

SUBJECT TO CONTRACT

DATED 2024

EASTLEIGH BOROUGH COUNCIL

and

HAMPSHIRE COUNTY COUNCIL

and

WHITMAN BUILDERS LTD

and

KATHERINE RUTH BOWMAKER

and

RACHEL ALISON RUTH COOK AND HELEN KATHERINE FARR

and

NATIONWIDE BUILDING SOCIETY

A G R E E M E N T

Pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 relating to car park and land to the rear of 67a to 83 New Road, Netley SO31 5BN

[Head of Legal Services](#) ~~Manager~~
Eastleigh Borough Council
Eastleigh House
Upper Market Street
EASTLEIGH
SO50 9YN

THIS DEED is made on

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")

(2)(3) WHITMAN BUILDERS LTD incorporated and registered in England and Wales
with company number 06506999 whose registered office is 11 Tenterton
Avenue, Southampton, Hampshire, SO19 9HT ("the First Owner" and the
"Developer").

(3)(4) KATHERINE RUTH BOWMAKER of 26 Station Road, Netley Abbey,
Southampton SO31 5AF ("the Second Owner");

(4)(5) RACHEL ALISON RUTH COOK AND HELEN KATHERINE FARR of 2
Oakfields, Eastleigh, Hants, SO50 4RP ("the Third Owner");

(5)(6) NATIONWIDE BUILDING SOCIETY of Nationwide House, Pipers Way,
Swindon L SN38 1NW incorporated and registered in England and Wales as a
building society with mutuals register number 355B whose registered office is
Nationwide House, Pipers Way, SWINDON, SN38 1NW ("the Second Owner's
Mortgagee"); and

RECITALS

(1) The Council and the County Council are the local planning authority for the
purposes of the Act for the area within which the Site is situated

(1)(2) The First Owner, Second Owner and Third Owner (known hereinafter as the
"Owners") are the freehold owners of the Site

(2)(3) The County Council is the Highway Authority and Education Authority for
Hampshire

~~(3)~~(4) The Developer has by written application numbered F/20/88749 and dated 15 September 2020 ("the Application") applied to the Council for Planning Permission for the Development of the Site

~~(4)~~(5) The Second Owner's Mortgagee is the registered proprietor of the charge dated 27 April 2015 referred to in entry numbers 1 – 3 of the charges register of Title number HP288531 and has agreed to enter into this deed to give its consent to the terms of this deed.

Commented [JD1]: To remain unless/until evidence of discharge received

~~(5)~~(6) The Council is desirous of granting planning permission for the Development of the Site subject to the conditions contained in the Planning Permission and subject to the Owners and the Developer entering into this Deed

~~(6)~~(7) The parties hereto are satisfied that the agreement is to the benefit of the public and that the obligations contained herein are:

- a. Necessary to make the development acceptable in planning terms;
and
- b. directly related to the development; and
- c. fairly and reasonably relate in scale and kind to the development in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

Interpretation

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

1.1 Definitions

"the Act" means the Town and Country Planning Act 1990

"Car Park" means the car park of the Netley Central Sports and Social Club as shown hatched ~~greenerange~~ on the

Car Park and Path Plan annexed to this Deed and titled "Car Park Plan"

"Car Park and Path Plan"

means the plan annexed to this Deed and titled 'Right of Way Layout' [with drawing number 28086-PD700 Rev A](#)

"Commencement of Development"

means the carrying out in relation to the Development of any material operation as defined by section 56 (4) of the Act but disregarding for the purposes of this deed and for no other purposes, the following operations:

- works associated with the construction of temporary access to the Site
- Site clearance
- Site preparation;
- Archaeological investigations and evaluation;
- Ecological mitigation works
- Evaluation and investigation for the purposes of assessing contamination and any remedial action in respect of any contamination;

and the expressions "commenced", "commence", "commencing" and

"commences" shall be construed accordingly

"Council's Contribution Payments"

means the payments to be made by the Owners and Developer to the Council in respect of:

