

DATED

8th April

2015

PHILIP DYMOKE WHITE, FIONA ELIZABETH WHITE and ALEXANDER
STUART DYMOKE STUART WHITE (1)

CHARGE
MORTGAGE
SPELLED
UP

and

THE COUNCIL OF THE BOROUGH OF HAVANT (2)

**DEED OF VARIATION
AND PLANNING OBLIGATION**

Pursuant to (inter alia)

Section 106 and Section 106A of the Town and Country Planning Act 1990
Relating to land West of Horndean Road and South of Southleigh Road Emsworth
in Hampshire

Mrs J Barden-Hernandez
Solicitor to the Council
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant, Hampshire
PO9 2AX

THIS DEED OF VARIATION is made the 8th day of April 2015
BETWEEN

- (1) PHILIP DYMOKE WHITE, FIONA ELIZABETH WHITE and ALEXANDER STUART
DYMOKE STUART WHITE of Chidden Farmhouse, Chidden, Hambledon,
Waterlooville Hampshire PO7 4TD as Trustees of PD WHITE ("the
Owners")
- (2) THE COUNCIL OF THE BOROUGH OF HAVANT of Civic Offices Civic
Centre Road Havant Hampshire PO9 2AX ("the Council")

Chris
Russell
Solicitors
LLP

WHEREAS:

1. This Deed is supplemental to a Deed of Agreement dated 7th October 1992 made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (the "1990 Act") and Section 111 of the Local Government Act 1972 between (1) Richard Charles Kirby and Peter Richard Wingate Pemberton and (2) the Council in relation to the development of land west of Southleigh Road and North of Rowan Road, Havant in Hampshire ("the Original Section 106 Agreement").
2. By supplemental Agreement dated 26th September 1995 and made between (1) Richard Charles Kirby and Peter Richard Wingate Pemberton and (2) the Council the parties thereto agreed inter alia to vary the provisions of the Original Section 106 Agreement so as to substitute Plan 2, revoke clause 6, amend provisions within the conveyance attached to the Section 106 Agreement and replace wording in clause 10.3 of the Original Section 106 Agreement ("the 1995 Supplemental Agreement").
3. By supplemental Agreement dated 29th March 1996 and made between (1) the Council (2) Portsmouth Housing Association Limited (3) Hermitage Housing Association Limited the parties thereto agreed inter alia to vary the provisions of the Original Section 106 Agreement and the 1995 Supplemental Agreement so as to acknowledge the roadworks obligations being satisfied and to confirm that once the land transfers occur the obligations within clause 10 shall be rendered null and void and the restrictions on commencement under clause 8 shall not apply and it also acknowledged the Council having completed and signed the application referred to in clause 3(a).

4. By Supplemental Agreement dated 4th April 1996 and made between (1) Richard Charles Kirby and James Westwood Squier and (2) the Council the parties thereto agreed inter alia to vary the provisions of the Original Section 106 Agreement so as to declare clause 10 of the Original Section 106 Agreement to be null and void and to cease to take effect and undertook to secure the connection of certain land to the existing public highway.
5. By Supplemental Agreement dated 19 February 2004 between (1) Richard Charles Kirby and James Westwood Squier (2) Ideal Homes Limited and (3) the Council the parties thereto agreed to vary the provisions of the Original Section 106 Agreement in relation to a footpath.
6. By supplemental Agreement dated 31st October 2012 and made between (1) the Council (2) Southern Co-operative Properties Limited (3) Richard Charles Kirby and Philip Dymoke White the parties thereto agreed inter alia to vary the provisions of the Original Section 106 Agreement so as to exclude the area of land shown on an appended plan from being bound by the provisions within clause 2 relating to Restricted Land (as defined in the Original Section 106 Agreement).
7. The Owners are Trustees for the freehold owner of the Land registered at the Land Registry under Title number SH34071.
8. Clause 2 of the Composite Section 106 Agreement prohibits new buildings being constructed on the Restricted Land and contains other restrictions in respect of the Restricted Land.
9. The Chidden Farms of Chidden Farmhouse, Chidden, Hambledon, Waterlooville Hampshire PO7 4TD have submitted an application for outline planning permission given planning reference APP/14/00547 for 125 residential units and a water retention area (all matters reserved except access and levels) on the Land which lies within the Restricted Land.
10. The Parties hereto agree and consent to the terms of the Composite Section 106 Agreement and Supplemental Deeds being further varied so as to release the Land as hereinafter provided.

NOW THIS DEED WITNESSETH as follows:

PRELIMINARY AND RECITALS

A Definitions

A.1 Words and phrases used in this Deed are defined at Clause 1.1. Save as otherwise provided words and phrases in this Deed shall have the meaning contained in the Composite Section 106 Agreement.

B Purpose of Deed

B.1 This Deed is supplemental to and varies certain of the obligations contained in the Composite Section 106 Agreement.

B.2 The Deed is being entered into to release the Land from the terms of the Composite Section 106 Agreement (including clause 2 and the restrictions relating to the Restricted Land) and the Supplemental Deeds.

B.3 The provisions of this Deed bind the Land (and each and every part of it) the parties and their successors in title save where this Deed expressly provides to the contrary.

C Statutory Authorities

C.1 The Council is for the purposes of Sections 106 and 106A of the Act the authority which can enforce the terms of this Agreement.

