

DATED

19th November

2024

EASTLEIGH BOROUGH COUNCIL

and

HAMPSHIRE COUNTY COUNCIL

and

EASTLEIGH BOROUGH COUNCIL

DEED OF VARIATION

Pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 relating to land west of at Burnetts Lane,
Eastleigh

Head of Legal Services
Eastleigh Borough Council
Eastleigh House
Upper Market Street
EASTLEIGH
SO50 9YN
File ref V/23/95347

THIS DEED is made on

19th November

2024

BETWEEN

- (1) EASTLEIGH BOROUGH COUNCIL of Eastleigh House Upper Market Street
Eastleigh Hampshire SO50 9YN ("the Council")
- (2) HAMPSHIRE COUNTY COUNCIL of The Castle Winchester Hampshire SO23
8UJ ("the County Council")
- (3) EASTLEIGH BOROUGH COUNCIL of Eastleigh House Upper Market Street
Eastleigh Hampshire SO50 9YN ("the Owner")

RECITALS

- (1) The Council and the County Council are the local planning authorities for the purposes of the Act for the area within which the Site is situated
- (2) The Owner is the freehold owner of the Site
- (3) The County Council is the Highway Authority and Education Authority for Hampshire for the area within which the Site is situated
- (4) On the 2 December 2022 the Council, the County Council and the Owner entered in to the Original Deed
- (5) This Deed is made under s106A of the Act in order to vary the Original Deed
- (6) Each obligation undertaken in the Original Deed as varied and supplemented by this Deed is a planning obligation for the purposes of Section 106 of the Act
- (7) The parties hereto now consent to vary their respective obligations contained within the Original Deed as hereinafter provided relating to the Site

Interpretation

1. The following definitions and rules of interpretation apply in this Deed:

"Original Deed"

means the agreement made under s106 of the Act dated 2 December 2022 between the Council, the County Council and the Owner

“Site” has the same meaning as defined in the Original Deed

- 1.1 Unless the context otherwise requires, all words, terms, definitions, expressions and phrases used in the Original Deed shall have the same meaning in this Deed.
- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written excludes faxes and email.
- 1.11 A reference to this Deed or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Deed.

- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 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.
- 1.16 any reference to 'the Owner' are to the Council acting as a landowner and any successor in title
- 1.17 Any reference to "the County Council" is to the County Council acting as local planning authority local education authority and local highway authority and to any successor to that statutory function for the area in which the Site is situated subject to the provisions of clause 2.2 below

Statutory Provisions

- 2.1 This Deed is made pursuant to Section 106 and Section 106A of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and in consideration of the covenants contained in this Deed and the obligations of the parties in the Original Deed as amended by this Deed under section 106A of the Act are deemed to be planning obligations for the purposes of Section 106 and are enforceable by the County Council subject to the provisions of clause 2.2 below
- 2.2 The County Council agrees to act on behalf of the Council in its statutory capacity as local planning authority by enforcing the obligations against the Owner in favour of the Council contained within this Deed until such time as the Council as Owner has parted with its interest in the Site (or the relevant part thereof) at which point the Council as a local planning authority shall assume this responsibility and

the County Council shall continue as local planning authority local education authority and local highway authority

- 2.3 For the avoidance of doubt following the Council as Owner having parted with its interest in the Site (or the relevant part thereof) it shall remain a party to this Deed in its capacity as the local planning authority
- 2.4 The covenants, restrictions and obligations imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable in respect of the **Site** by the County Council as local planning authority local highway authority and local education authority and enforceable by the Council (once responsibility is reassumed pursuant to clause 2.2) as local planning authority against the Owner
- 2.5 The definitions, clauses, obligations and provisions of the Original Deed shall remain in full force and effect except as varied or added to by this Deed and shall continue to be applicable to the Site in respect of the Development and remain to be performed to the extent that they have not already been performed or discharged
- 2.6 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Site and that the Site is free from any incumbrances PROVIDED THAT such warranty does not extend to interests held by any statutory undertakers.