- (i) Solent Recreation Mitigation Partnership Contribution index linked in accordance with clause 12.2 of this Deed

"County Council Contribution Payments"

means the payments to be made by the Owners and Developer to the County Council in respect of:

- (i) the ~~TRO Traffic Regulation Order~~ Contribution

index linked in accordance with clause 12.1 of this Deed

"County Council Development Control Fee"

means the sum of five hundred Pounds (£500) for the development control fee in relation to the preparation of this Deed

"County Council Monitoring Fee"

means a contribution in the sum of One thousand nine hundred and fifty pounds (£1950) to help fund the ongoing

	monitoring of compliance with obligations and/or the collection of developer contributions
"Default Interest Rate"	means interest at four percent (4%) above the base lending rate of Barclays Bank Plc from time to time
"Development"	means the development described in Schedule Two
"Dwellings"	means those dwellings to be constructed on the Site by the carrying out of the Development and the expression "Dwelling" shall be construed accordingly
"Highway Agreement"	means one or more agreements for the Highway Works to be entered into by the Owners and Developer and the County Council pursuant to (inter alia) section 278 and/or section 38 and/or section 25 and/or any other provision of the Highways Act 1980 in a form agreed by the County Council to provide for the execution of the Highway Works by the Owners and Developer at the Owners' and Developer's expense

"Highway Works"

means provision of access junction and associated pedestrian drop kerbs and tactile paving as shown in principle on drawing 28086-PD101 rev M attached to this Deed

"Highways Works Completion Standard"

means completion of the Highway Works to the reasonable satisfaction of the County Council as evidenced by the issue of a certificate of completion or part 2 certificate under the related Highways Agreement

"Local Area"

means the area of Bursledon, Hamble Le Rice and Hound

"Occupation"

means occupation for residential purposes excluding occupation for the purpose of sales or maintaining, fitting out or decoration and reference to "Occupy" and "Occupied" shall be construed accordingly

"Owner"

means the Owner and/ or Owners and their respective successors in title to the Site

"Penultimate Dwelling"	means the last but one Dwelling on the Site to be Occupied
"Permissive Path"	the footpath shown coloured-hatched <u>yellow</u> on <u>the</u> Car Park and Path Plan
"Planning Permission"	means planning permission for the development of the Site numbered F/20/88749
"Section 106 Monitoring Contribution"	means the cost of the Council's Planning Obligations Administrator and Enforcement Officer for monitoring compliance with the terms of this Deed in the sum of One Thousand Pounds (£1,000)
"Section 73 Permission"	means a permission granted pursuant to section 73 of the Act
"Services"	means foul, surface, storm and portable water, soil, effluent, gas, fuel, oil, electricity, telephone signals, television, electronic mail, data and information communications and other services

"Site" means the land described in Schedule One

"Site Plan" means the plan annexed hereto

"Solent Recreation Mitigation

Partnership" means the partnership of South Hampshire local authorities and other organisations established to implement measures to mitigate cumulative recreational disturbance of birds within the Solent Southampton Water, Portsmouth Harbour and Chichester and Langstone Harbour Special Protection Areas

"Solent Recreation Mitigation

Partnership Contribution" means a contribution to the Council in the sum of Five Thousand One Hundred and Ninety Two Pounds (£5,192.00) index linked in accordance with clause 12.2 to be paid by the Owners to the Council as a contribution to funding the work of the Solent Recreation Mitigation Partnership

“TRO” means a traffic regulation order made Pursuant to the Road Traffic Regulation Act 1984

“TRO Contribution” means a TRO contribution to be paid to the County Council in the sum of Six Thousand Pounds (£6,000.00) index linked in accordance with Clause 12.1 of this Deed to be used towards traffic management measures and signage alterations required on the local road network and/or towards the cost of implementing revised TROs in the vicinity of the Site.

