

DATED

3rd March

2016

NIGEL COLIN WOOD AND JANE LESLEY WOOD

MILDREN HOMES LIMITED

and

THE COUNCIL OF THE BOROUGH OF HAVANT

DEED

Pursuant to (inter alia)

Section 106 of the Town and Country Planning Act 1990
Relating to Land at Eastleigh House Bartons Road Havant PO9 5NA
in Hampshire

Solicitor to the Council
East Hampshire District Council
Penns Place
Petersfield
Hampshire
GU31 4EX

THIS DEED is made the 3rd day of March 2016

BETWEEN

- (1) NIGEL COLIN WOOD and JANE LESLEY WOOD both 37 St Catherine's Road Hayling Island Hampshire PO11 0HF ("the Owners")
- (2) Mildren Homes Limited whose registered office is situate at Mildren Construction Limited 120 Matchams Lane, Hurn, Christchurch, Dorset, BH23 6AN [Company Register No. 07308571] ("the Developer")
- (3) 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 Owners are the freehold owners of the Land free from encumbrances being registered at the Land Registry under Title Number HP525447 and title entries have been produced to the Council prior to the date hereof
- (3) The Developer has entered into a conditional contact to purchase the Land with the Owners subject to obtaining Planning Permission and agrees that its interest in the Land is bound by the terms of this deed
- (4) 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
- (5) The Developer submitted the Application to the Council seeking Planning Permission for the Development

NOW THIS DEED WITNESSETH as follows:

1. Statutory Powers

This Deed is made pursuant to:

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

2. Interpretation

- 2.1 Reference in this Agreement to a Clause Schedule or Recital shall mean a Clause Schedule or Recital to this Agreement
- 2.2 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
- 2.3 In this Agreement 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
 - 2.3.3 A reference to writing or written does not include faxes or e-mail
 - 2.3.4 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
 - 2.3.5 References to clauses plans schedules and appendices are to the clauses plans schedules and appendices of this deed
 - 2.3.6 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
 - 2.3.7 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

3. Planning Obligations

- 3.1 The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Town and Country Planning Act 1990 and are enforceable by the Council

4. Covenants Binding on Implementation

- 4.1 The covenants undertakings obligations and restrictions in this Agreement shall become binding on the parties to this Agreement upon Implementation

5. Definitions

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

"The Act"	means the Town and Country Planning Act 1990 as amended
"Affordable Housing Contribution"	means the sum of £124,106 (ONE HUNDRED AND TWENTY FOUR POUNDS ONE HUNDRED AND SIX POUNDS) Index Linked towards the provision of off-site affordable housing in accordance with Policies CS9 and CS21 of the Havant Borough Local Plan (Core Strategy)
"the Application"	shall mean the application submitted to the Council by the Developer given reference number APP/15/01103 for the Development
"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 any, unadopted roads, communal parking areas, footways, footpaths, landscaped areas, amenity spaces 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 construction of the conversion of Eastleigh

House from a single C3 dwellinghouse to B1 offices and two C3 Dwellinghouses along with the erection of a two storey extension to provide a further single C3 Dwellinghouse plus the construction of a courtyard development of 10 terraced Dwellinghouses including landscaping parking and turning areas

"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 the Occupier(s)

"Index Linked"

means increased in accordance with the following formula such indexation shall only be applied in circumstances where the RPI at the date of payment stands at a higher level than it did at the date of the Planning Permission for the Development:

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

Where: A = the contribution amount

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

C = the last figure published 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 Eastleigh House Bartons Road Havant in Hampshire shown for identification purposes only edged red on the Plan
"Management Company"	means a company or other body to be charged with the management and maintenance of the Common Parts in accordance with paragraph 4 of Schedule 1
"the Management Plan"	proposals (to be agreed in writing by the Council) for arrangements to secure the future maintenance and Management in perpetuity of the Common Parts by the Management Company
"Occupation"	means occupation of a Dwellinghouse for the purposes of a residential household (and "occupy" "occupies" "occupier" "occupiers" and "occupied" shall be construed accordingly)
"the Owners"	means the owners and in the case of two or more Owners each or all of them as Owners of any or all parts of the Land and as parties to this Deed of Agreement acting and being obliged by this Agreement jointly and severally who is (or are) described in recital 2 of this Agreement being a person or persons identified in accordance with Section 106 (9)(c) of the Act

"Plan"	means the plan annexed hereto at Schedule 3
"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 Mitigation Strategy Contribution"	means the sum of £2,375.10 subject to Indexation in accordance with the figures supplied to the Council by the Solent Recreation Mitigation Partnership in respect of the Special Protection Area avoidance and mitigation measures delivered through the Solent Interim Planning Framework

6. Statutory provisions

- 6.1 This deed constitutes a planning obligation for the purposes of section 106 of the Act

- 6.2 The covenants restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owners with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns
- 6.3 The covenants restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the Act
- 6.4 The Developer acknowledges and declares that this deed has been entered into by the Owner with its consent and that the Land will be bound by the obligations contained in this deed provided that the Developer shall have no liability under this deed unless and until it becomes the owner of the Land in which case it too will be bound by the obligations contained in this deed as the person deriving title from the Owner

