.1 Upon written request to repay any unexpended balance of the Traffic Regulation Order Contribution to the person who paid the said contribution to the Council on the expiry of 10 years from the date of completion of the Development.
 - 1.2 To pay the Solent Ecological Mitigation Contribution to Hampshire County Council within 10 working days of receiving such contribution from the Owner and the Developer

THE COMMON SEAL OF THE COUNCIL)
OF THE BOROUGH OF HAVANT)
was affixed in the presence of:)

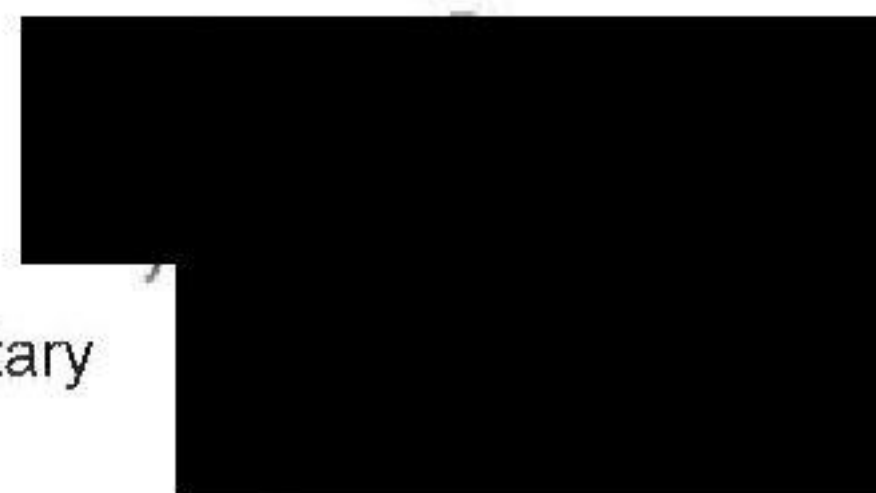


Authorised Signatory:

EXECUTED AS A DEED by R O'DELL)
HOLDINGS LIMITED)
in the presence of:)