“VAT” value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax

“Working Day” any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England **OR** Wales.

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 e-mail.
- 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.

Statutory Provisions

1. This Deed is made pursuant to Section 106 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.
2. The obligations by the Owner and Developer in this Deed are deemed to be planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority and the County Council as local planning authority and local highway authority.

Successors in title

3. The Owner and Developer 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 Schedule Three to Schedule Six inclusive.

Release

4. No person 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 [PropertySite](#), except in respect of any breach subsisting prior to parting with such interest.

Indemnity

5. The Developer covenants with the Owners and with each Owner separately by way of full and sufficient indemnity not to commence the Development until they have acquired all of the land comprised in the Site and to pay all sums due under this agreement on the date due for payment and to indemnify and hold harmless the Owners and each and every one of them against all liability under this agreement whenever it arises.

Reasonableness

5.6. The parties hereby agree that where under the terms of this Deed the consent or approval or confirmation of the Council or the County Council or their respective officers is required then such consent or approval or confirmation shall not be unreasonably withheld or delayed and the parties shall use their respective reasonable endeavours to raise and answer any queries arising from submission for consents or approvals or confirmations as promptly as reasonably practicable to enable the Council or the County Council to make the relevant decision on an informed basis.

Local land charge

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

Mortgagee's consent

7.8. The Second Owner's Mortgagee consents to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Second Owner's Mortgagee's interest in the Property.

8.9. The Second Owner's Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when

the Second Owner's Mortgagee is in possession of all or any part of the Property.

Commented [JD2]: As above

Section 73 permission

~~9.10.~~ If a Section 73 Permission is granted by the Council in relation to the Development then with effect from the date that such permission is granted the definitions and the obligations in this Deed shall in addition to continuing to bind the Site in respect of the Outline Planning Permission relate to and bind all subsequent Section 73 Permissions and the Site itself without any further act by the parties PROVIDED THAT nothing in this clause shall:

- 10.1 Restrict the ability of the Owner or Developer to request a variation to the terms of this Deed in connection with the grant of any Section 73 Permissions (which request the Council and the County Council shall consider in light of all the circumstances); or
- 10.2 Fetter the discretion of the Council and County Council where appropriate in determining:
 - 10.2.1 Any application(s) under section 73 of the Act; or
 - 10.2.2 The appropriate nature and/ or quantum of section 106 obligations insofar as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification agreement pursuant to section 106A of the Act.

Disputes

- 11 Save in respect of any provision requiring any disagreement or dispute between the parties to be referred to arbitration, if any dispute or difference shall arise between the parties then the following provisions shall apply

- 11.1 the dispute or difference may on written notice by any party at any time and served on the other parts (the "Determination Notice") be referred to and determined by an independent person (the "Independent Person") who shall have been qualified in respect of the general subject matter of the dispute or difference for not less than ten (10) years and who shall be a specialist in relation to such subject matter
- 11.2 the Independent Person shall be appointed by agreement between the relevant parties (if within 10 working days after service of the Determination Notice they have been unable to agree) on the application of any relevant party by the President for the time being of the Law Society or his or her duly appointed deputy or any other person authorised by him or her to make appointments on his or her behalf
- 11.3 the Independent Person to be appointed under this Clause shall act as an expert and the following provisions shall have effect:
- 11.3.1 the Independent Person shall act as an expert and not as an arbitrator and his or her decision shall be final and binding upon the parties to the dispute or disagreement (save in the case of manifest error)
- 11.3.2 the Independent person shall consider (inter alia) any written representations made on behalf of any party (if made reasonably promptly) but shall not be bound by them
- 11.3.3 the parties to the dispute or disagreement shall use all reasonable endeavours to procure that the Independent Person shall give his or her decision as speedily as possible;
- 11.3.4 the cost of appointing the Independent Person and his or her costs and disbursements in connection with his or her duties under this agreement shall be shared between the parties to the dispute or disagreement in such proportions as the Independent Person shall

determine, or in the absence of such determination equally between such parties; and

