

Dated

2009

WINCHESTER CITY COUNCIL(1)

-and-

THE HAMPSHIRE VOLUNTARY HOUSING SOCIETY (2)

SECTION 106 AND 106A DEED OF VARIATION OF PLANNING OBLIGATIONS

UNDER THE TOWN AND COUNTRY PLANNING ACT 1990

DEED OF VARIATION OF PLANNING DEED DATED 21 July 1995

Land at Pound Lane, Meonstoke, Hampshire

Howard Bone
Head of Legal Services
Winchester City Council
City Offices
Colebrook Street
Winchester
Hampshire

Ref: WAL/PL1/6/624

DATED the day of 2009

PARTIES

- (1) **WINCHESTER CITY COUNCIL**, of City Offices Colebrook Street Winchester (“the “Council”)
- (2) **THE HAMPSHIRE VOLUNTARY HOUSING SOCIETY**, whose registered office is at 6 St Clement Street Winchester Hampshire SO23 9DR (the “Society”)

WHEREAS

- (A) The Council is the Local Planning Authority for the purposes of the Act for the administrative area within which the Development is situated.
- (B) The Society is registered as proprietor with freehold title absolute of the land at Pound Lane, Meonstoke, Hampshire (now known as Bridgemead) which is registered at HM Land Registry under Title Number HP489908 (hereinafter called "the Land") and which is shown for identification purposes only edged red on the plan attached to the 1995 Deed¹.
- (C) The Council granted planning permission under the Act for the Development on the Land in accordance with the plans specifications and particulars deposited with the Council and forming the application with Planning Reference Number W3660/04
- (D) The Council and the Society entered into the 1995 Deed which is a planning obligation under Sections 106 of the Town and Country Planning Act 1990 and which provided for inter alia the provision of housing for those in need of accommodation and subject to specific criteria and policy detailed therein.
- (E) It has been agreed that the terms of the 1995 Deed shall inter alia be varied in order to provide alternative criteria by which those eligible for accommodation shall be identified.
- (F) It has further been agreed that the terms of the 1995 Deed shall be varied so that the Council shall have the right to nominate occupiers for 100% of the dwellings situated on the Land.
- (G) This Deed is supplemental to the 1995 Deed a copy of which is attached hereto and incorporated.
- (H) The Deed is a Planning Obligation made pursuant to section 106 the Act (as amended by Section 12 of the Planning and Compensation Act 1991) and all other powers enabling the parties hereto and the provisions of this Deed shall be binding on the parties hereto and their successors in title in the same way that the 1995 Deed is binding on them

¹ Please provide Land Registry certificate.

- (I) The Society hereby warrants that it has given notice in writing to the Council by letter to the Head of Legal Services of all mortgagees, covenantees, or other persons with an interest in the Land prior to the Society entering into the Deed.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1 DEFINITIONS

In this Deed where the context so admits and save where contrary intention is expressed the following expressions shall have the meaning assigned to them:-

“the Act”	means the Town and Country Planning Act 1990
“the 1995 Deed”	means the planning obligation dated 21 July 1995 made between the Council (1) and The Hampshire Voluntary Housing Society (2) relating to the Development
“the Deeds”	means the 1995 Deed and this Deed together
“the Development”	means the development of the Land permitted by the Permission granted pursuant to the planning application reference number W3660/04 for the erection of nine dwellings together with associated soft landscaping access drives and parking areas and any subsequent amendment or variation.
“the Existing Covenants”	means Paragraphs 4, 5(a), (b), 6(a), (b), 8, 10 of the Schedule of the 1995 Deed
“the New Covenants”	means the covenants set out in Schedule 1 below

2. COMMENCEMENT

- 2.1 This Deed shall come into effect upon the date hereof.
- 2.2 The planning obligations contained in this Deed are enforceable by the Council as the local planning authority for the area in which the Land is situated.

3. GENERAL PLANNING OBLIGATION

- 3.1 This Deed is made in pursuance of Section 106 and Section 106A of the Act and Section 111 of the Local Government Act 1972 (as amended) and all other powers so enabling

- 3.2 This Deed varies and supplements certain of the provisions of the planning obligations contained in the 1995 Deed and creates new covenants restrictions and planning obligations in respect of which the Land is bound
- 3.3 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Owner
- 3.4 In order to create planning obligations for the purposes of Section 106 of the Act:-
- (i) The Society HEREBY COVENANTS with the Council that the Land shall not be used OTHERWISE THAN as permanently subject to the restrictions and requirements specified in this Deed and which Deed is supplemental to and varies the 1995 Deed.
- (ii) The Society FURTHER COVENANTS with the Council that save as expressly provided by this Deed the 1995 Deed shall remain in full force and effect.
- 3.5 The Society and the Council HEREBY MAKE APPLICATION to the appropriate Registrar of Local Land Charges for registration of this Deed pursuant to the provisions of the Local Land Charges Act 1975 and Section 106(11) of the Act.
- 3.6 On the date hereof the Society shall pay to the Council the Council's reasonable legal costs in this matter relating to the negotiation, preparation and completion of this Deed.