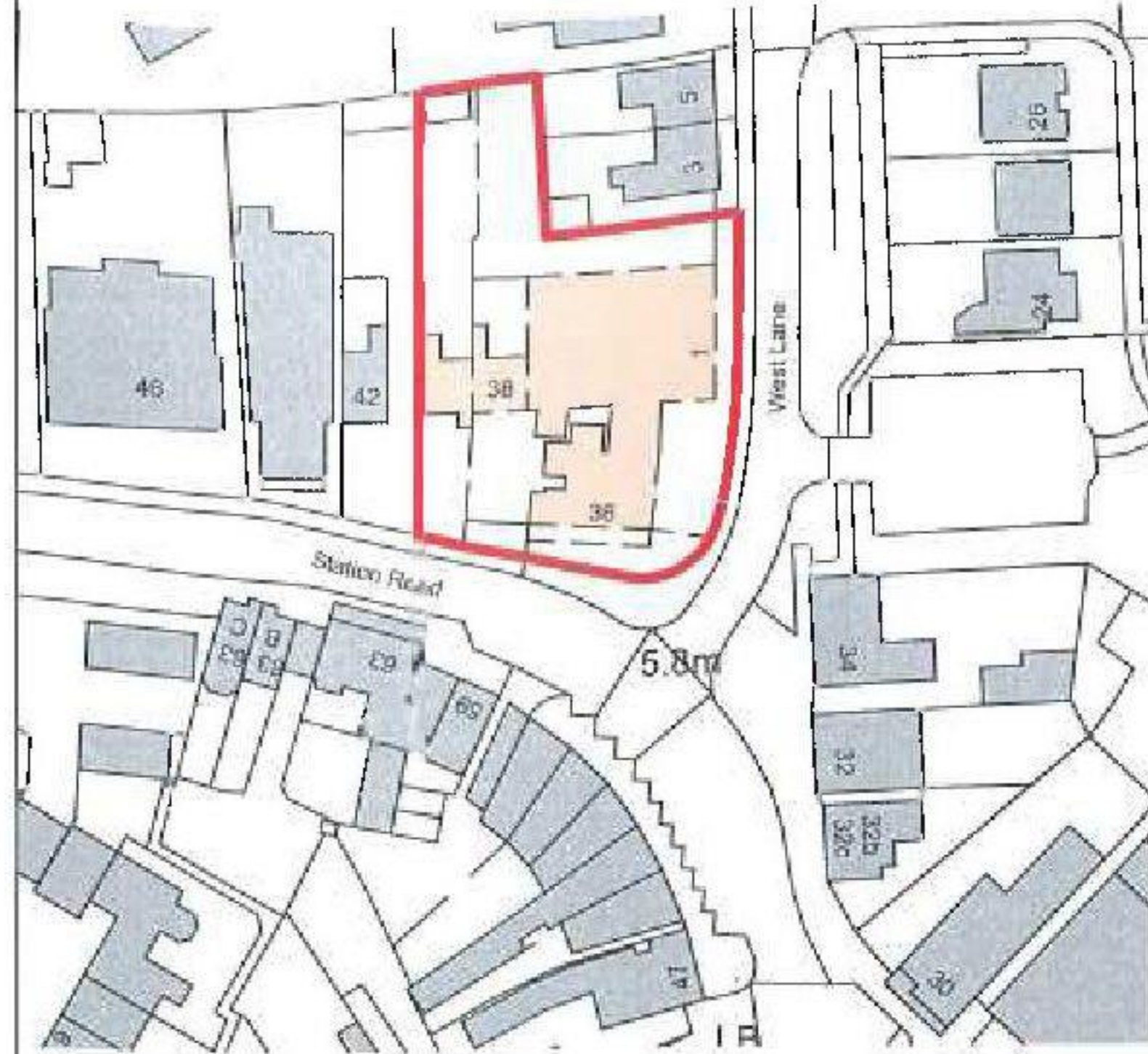
Director:

Director/Secretary



36 Station Road, Hayling Island

Please do not scale from this drawing use figured dimensions only.
Discrepancies are to be brought to the attention of the Architects Ltd.
In any doubt, ask.



Location Plan (1:1,250)

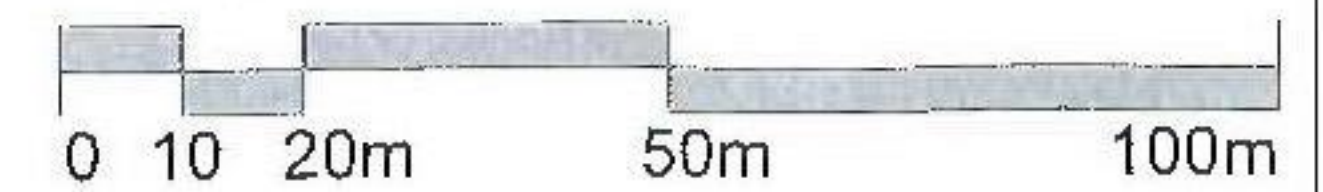
Notes

OS Plan data: Ordnance Survey (c) Crown Copyright
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Key

- Existing surroundings
- Existing site (to be demolished)
- Demolished
- Proposed new footprint
- Site boundary (1,730sqm)

1:1250



1:500



PLANNING

- | | | | | |
|---|----------|--------------------------------------|-------|------------|
| D | 10/03/16 | Minor adjustments to block plan | by JD | checked GJ |
| C | 18/02/16 | Red line boundary revised | by JD | checked GJ |
| B | 23/12/15 | Updated following design development | by JD | checked CE |
| A | 20/08/15 | Demolished footprint added | by JD | checked CE |