7. Conditionality

- 7.1 With the exception of clauses 1, 2, 3, 5, 6, 9, 11, 12, 13, 16, 17, 18, 20, 21, 22, 23, 25, 26, 27 and this clause 7 (which take effect immediately) this deed is conditional on (i) the grant and issue of the Planning Permission and (ii) Implementation of the Development

8. Covenants

- 8.1 The Owners covenant with the Council to observe and perform such of the covenants restrictions and obligations contained in Schedule 1
- 8.1 The Council covenants with the Owners to observe and perform the covenants restrictions and obligations contained in Schedule 2

9. Exclusions of Liability

- 9.1 Notwithstanding any other provision of this Deed the obligations contained within clause 8 shall not be binding upon or enforceable against the occupiers of any Dwellinghouse nor any mortgagees of any occupiers of any Dwellinghouse nor any providers of utility services

10. Indexation

- 10.1 The Affordable Housing Contribution shall be Index Linked from the date that the Planning Permission is granted until the date of payment and shall be linked to the RPI

- 10.2 The Solent Mitigation Strategy Contribution shall be Index Linked from the date that the Planning Permission is granted until the date of payment and shall be linked to the RPI
- 10.3 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 shall advise the owners in writing

11. Release

- 11.1 No person (including any subsequent successors in title to the Land) shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest

12. Determination of deed

- 12.1 The obligations in this deed 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 Owners or the Developer; or
 - (c) is quashed following a successful legal challenge
- 12.2 Nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Land or the whole thereof 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

13. Local land charge

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

14. Interest on late payment

- 14.1 Where any sum or amount has not been paid to the Council by the date on which it is due the Owners 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

15. Reasonableness

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

16. Disputes

- 16.1 If any dispute arises out of this deed 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
- 16.2 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)

17. No fetter of discretion

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

18. No compensation payable

- 18.1 No compensation shall be payable by the Council as a result of the obligations contained in this deed

19. Waiver

- 19.1 No waiver (whether express or implied) by the Council of any breach or default by the Owners in performing or observing any of the covenants restrictions or obligations of this deed 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 deed or acting on any subsequent breach or default of this deed

20. Future Permissions

- 20.1 Nothing in this deed shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission

- 20.2 For the avoidance of doubt this deed shall apply to the Planning Permission and all associated permissions issued pursuant to section 73 of the Act unless the Council requires a specific variation to this deed

21. Notices

- 21.1 Any notice or other communication required to be given under this deed 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
- 21.2 Any notice or other communication required to be given under this deed to the Owners shall be sent to the Owners at their address set out above or as otherwise specified by the Owners by notice in writing

22. Third party rights

- 22.1 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

23. Severance

- 23.1 If any court or competent authority finds that any provision of this deed (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
- 23.2 If any invalid unenforceable or illegal provision of this deed 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

24. Value added tax

- 24.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid
- 24.2 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

25. Governing Law

25.1 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

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

26. Costs

26.1 The Owners hereby covenant to pay to the Council on completion of this deed the sum of £665.00 in respect of its legal and other costs in connection with the preparation and approval of this deed such costs to be paid prior to completion of this deed

27. Council Successors

27.1 The expression "the Council" shall include successors to its functions as Local Planning Authority for the purposes of the Town and Country Planning Act 1990

IN WITNESS whether the parties hereto have executed these presence as a Deed the day and year first before written

Signed as a DEED by the said)
NIGEL COLIN WOOD)

in the presence of:

A. TURNER
162 HENDON RD
PERTS MD 16

Signed as a DEED by)
JANE LESLEY WOOD)

In the presence of:

DIANA WALKER
68 HANWY ROAD
EMSWORTH

Signed as a DEED by
MILDREN HOMES LIMITED
acting by a director and its secretary of,
two Directors)

Director

ANGELA KERN
6 BOTLEY DRIVE
HAVANT
PO9 4QX.

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

Authorised Signatory



13140

Schedule 1
Owners covenants

1. Implementation

- 1.1 The Owners shall notify the Council in writing at least 14 days before Implementation

2. Contributions

- 2.1 The Owners covenant 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
- 2.2 The Owners covenant not to Occupy or to cause or permit Occupation of the Development permitted by the Planning Permission until it has paid or caused to be paid to the Council the Affordable Housing Contribution

4. Management of the Land

- 4.1 The Owners covenant not to Implement the Development unless and until the Council has approved in writing (such approval not to be unreasonably withheld or delayed) the Owners' proposal for an entity to be responsible for the maintenance and management of the Common Parts (the "**Management Company**")
- 4.2 The Owners shall not Occupy or cause or permit Occupation of any Dwellinghouse on the Land until the Management Plan has been approved in writing by the Council (such approval not to be unreasonably withheld or delayed)
- 4.3 The Owners shall repair and maintain the Common Parts to the reasonable satisfaction of the Council until such time as the Management Plan (as agreed by the Council) is being fully implemented by the Management Company

