

DATED 23rd October **2025**

- (1) EASTLEIGH BOROUGH COUNCIL
- (2) HAMPSHIRE COUNTY COUNCIL
- (3) BDW TRADING LIMITED

Second s106A Deed of Variation

relating to a Deed dated 30 June 2017 made pursuant to Section 106 of the Town and Country Planning Act 1990 and relating to Berry Farm (aka Monarch's Keep), Hamble Lane, Bursledon, Southampton

Variation Application Reference: V/21/90698

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THIS DEED is dated

23rd October

2025

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) **BDW TRADING LIMITED** incorporated and registered in England and Wales with company number 03018173 whose registered office is at Barratt House, Cartright Way, Forest Business Park, Bardon Hill, Coalville LE67 1UF ("**the Owner**").

BACKGROUND

- A. The Council is the local planning authority for the purposes of the Act for the area within which the Site is situate.
- B. The County Council is the local planning authority for the purposes of the Act, the highway authority (save for trunk roads and special road) for the purposes of the Highways Act 1980, the education authority and the transport authority for the purposes of the Transport Acts of 1985 and 2000 for the area within which the Site is situate.
- C. The Council and County Council are the authorities by whom the planning obligations contained in this Deed are enforceable.
- D. The Owner is the registered proprietor of that part of the Site that remains registered at the Land Registry with Title Number HP170763.
- E. There are a number of other persons who are not party to this Deed or the Original Agreement who purchased private individual plots and the Affordable Housing Dwellings that have been constructed on the Site pursuant to the Planning Permission ("**the Other Owners**").
- F. The Council, the County Council and the Owner entered into a Deed dated 30 June 2017 pursuant to Section 106 of the Town and Country Planning Act 1990 as varied by a Supplemental Deed dated 18 October 2019 and made between the Council (1), the County Council (2), the Owner (3) and Vivid Housing Limited (4) in relation to the Site ("**the Original Agreement**").

- G. Without prejudice to the terms of the other covenants contained in the Original Agreement, the parties wish to vary the Original Agreement as set out in this Deed with effect from the date of this Deed ("**the Variation Date**").
- H. An application for a determination on the proposed variations has been registered and validated by the Council under reference V/21/90698.
- I. The Owner, the Council and the County Council have agreed that, as the variations envisaged by this Deed relate to the On-Site Open Space Land and the making of payments to the Council and the County Council, these obligations remain to be discharged by the Owner.
- J. The Owner, the Council and the County Council have also agreed that the Other Owners are not required to be a party to this Deed.
- K. This Deed is made under section 106A of the Act and is supplemental to the Original Agreement and is made with the intention that it binds all owners' interests in the Site and their successors in title.

AGREED TERMS

1. Interpretation and Effect

In this Deed, expressions defined in the Original Agreement and used in this Deed have the meaning set out in the Original Agreement (save as expressly varied by the provisions of this Deed). The rules of interpretation set out in the Original Agreement apply to this Deed.

2. Statutory Provision

This Deed is made pursuant to the provisions of sections 106 and 106A of the Act.

3. Variation

With effect from the Variation Date the parties agree that:

- 3.1. The definition of "Council's Contribution Payments" in Clause 1 of the Original Agreement shall be deleted in its entirety and replaced by the following:

"Council's Contribution Payments" means payments to be made to the Council in respect of:

- (i) the Community Infrastructure Contribution;
- (ii) the Off-site Play Area Contribution;

- (iii) the Off-site Play Area Maintenance Contribution;
 - (iv) the Off-Site Open Space Contribution;
 - (v) the Air Quality Monitoring and Mitigation Contribution;
 - (vi) the On-site Open Space Supervision Contribution;
 - (vii) the Solent Recreation Mitigation Partnership Contribution;
 - (viii) the BREEAM Communities Post-Occupancy Evaluation Contribution;
 - (ix) the Public Art Contribution; and
 - (x) the TRO Contribution
- all Index Linked.”

3.2. For the avoidance of doubt, the definition of “On-Site Street Tree Maintenance Contribution” at Clause 1(vii) of the Original Agreement shall be deleted in its entirety.

3.3. For the avoidance of doubt, the definition of “On-Site Open Space Commuted Maintenance Contribution” in Clause 1(viii) of the Original Agreement shall be deleted in its entirety.

3.4. The following new definition shall be inserted into Clause 1 of the Original Agreement:

“Management Company” means the entity nominated or established by the Owner (and confirmed to the Council in writing) for the management and maintenance of the On-Site Open Space Land

3.5. Paragraphs 1 – 4 (inclusive) of Schedule Five shall be amended by deleting the words “the On Site Tree Maintenance Contribution, the On Site Open Space Commuted Maintenance Sum and”.