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client The O'Dell Group

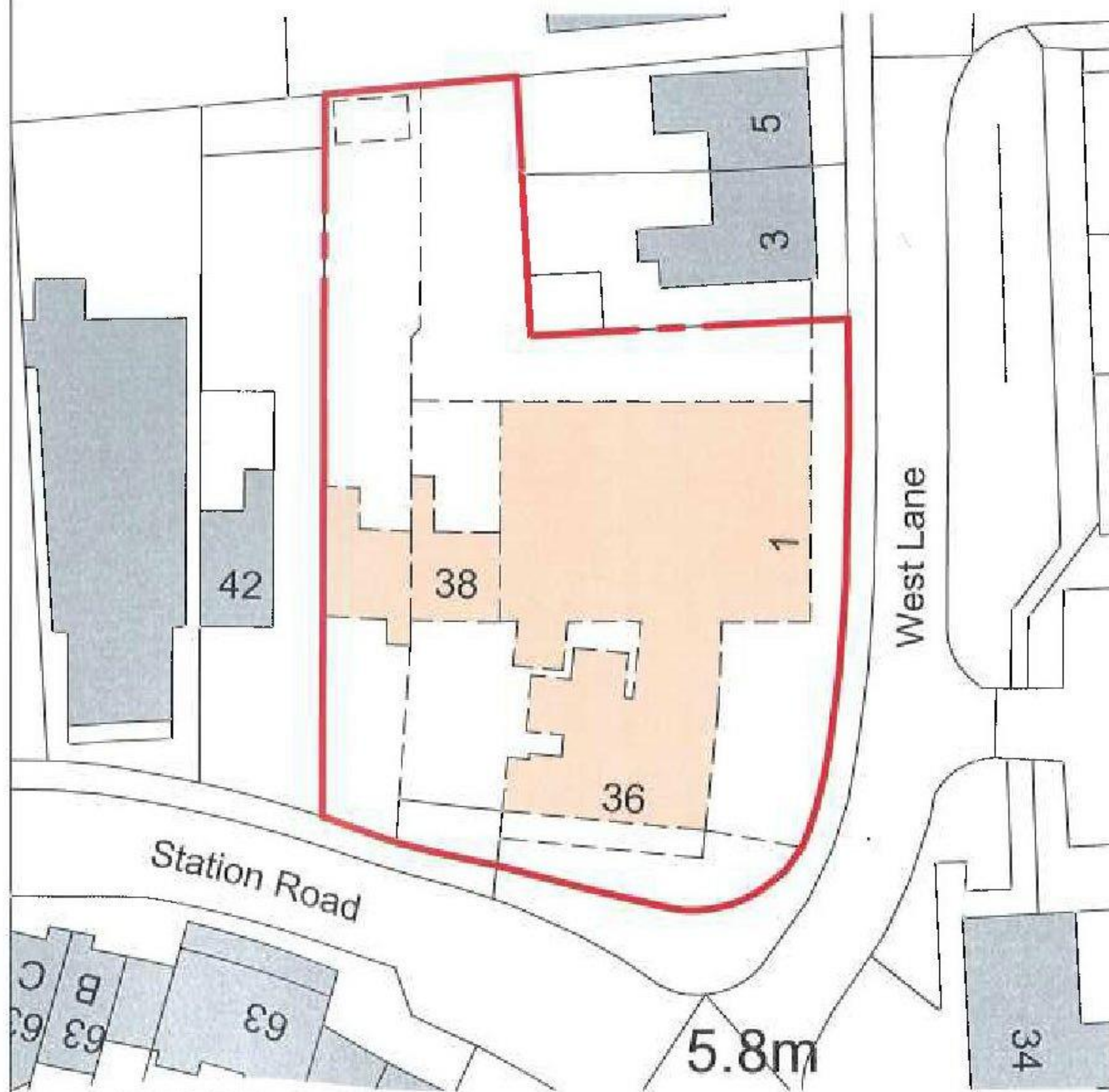
project 36 Station Road, Hayling Island

title Location and Block Plan as Existing and Proposed

date	scale	paper	drawn	checked
Jul 2015	Varies	A3	JD	CE

job no.	dwg no.	revision
34139	100	D

file 100 - Location and Block Plans



Site Block Plan as Existing (1:500)



Site Block Plan as Proposed (1:500)