

Dated

10th July 2025

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

(2) HAMPSHIRE COUNTY COUNCIL

(3) VIVID HOUSING LIMITED

(4) M&G TRUSTEE COMPANY LIMITED

DEED OF VARIATION

pursuant to

**Section 106A of the Town and Country Planning Act 1990
relating to the land west of Coldharbour Farm Road, Emsworth**

DEED OF VARIATION

THIS DEED OF VARIATION IS MADE THE 10th DAY OF July 2025

PARTIES:

- (1) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza, Civic Centre Road, Havant PO9 2AX ("**the Borough Council**")
- (2) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire SO23 8UJ ("**the County Council**");
- (3) **VIVID HOUSING LIMITED** a society registered under the Co-Operative and Community Benefit Societies Act 2014 (Community Benefit Society No 7544) of Penisular House, Wharf Road, Portsmouth PO2 8HB ("**the Owner**"); and
- (4) **M&G TRUSTEE COMPANY LIMITED** a company registered in England and Wales with company number 1863305 of 10 Fenchurch Avenue, London, EC3M 5AG ("**the Mortgagee**")

Collectively "the Parties"

BACKGROUND

- (A) For the purposes of the Act, the Borough Council and the County Council are the local planning authorities for the area within which the Land is situated.
- (B) The County Council is also the Local Highway Authority for Hampshire (save for trunk roads and special roads) and the Transport Authority for Hampshire for the purpose of the Transport Act 1985 and 2000.
- (C) The Owner is the registered freehold owner of the Land, registered with HM Land Registry under title number HP376940 and HP376939.
- (D) The Mortgagee has a legal charge dated 25th June 2019 over title number HP376940.
- (E) This Deed varies the Original Agreement.
- (F) The parties have agreed to vary the terms of the Original Agreement as set out in this Deed.

1 OPERATIVE PART

This Deed of Variation is made pursuant to Sections 106 and 106A of the Act and the enabling powers and contains amendments to the planning obligations contained in the Original Agreement.

2 INTERPRETATION

- 2.1 In this Deed unless the context otherwise requires the following terms shall have the following meanings:

2.1.1 "**Deed of Variation**" means this agreement made by Deed.

- 2.1.2 **“Land”** has the same meaning as in the Original Agreement to include the land within the title registration numbers HP376940 and HP376939 as shown edged red on Plan 1 in the Original Agreement.
- 2.1.3 **“Original Agreement”** means the agreement made under Section 106 of the Act dated 21 March 2024 and made between (1) the Borough Council, (2) the County Council, (3) Leslie Shipp, Jill Irene Shipp and David Patrick Kingston Christian and (4) the Owner.
- 2.2 The definitions and rules of interpretation in this Clause apply in this Deed.
- 2.3 Where in this Deed of Variation reference is made to any clause paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital in this Deed.
- 2.4 All references in this Deed of Variation to Clauses in the Original Agreement are to Clauses within the Original Agreement.
- 2.5 Clause headings shall not affect the interpretation or construction of this Deed of Variation and are for reference only.
- 2.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.7 A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 2.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.9 A reference to a party shall include that party's representatives, successors or permitted assigns and in the case of the Borough Council or the County Council the successors to its respective statutory functions.
- 2.10 A reference to a statute or statutory provisions is a reference to it as it is in force at the date of this Deed of Variation and shall include any subordinate legislation made under the statute or statutory provision.
- 2.11 References to clauses, schedules and plans (unless the context otherwise requires) are to clauses, schedules and plans of this Deed of Variation.
- 2.12 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

3 LEGAL BASIS/STATUTORY PROVISIONS

- 3.1 This Deed of Variation is made pursuant to all powers enabling the parties and in particular Section 106 and 106A of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling acts with the intention that it binds the Owner's interests in the Land and their successors in title.
- 3.2 The obligations imposed upon the Owner contained in this Deed of Variation are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Borough Council and the County Council in the manner set out in the Original Agreement.
- 3.3 Nothing contained or implied in this Deed of Variation shall prejudice or affect the rights, powers, duties and obligations of the Borough Council and County Council in the exercise of its function and its rights, powers, duties and obligations under all public private statutes, byelaws and regulations may be as fully and effectively exercised as if they were not a party to this Deed.
- 3.4 The parties agree that the Original Agreement shall remain in full force and effect save as expressly varied by this Deed of Variation.
- 3.5 The Parties confirm that the covenants and conditions contained in the Original Agreement (except as varied by this deed) are to continue in full force and effect and shall continue to be applicable to the Land in respect of the Development and remain to be performed to the extent that they have not already been performed.
- 3.6 It is hereby agreed by the parties that the variations contained in this Deed of Variation shall take effect from the date of this Deed as though it had originally been contained in the Original Agreement.