3.6. Paragraph 5 of Schedule Five shall be deleted in its entirety and replaced with the following:

“5. NOT USED”

3.7. Paragraph 6 of Schedule Five shall be deleted in its entirety and replaced with the following:

“6. No later than 30 (thirty) days following receipt of a valid invoice from the Council addressed to the Owner for the Off-Site Play Area Maintenance Contribution the Owner shall pay to the Council the Off-site Play Area Maintenance Contribution.”

3.8. Paragraph 4 of Schedule Seven shall be deleted in its entirety and replaced with the following:

"4. On expiry of the 12 (twelve) months maintenance period the On-Site Open Space Land, subject to a satisfactory final inspection (the Council acting reasonably in this regard) shall be transferred to a Management Company on the following terms:

4.1 the transfer of such On-Site Open Space Land shall be in consideration of the sum of £1.00 (one pound) and shall be subject to a covenant in favour of the Owner not to use the On-Site Open Space Land otherwise than in accordance with the Open Spaces Act 1906 and this Deed;

4.2 vacant possession on completion;

4.3 for an estate in fee simple in possession;

4.4 with full title guarantee;

4.5 subject to the matters specified in the title of the On-Site Open Space Land to be transferred (other than entries securing monies) and the terms of this Deed so far as the same relate to and affect the On-Site Open Space Land;

4.6 With all necessary rights of access and drainage; and

4.7 subject to any easements wayleaves covenants and rights over on or under in respect of such On-Site Open Space Land."

3.9. Paragraph 5 of Schedule Seven shall be deleted in its entirety and replaced with the following:

"5. The Owner covenants to manage and maintain the On-Site Open Space Land (either itself or through the Management Company) in accordance with the Approved Specification and to the reasonable satisfaction of the Council in perpetuity."

3.10. Paragraph 6 of Schedule Seven shall be deleted in its entirety and replaced with the following:

"6. The Owner covenants not to use the On Site Open Space Land for any purpose other than for public recreation and amenity."

3.11. Paragraph 7 of Schedule Seven shall be deleted in its entirety.

3.12. Paragraph 8 of Schedule Seven shall be deleted in its entirety.

4. **Covenant to the Council**

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement, as varied by this Deed.

5. **Local Land Charge**

This Deed shall be registered as a local land charge.

6. **Third Party Rights**

It is not intended that any person other than a party to this Deed and their successors shall have any right to enforce any of its terms.

7. **Costs**

The Owner shall pay the Council's and the County Council's reasonable and proper legal costs and disbursements in connection with the preparation, negotiation and completion of this Deed on completion of this Deed.

8. **Governing law and Jurisdiction**

- 8.1. This Deed 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.
- 8.2. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this document has been executed and delivered on the date first stated above.

Executed as a deed by **ROSS SNOW**

and **ADAM QUAYLE**

as attorneys pursuant to a Power of Attorney
dated ~~24 April 2024~~ for and on behalf of
BDW TRADING LIMITED

Signature of Witness

[Redacted]

Attorney

Name of Witness

RACHEL BAHAM

Address

[Redacted]

Signature of Witness

[Redacted]

Attorney

Name of Witness

RACHEL BAHAM

Address

[Redacted]

Executed as a deed by affixing the common
seal of **HAMPSHIRE COUNTY COUNCIL**,
in the presence of:

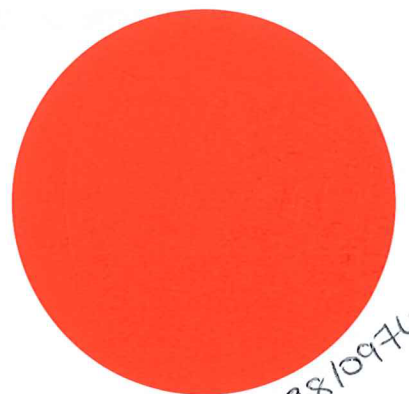
[Redacted]

Authorised Officer

Name

Position

Timothy Spender
Assistant Head of
Legal Services



38/0974

Executed as a deed by affixing the common
seal of **EASTLEIGH BOROUGH COUNCIL**,
in the presence of:



Authorised Officer

Name **JOANNE CASSAR**

Position **SERVICE DIRECTOR
GOVERNANCE + SUPPORT
(MONITORING OFFICER)**



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