Variations to the Original Deed

3 The following variations will be made to the Original Deed:

3.1 The following definitions shall be deleted in their entirety:

3.1.1 "Additional First Homes Contribution"

3.1.2 "Affordable Housing"

3.1.3 "Affordable Housing Dwellings"

3.1.4 "Affordable Housing Land"

- 3.1.5 “Affordable Housing Plan”
- 3.1.6 “Affordable Housing Provider”
- 3.1.7 “Affordable Housing Scheme”
- 3.1.8 “Armed Services Member”
- 3.1.9 “Compliance Certificate”
- 3.1.10 “Discount Market Price”
- 3.1.11 “Disposal”
- 3.1.12 “Eligibility Criteria (Local)”
- 3.1.13 “Eligibility Criteria (National)”
- 3.1.14 “Exempt Disposal”
- 3.1.15 “First Homes”
- 3.1.16 “First Homes Owner”
- 3.1.17 “First Time Buyer”
- 3.1.18 “Homes England”
- 3.1.19 “Income Cap (Local)”
- 3.1.20 “Income Cap (National)”
- 3.1.21 “Key Worker”
- 3.1.22 “Local Connection Criteria”
- 3.1.23 “Market Value”
- 3.1.24 “Mortgagee”
- 3.1.25 “Nominations Agreement”
- 3.1.26 “Open Market Dwellings”
- 3.1.27 “Practical Completion”
- 3.1.28 “Price Cap”
- 3.1.29 “SDLT”
- 3.1.30 “Valuer”

3.2 The following definitions shall be amended:

3.2.1 In the definition of “Dwellings” the words “including both the Affordable Housing Dwellings and the Open Market Dwellings” shall be deleted

3.2.2 The definition “Highways Contribution” at clause 1 ‘Interpretation sub clause 1.1 shall be amended so that the words “two million three hundred and eighty four thousand nine hundred and forty four pounds (£2,384,944)” shall be deleted and replaced with the words “two million one hundred and forty nine thousand nine hundred and forty five pounds and thirty three pence (£2,149,945.33)”

3.3 Clause 24.1 shall be amended by deleting the words “(with the exception of the Affordable Housing Dwellings to which paragraphs 2.1 – 4.4 of Part 2 of Schedule 5 shall apply)”

3.4 Schedule 5 shall be deleted in its entirety

Covenants to the Council and County Council

4 The Owner for themselves and their respective successors in title hereby covenant with the Council, and as a separate covenant with the County Council, with the intent of binding the Site so that such covenants shall be enforceable against successors in title and any person claiming through or under them to observe the restrictions and to perform the obligations contained in the Original Deed as varied by this Deed.

Local land charge

5 This Deed is a local land charge and will be registered as such

No fetter of discretion

6 Nothing (contained or implied) in this Deed shall fetter or restrict the Council’s or the County Council’s statutory rights, powers, discretions and responsibilities.

Waiver

7 No failure or delay by the Council or the County Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any

other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

Third party rights

- 8 Any person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term under this Deed

VAT

- 9 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this Deed is exclusive of VAT (if any).
- 10 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice

Costs

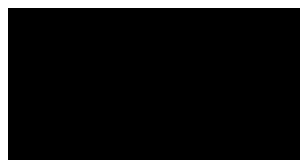
- 11 The Owner covenants with the County Council to pay the County Council's legal fees on completion of this Deed

Governing law

- 12 This Deed is to be governed by and interpreted in accordance with the law of England and is enforceable in the Courts of England and Wales.

In Witness whereof the parties hereto have today executed and delivered this agreement
as a Deed

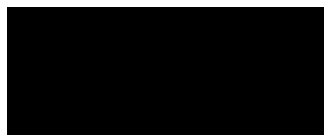
EXECUTED as a DEED by affixing)
THE COMMON SEAL of EASTLEIGH)
BOROUGH COUNCIL in the)
presence of:)



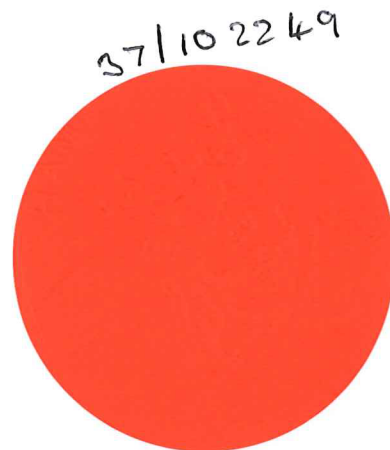
Authorised Signatory



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



Authorised Signatory



Name

Position