- 11.3.5 if the Independent Person shall be or become unable or unwilling to act then the above procedure for the appointment of an expert may be repeated as often as necessary until a decision is obtained

Indexation

12 It is agreed between the parties that:

12.1 the County Council's Contribution Payments to be paid to the County Council by the Owners and Developer hereunder is required to be index linked and each relevant payment shall be increased by reference to the Retail Price Index ("RPI") published by the Office for National Statistics (or amendment or replacement thereof) from and including 1st February 2012 to the date that the payment is received by the County Council.

12.2 the Council's Contribution Payments to be paid to the Council by the Owners under the terms of this Deed are required to be index linked and in this respect each relevant payment shall be increased by the percentage by which the Retail Prices Index (excluding mortgages) ("RPIX") published by the Office for National Statistics (or amendment or replacement thereof) increased from and including 1st April 2022 to the date the relevant payment is received by the Council.

Interest on late payment

13 If any sum or amount has not been paid to the Council or the County Council by the date it is due, the Owner and Developer shall pay the Council or the County Council (as appropriate) interest on that amount at the Default Interest Rate (both before and after any judgement). Such interest shall accrue on a daily basis for the period from the due date and including the date of payment.

Expenditure in advance by Council or County Council

- 14 If prior to receipt of any contributions payable pursuant to the terms of this Deed the Council and/or County Council incurs any expenditure in providing facilities to which it was intended to apply any such contribution (or in consequence of arranging the provision thereof) by the letting of a contract or otherwise including any design costs whether in anticipation of or as a result of the Development then the Council and/or County Council may immediately following receipt of such contribution deduct therefrom a sum equivalent to such expenditure incurred and for the avoidance of doubt it is hereby further agreed that such a proportion of any such contribution shall not be the subject of any requirement to repay or account for it or any interest accrued thereon pursuant to the terms of this Deed and that such monies shall be and remain the property of the Council and/or County Council and shall not be bound by the terms of this Deed. For the further avoidance of doubt any such expenditure shall not result in an increase of the contributions identified in this Deed.

No fetter of discretion

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

Waiver

- 16 No failure or delay by the Council or 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.

Future permissions

- 17 Nothing in this agreement shall prohibit or limit the right to develop any part of the Property 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.

18 The parties agree that:

18.1 Nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and

18.2 Nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council or the County Council in the exercise of any other statutory function.

Third party rights

19 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

Ownership

20 The Owners and Developer agree with the Council and the County Council to give the Council and the County Council immediate written notice of any change of ownership of any of its interest in the Site occurring before all the obligations under this Deed have been discharged by the Council and the County Council and such notice shall give details of the transferees full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation acquired by the transferee by reference to a plan.

21 The Owner warrants that no person other than the Owner and the Mortgagee/ Developer has any legal or equitable interest in the Site.

Costs

22 On or before completion of this Deed the Owners [and Developer](#) shall pay to the Council the Council's reasonable and proper legal costs in connection with the

preparation, negotiation and completion of this Deed together with the Council's Section 106 Monitoring Contribution.

- 23 On or before completion of this Deed the Owners and Developer shall pay to the County Council the County Council's reasonable and proper legal fees in connection with the preparation, negotiation and completion of this Deed and the County Council Development Control Fee and County Council Monitoring Fee.

Cancellation of entries

- 23 On the written request of the Owner [or Developer](#) at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.
- 24 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined for any reason (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner [or Developer](#) cancel all entries made in the local land charges register in respect of this deed.

VAT

- 25 Each amount stated to be payable by the Council or the Owner [or the Developer](#) to the other under or pursuant to this deed is exclusive of VAT (if any).
- 26 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

Governing law

27 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.