Schedule 2

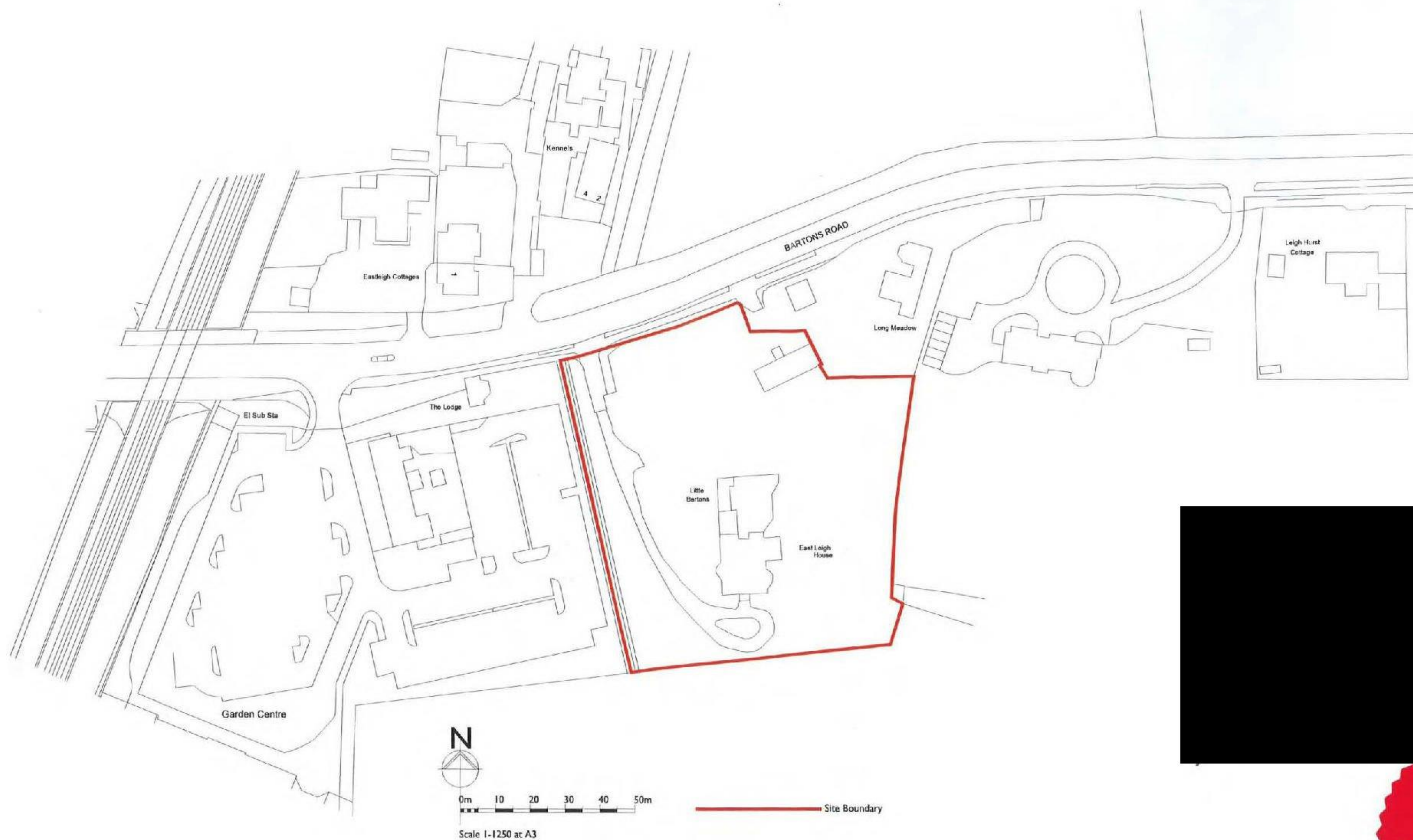
Council's covenants

1. Covenants to the Owners

- 1.1 The Council covenants with the Owners not to use the Affordable Housing Contribution or the Solent Mitigation Strategy Contribution other than for or to the purposes set out in this Deed and on the written request of the Owners to repay any unexpended balance of the Contributions to the Owners on the expiry of 10 years from the date of Practical Completion of the Development or the date of payment whichever is the latest

Schedule 3

The Plan



Location Plan

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PROJECT
East Leigh House
Bartons Road
Havant
Mildren Homes

Project type
Residential + Commercial
Drawing classification
Site Layout
Work stage
Location Plan

SCALE	SHEET SIZE	SHEET No.	DRAWN	CHKD	DATE
1:1250	A3	1 of 1			

Detail Planning

The Studio, Unit 17, Vicarage Farm, Winchester Road,
Fairbairn, Hampshire, SO50 7HD
023 8069 7310
enquiries@urbanpulsedesign.co.uk www.urbanpulsedesign.co.uk

urban pulse design

14-1096-025