4 LOCAL LAND CHARGE

This Deed of Variation is a local land charge and shall be registered as such by the Borough Council.

5 NO FETTER ON DISCRETION

- 5.1 Nothing contained or implied in this Deed of Variation shall prejudice or affect the rights discretions powers duties and obligations of the Borough Council under all statutes by laws statutory instruments orders and regulations in the exercise of their functions as local authorities.
- 5.2 No waiver (whether expressed or implied) by the Borough Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed of Variation shall constitute a continuing waiver and no such waiver shall prevent the Borough Council from enforcing any of the relevant terms or conditions or from acting any subsequent breach or default.

6 RELEASE AND LAPSE

- 6.1 This Deed of Variation shall lapse and be of no further effect if the decision of the Borough Council or the County Council to enter into this Deed of Variation is quashed following a successful legal challenge.
- 6.2 Nothing in this Deed of Variation shall prohibit or limit the right to develop any part of the Land in accordance with planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed of Variation.

7 SEVERABILITY

It is agreed that if any part of this Deed of Variation shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Deed of Variation shall continue in full force and effect.

8 VARIATION

The parties hereto agree that the Original Agreement shall be varied as follows:-

- 8.1 A new definition of "Temporary Traffic Regulation Order" shall be inserted into the Definitions at Clause 1 as follows:

"Temporary Traffic Regulation Order" means the issue of a temporary traffic regulation order issued by the County Council to temporarily control vehicular and pedestrian activities along the public footpath"

- 8.2 Paragraph 1.1 of Schedule 3 shall be deleted and replaced with the following:

"1.1 Not to Commence the Development until a Temporary Traffic Regulation Order has been issued by the County Council."

9 GOVERNING LAW

This Deed of Variation 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.

10 MORTGAGEE'S CONSENT

The Mortgagee acknowledges and declares that this Agreement has been entered into by the with its consent and that the Land shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the part of the Land shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

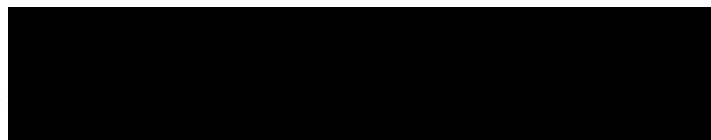
The parties to this Deed of Variation do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

12 LEGAL COSTS

The Owner covenants and undertakes that on completion of this Deed it will pay to the County Council the reasonable legal costs of the County Council in the consideration and completion of this Deed and the County Council's development control fee in the sum of £900.00 (nine hundred pounds).

IN WITNESS WHEREOF the parties have executed this Deed on the date first before here written

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



Authorised Signatory

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



Authorised Signatory

EXECUTED AS A DEED by

)

VIVID HOUSING LIMITED

)

acting by its attorney

) Attorney

in the presence of

)

Witness Signature:

)

Witness Name:

)

)

Witness Address:

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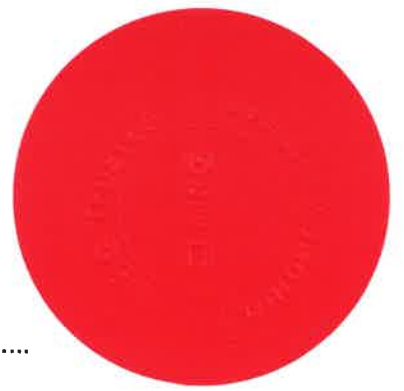
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Witness Occupation



EXECUTED AS A DEED by AFFIXING THE

OF M&G TRUSTEE COMPANY LIMITED

~~acting by direction~~

in the presence of

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation

[Redacted]

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Dealing Officer

Ava-Nomayo