Miscellaneous

28 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

INDEX OF SCHEDULES

Schedule One	Description
Schedule Two	Proposed Development of the Site
Schedule Three	Notification
Schedule Four	Contribution Payments
Schedule Five	Car Park and Permissive Path
Schedule Six	Covenants with the County Council

SCHEDULE ONE
(Description of Site)

The freehold land being part of the car park together with land to the rear of 67a to 83 New Road, Netley SO31 5BN shown for the purpose of identification only edged red on the Site Plan and registered at HM Land Registry with freehold title absolute under Title Numbers HP883527, HP504966 and HP288531.

SCHEDULE TWO
(Proposed Development of Site)

Erection of 2no. 3 bed town houses and 6no. 2 & 3 bed bungalows with access from
New Road.

SCHEDULE THREE

(Notification)

1. The Owner shall notify the Council and the County Council in writing or procure that they are so notified of each of the following events within 7 days of such event occurring:
 - 1.1. Commencement of Development
 - 1.2. Occupation of the 1st Dwelling
 - 1.3. Occupation of the penultimate Dwelling
 - 1.4. Each and every trigger relating to the provisions specified in each Schedule that is not listed at paragraphs 1.1-1.3 above

SCHEDULE FOUR
(The Contribution Payments)

1. The Owner and Developer covenant to pay to the Council the Council's Contribution Payments prior to Commencement of Development.
2. The Owners and Developer shall not Commence the Development until the Council's Contribution Payments referred to in paragraph 1 have been paid to the Council..
3. The Owners and the Developer covenant to pay to the County Council the TRO Contribution prior to Commencement of Development
4. The Owners and the Developer shall not Commence Development until the TRO Contribution referred to in paragraph 3 of this Schedule Four~~1~~ has been paid to the County Council.

Commented [SD3]: Note amendment for clarification

SCHEDULE FIVE
(Car Park and Permissive Path)

1. The Owner covenants with the Council as follows:
 - 1.1 To permit access to and use of the Car Park by members of the public on the following terms:
 - 1.1.1 between the hours of 7am and 3.30pm Monday to Friday and between the hours of 7am and 12.30pm on Saturdays, Sundays and bank holidays;
 - 1.1.2 for up to 90 minutes per vehicle visit (limited to one visit per vehicle per day);
 - 1.1.3 no caravans, mobile homes, trailers or HGV vehicles may be permitted to use the Car Park; and
 - 1.1.4 no overnight parking to be permitted unless the vehicle owner is a current member of the Netley Central Sports and Social Club.
 - and
 - 1.2 To permit access through the Permissive Path route to all members of the public at all times on foot only for the lifetime of the Development.

SCHEDULE SIX

The Owners' and Developer's covenants with the County Council

The Owners and Developer covenant with the County Council as follows:

Highway Works

- 1.1 Not to Commence nor permit Commencement of Development unless and until a Highway Agreement has been entered into with the County Council in respect of the Highway Works
- 1.2 Not to Occupy nor permit Occupation of the Development unless and until the Highway Works have been carried out and completed to Highway Works Completion Standard
- 1.3 To enter into a Highway Agreement with the County Council prior to the Commencement of Development
- 1.4 To complete the Highway Works to Highway Works Completion Standard prior to allowing Occupation of the Development

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:

SIGNED as a DEED by)
KATHERINE RUTH BOWMAKER)
in the presence of:-)

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address:

SIGNED as a DEED by)

RACHEL ALISON RUTH COOK)

in the presence of:-)

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address:

SIGNED as a DEED by)

HELEN KATHERINE FARR)

in the presence of:-)

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address:

EXECUTED as a DEED by affixing)

THE COMMON SEAL of)

NATIONWIDE BUILDING SOCIETY)

in the presence of:)

Authorised Signatory/Director
Authorised Countersignatory/Secretary

EXECUTED AS A DEED by)
WHITMAN BUILDERS LTD)
acting by a director)
in the presence of:-

Witness Signature:
Witness Name:
Witness Occupation:
Witness Address: