

DATED

^{4th} February
~~25th January~~

2013 14

HOMES AND COMMUNITITES AGENCY

(1)

and

BEGG (NOMINEES) LIMITED

(2)

and

HAMPSHIRE COUNTY COUNCIL

(3)

and

THE COUNCIL OF THE BOROUGH OF HAVANT

(4)

**SECOND 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 at Former Council Depot Unit 4 Harts Farm Way, Havant
in Hampshire

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

THIS SECOND DEED OF VARIATION is made the

^{4th}
~~28th~~ day of ~~January~~^{February} 2014
SHP

~~2013~~

BETWEEN

- (1) HOMES AND COMMUNITIES AGENCY of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7QH ("the Owner")
- (2) BEGG (NOMINEES) LIMITED (Company Registered Number SC147164) of GSO Business Park, East Kilbride, Glasgow G74 5PG ("the Developer")
- (3) HAMPSHIRE COUNTY COUNCIL of The Castle Winchester Hampshire SO23 8UJ ("the County Council")
- (4) THE COUNCIL OF THE BOROUGH OF HAVANT of Civic Offices Civic Centre Road Havant Hampshire PO9 2AX ("the Council")

WHEREAS:

1. The Owner is registered at the Land Registry under Title Number SH11401 as freehold owner of the Land.
2. The Developer has the benefit of an agreement for development and sale over the Land dated 22 May 2013 between the Owner and the Developer.
3. The Council is the local planning authority for the purposes of the 1990 Act for the area of the Borough of Havant within which the Land is situated
4. The County Council is the local highway authority for the purposes of the 1980 Act for the area within which the Land is situated and is also a local planning authority for the purposes of the 1990 Act for the area within which the Land is situated
4. This Second Deed of Variation is supplemental to a Deed of Agreement dated 19 December 2007 made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and Section 111 of the Local Government Act 1972 between the South East England Development Agency (1) Edmond Holdings Limited (2) the Council (3) and the County Council (4) in relation to the development of land at Havant Borough Council Depot, Harts Farm Way Havant in Hampshire ("the Principal Agreement").
5. By the First Deed of Variation dated 23 June 2011 and made between South East England Development Agency (1) The Council (2) and The County Council (3) the parties thereto agreed inter alia to vary the provisions of the Principal Agreement so as to apply the provisions of the Principal Agreement

to the development authorised by the Extension Permission and to release Edgmond Holdings Limited from all obligations under the Principal Agreement

6. The Developer has by an application planning reference number APP/13/00592 dated 5 June 2013 applied for removal of condition 13 of planning permission APP/10/00737
7. The Parties hereto agree and consent to the terms of the Principal Agreement being further varied in respect of the Land as hereinafter provided.

NOW THIS DEED WITNESSETH as follows:

PRELIMINARY AND RECITALS

A Definitions

- A.1 Words and phrases used in this Second Deed of Variation are defined at Schedule 1. Save as otherwise provided words and phrases in this Second Deed of Variation shall have the meanings contained in the Principal Agreement as varied by the First Deed of Variation.

B Purpose of Deed

- B.1 This Second Deed of Variation is supplemental to and varies certain of the definitions contained in the Principal Agreement as varied by the First Deed of Variation.
- B.2 The provisions of this Second Deed of Variation bind the Land (and each and every part of it) the parties and their successors in title save where this Second Deed of Variation expressly provides to the contrary

C Statutory Authorities

- C.1 The Council is for the purposes of Sections 106 and 106A of the Act an authority which can enforce the terms of this Second Deed of Variation
- C.2 The County Council is for the purposes of Sections 106 and 106A of the Act an authority which can enforce the terms of this Second Deed of Variation

- C.3 This Second Deed of Variation is made pursuant to the provisions Section 106 and 106A of the 1990 Act Section 111 of the Local Government Act 1972 the Housing Acts and Section 2 of the Local Government Act 2000 and all other powers enabling

D Planning

- D.1 This Second Deed of Variation is supplemental to the Principal Agreement as varied by the First Deed of Variation which is varied by the provisions of this Deed

E Liability for this Deed

- E.1 The Planning Obligations restrictions covenants limitations and obligations in this Second Deed of Variation relating to all clauses within the Principal Agreement and this Second Deed of Variation relate to and are binding in their entirety upon the Owner and its successors in title and assigns and its interest in the Land save as otherwise provided shall bind and run with the land and each and every part of it.

1 DEFINITIONS AND INTERPRETATION

- 1.1 The definitions contained in the Principal Agreement apply unless the context otherwise requires
- 1.2 The provisions of this Second Deed of Variation shall unless the context otherwise requires be construed as follows:
- 1.2.1 Words importing one gender shall include all other genders
- 1.2.2 The singular includes the plural and vice versa
- 1.2.3 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
- 1.2.4 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 Second Deed of Variation
- 1.2.5 Headings to clauses of this Second Deed of Variation do not affect the interpretation or construction of this Second Deed of Variation

2 EFFECT OF AGREEMENT

- 2.1 The covenants restrictions and requirements imposed upon the Owner under this Second Deed of Variation create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Owner and their successors in title.
- 2.2 This Second Deed of Variation also varies and supplements certain of the provisions contained in the Principal Agreement as varied by the First Deed of Variation.