C.2 This Deed is made pursuant to the provisions Section 106 and 106A of the 1990 Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers enabling.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed (including the Recitals) the following expressions shall have the following meanings:

"Land"	means the land shown edged red on the plan annexed to this Deed drawing reference 055/PL/01 rev A titled "Location Plan";
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"the Composite Section 106 Agreement"	means the Agreement dated 7 th October 1992 made pursuant to Section 106 of the Town and Country Planning Act 1990 (as
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amended) and Section 111 of the Local Government Act 1972 by (1) Richard Charles Kirby and Peter Richard Wingate Pemberton and (2) the Council in relation to the development of land at land west of Southleigh Road and North of Rowan Road, Havant in Hampshire as supplemented and varied by the Supplemental Deeds;

"Supplemental Deeds"

means the Deeds referred to in Recitals (2) to (6) inclusive.

1.2 The definitions contained in the Section 106 Agreement apply unless the context otherwise requires.

1.3 The provisions of this Deed shall unless the context otherwise requires be construed as follows:

1.3.1 Words importing one gender shall include all other genders;

1.3.2 The singular includes the plural and vice versa;

1.3.3 Reference to a statute includes any amendment, modification, extension consolidation or re-enactment of it and any statutory instrument, regulation or order made under it which is for the time being in force;

1.3.4 References to any "Clause" or "Sub-Clause" (or any part of them) shall (unless the context otherwise requires) be references to a Clause Sub-Clause (or any part of them) of this Deed;

1.3.5 Headings to clauses of this Deed do not affect the interpretation or construction of this Deed.

2 LOCAL LAND CHARGE REGISTRATION

2.1 This Deed is registerable by the Council as a local land charge in the Register of Local Land Charges kept by the Council.

3 RELEASE

3.1 The Council and the Owners hereby agree that the Land shall be released from the terms of the Composite Section 106 Agreement and the

Supplemental Deeds such that the terms of the Composite Section 106 Agreement and the Supplemental Deeds shall not be binding upon the Owners in their capacity as freehold owners of the Land nor their successors in title or persons deriving title from them.

- 3.2 Save as referred to in clause 3.1 the Owners and the Council confirm that the terms of the Composite Section 106 Agreement and Supplemental Deeds remain unaffected by the entering into of this Deed.

4 AGREEMENTS AND DECLARATIONS

It is hereby agreed and declared by the parties hereto that:

- 4.1 except in so far as legally or equitably permitted this Deed shall not prejudice fetter or affect the exercise of any statutory power duty or discretion of the Council;
- 4.2 the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed.

IN WITNESS whereof this Deed has been executed as a Deed by the parties hereto the day and year first before written

Signed as a DEED by
PHILIP DYMOKE WHITE
in the presence of

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)
)



Witness Signature



Witness Name

JORIN CLIVE DALTON

Witness Address

THE GRANARY

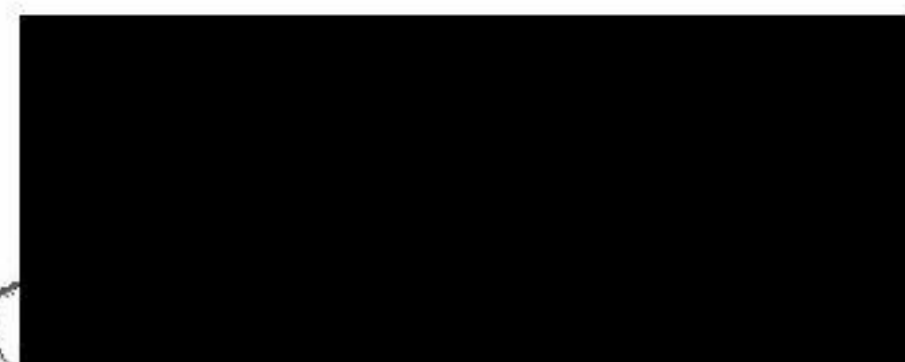
STOLKS FARM

PRIVETT, HANZS LN34 3NZ

Occupation ARABLE FARMER

Signed as a DEED by
FIONA ELIZABETH WHITE
as TRUSTEE for PD WHITE
in the presence of

)
)
)
)



JOHN LLIVE DALTON

Witness Address

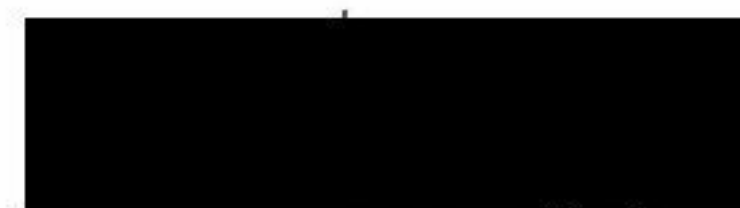
THE GRANARY

STOLKS FARM PRIVETT GU34 3NZ

Occupation ARABLE FARMER
Fiona E. White

Signed as a DEED by
ALEXANDER DYMOK STUART
WHITE as TRUSTEE for PD
WHITE in the presence of

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)
)
)



AS ATTORNEY FOR
ALEXANDER STUART DYMOK

Witness Signature



Witness Name

JOHN LLIVE DALTON

Witness Address

THE GRANARY, STOLKS FARM

PRIVETT, HANTS GU34 3NZ

Occupation ARABLE FARMING

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

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Scale for planning purposes only.
Contractors to confirm all dimensions before
commencing work on site or shop drawings.
STAINSBY ARCHITECT to be notified of any
discrepancies.



PLANNING
CHIDDEN FARMS

Client: CHIDDEN FARMS
Project: LAND WEST OF HORNDEAN ROAD
EMSWORTH

Title: LOCATION PLAN

Drawn: JAW
Authorised: JAW

Scale: A2 1:2000
Date: MAY 2014

055 PL 01
Rev A

STAINSBY ARCHITECT

TAS HOUSE
115-117 ROADS
HITCHIN
HUNTS
GU25 9PA
E andrew.stainby@stainbyarchitect.co.uk
T 01438 637868
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AS ATTORNEY FOR
ALEXANDER STUART
DINOKE WHITE