3 LAND BOUND AND ENFORCING AUTHORITY

- 3.1 The provisions of this Second Deed of Variation and the covenants restrictions limitations and obligations given by the Owner shall bind and run with the Land and each and every part of it and shall be binding against the Owner and its successors in title and assigns to the Land and each an every part of it save as provided elsewhere in this Second Deed of Variation.

4 LOCAL LAND CHARGE REGISTRATION

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

5 THE OWNER'S AND DEVELOPER'S COVENANTS

- 5.1 The Owner for itself and its successors in title to the Land and each and every part of it hereby covenants in favour of the Council and the County Council to observe perform and abide by the obligations restrictions limitations and covenants contained in this Second Deed of Variation and in the Principal Agreement as varied by this Second Deed of Variation and the said obligations restrictions limitations and covenants shall run with and bind with the Land and each and every part of it as set out below.
- 5.2 The Developer acknowledges and declares that this Second Deed of Variation has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Second Deed of Variation.

6 VARIATIONS TO THE PRINCIPAL AGREEMENT

- 6.1 The variations set out in Schedule 1 hereto shall have effect.

7 AGREEMENTS AND DECLARATIONS

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

- 7.1 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 County Council or the Council
- 7.2 The terms of the Principal Agreement except as varied by the First Deed of Variation and this Second Deed of Variation are confirmed as if the same were set out in this Second Deed of Variation in full and that such terms as so varied shall for all purposes be deemed incorporated in this Second Deed of Variation.
- 7.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Second Deed of Variation.

8. Certificate of Ownership

- 8.1 The Owner has produced a certificate of title prepared by its property solicitors set out in Schedule 2 upon which said certificate the Council and the County Council relies that the Owner is the owner of the freehold of the Land free from any mortgage or charge other than that declared within this Second Deed of Variation and the Owner states and the solicitors as aforesaid certify with the intent that the Council and the County Council shall rely upon the statement and certificate respectively that no mortgage or charge has been concluded which affects the Land and no other person has any interest in the Land whether legal or equitable other than that declared within this Second Deed of Variation.

IN WITNESS whereof this document has been executed as a Deed by the parties hereto but is not intended to have legal effect until it has been unconditionally delivered and dated

THE COMMON SEAL of)
HOMES AND COMMUNITIES AGENCY)
was hereunto affixed in the presence of:)

Authorised Signatory

~~Signature~~
A23912

HEAD OF EXISTING STOCK

Member/Authorized Signatory

"Signed by [redacted] *α*
Authorised signatory of [redacted]
F&C REIT Property Asset Management plc
As attorney for BEGG (Nominees) Limited"

Director/ Secretary

EXECUTED as a DEED by affixing)
THE COMMON SEAL of)
THE HAMPSHIRE COUNTY COUNCIL)
in the presence of:)

[redacted]



36/5540

authorised signatory

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

[redacted]



authorised signatory

12888

SCHEDULE 1

Variation of Principal Agreement

1 Definitions

- 1.1 The following definitions in Clause 3.1 of the Principal Agreement shall be amended as set out below:-

Defined Term in Principal Agreement	Amended Defined Term	Amendment to definition
Planning Application	Planning Application	Means the applications for planning permission submitted on behalf of the Owner to the Council given reference numbers 02/52646/016 for the development of the Land by way of outline application for new business and industrial development with new access from Harts Farm Way; APP/10/00737 Extension of time limit for implementation of outline Planning Permission 02/52646/016 for new business and industrial development with new access from Harts Farm Way, incorporating extension of time limit for implementation and phasing of reserved matters and other matters; and APP13/00592 for removal of condition 13 of planning permission APP/10/00737

Other Variations

- 1.1 Where a defined term which is amended in 1.1 above appears in the Principal Agreement it shall be deemed to include a reference to the amended defined term as set out in 1.1 above.

- 2.2 The following definitions shall be deemed to be inserted into Clause 3.1 of the Principal Agreement:-

"First Deed of Variation"	means the deed of variation dated the 23 rd day of June 2011 and made between South East England Development Agency (1) The Council of the Borough of Havant (2) Hampshire County Council (3)
"Second Deed of Variation"	means a second deed of variation dated the day of 2013 and made between Homes and Communities Agency (1) BEGG (Nominees) LIMITED (2) The Council of the Borough of Havant (3) Hampshire County Council (4)

SCHEDULE 2

Certificate of Title

- .1 As property solicitors for the Owner we hereby certify that on the date of this Agreement what is set out at recitals 1 and 2 and clause 8 are true and certificate respectively that no mortgage or charge has been concluded which affects the Land and no other person has any interest in the Land whether legal or equitable other than that declared within this Deed.

Signed...

Name: *S. M. Watson*

Address: *Commercial Road, Southeyton*