4. ADOPTION AND VARIATION

- 4.1 The Planning Agreement is varied by substituting the New Covenants for the Existing Covenants and the said New Covenants shall run with and bind with the Land and each and every part of it as set out below
- 4.2 The Society and the Land are respectively released from the Existing Covenants where substituted and are now bound by the New Covenants
- 4.3 IT IS HEREBY AGREED that the terms and provisions of the Deeds shall apply to the Land and shall be of the same effect save insofar as those same terms and provisions have been discharged to the satisfaction of the Council or varied in accordance with the said Deed as at the date hereof.
- 4.4 IT IS FURTHER AGREED and declared that in all other respects the 1995 Deed shall remain in full force and effect.

Schedule 1

The New Covenants

- 1.1 The 1995 Deed is varied as follows:
- 1.2 For all purposes “the Parish of Corhampton and Meonstoke” will be substituted for the “the Parish of Meonstoke”
- 1.3 Clause (3)(i) and (ii) of the Schedule will be substituted to read as follows:

“(3) Upon completion of the Development and at all times thereafter each unit of accommodation comprised therein shall only be occupied by a person:

- (i) who is considered by the Council to be in need of such accommodation in accordance with the Council’s published Scheme of Allocations and to be unable to afford housing accommodation on the open market (whether by renting or purchasing) within the Parish of Corhampton and Meonstoke and;
- (ii) who has a strong local connection with the said Parish of Corhampton and Meonstoke and for the purposes of this clause a person shall be taken to have a strong local connection with the Parish of Corhampton and Meonstoke if:
 - (a) he or she is ordinarily resident in the Parish at the date of allocation
 - (b) he or she was previously ordinarily resident in the Parish prior to the date of allocation and has family who ordinarily reside there
 - (c) he or she has a demonstrable need to live in the Parish by reason of:
 - a. his/her current employment in the Parish
 - b. his/her taking up permanent employment in the Parish
 - (d) he or she has a demonstrable need to reside in the Parish either to support or to be supported by another member of his/her family who ordinarily reside in the Parish at the date of allocation

For the purposes of this Schedule a member of his/her family shall be the spouse civil partner mother father sister brother daughter son grandparent or grandchild of that other person or if he or she ordinarily resides with that other person as husband or wife or partner without being legally married to that person”

1.4 Clause (4) of the Schedule will be substituted to read as follows:

“(4) If within a reasonable time of a unit of accommodation becoming available for occupation whether on practical completion of the Development or at any time thereafter then the Society will use its best endeavours to allocate any such vacant unit of accommodation to a person who falls within the criteria of clause 3(i) and (ii) of this Schedule and:

(a) first preference shall be given to applicants demonstrating a connection with the said Parish as set out in 3(ii) above but for a period of ten years or more;

(b) second preference shall be given to applicants demonstrating a connection as set out in 3(ii) above for a period of more than three years but less than ten years;

(c) third preference shall be given to applicants demonstrating a connection with the said Parish as set out in 3(ii) above but for a period of more than one year but less than three years;

(d) fourth preference shall be given to applicants with a connection as set out in 3(ii) above for a period of 10 years but with any one of the Parishes of Droxford, Exton, Hambledon, Soberton and Newtown, Warnford and West Meon

(e) fifth preference shall be given to applicants demonstrating a connection as set out in 3(ii) above for a period of more than three years but less than ten years but with any one of the Parishes of Droxford, Exton, Hambledon, Soberton and Newtown, Warnford and West Meon

(f) sixth preference shall be given to applicants demonstrating a connection as set out in 3(ii) above but for a period of more than one year but less than three years but with any one of the Parishes of Droxford, Exton, Hambledon, Soberton and Newtown, Warnford and West Meon”

1.4 Clause 5 of the Schedule will be substituted to read as follows:

“If within a reasonable time of a unit of occupation becoming available for occupation whether on practical completion of the Development or at any time thereafter the Society (having first consulted with the Chief Housing Officer as aforesaid) is unable to fill any vacancy arising in accordance with clause (4) hereof then the Society shall use its best endeavours to allocate any such vacant unit of accommodation to a person

(a) who is considered by the Council to be in need of such accommodation in accordance with the Council's published Scheme of Allocations and is unable to afford housing accommodation on the open market (whether by renting or purchasing) within any rural village within the administrative area of Winchester City Council as listed in the Rural Settlement Gazetteer 2005 and as listed in Statutory Instrument 1997 No 625 Schedule 1 and 2; and

(b) who has a strong local connection with any such other part or parts as aforesaid and for the purpose of this clause the person shall be taken to have a strong local connection with any such part or parts if he satisfies the criteria set out at (a) to (d) inclusive of clause 3 (ii) hereof except that reference therein to the Parish of Corhampton and Meonstoke shall be read and construed as reference to any the Parishes referred to in clause 5(a) hereof.

1.6 Clause 6 will be deleted;

1.7 Clause 7 will be renumbered as Clause 6;

1.8 Clause 8 of the Schedule will be numbered Clause 7 and will be substituted to read as follows:

“The Council will have the right to nominate occupiers for one hundred percent (100%) of the dwellings to be built on the said land for the first and any subsequent lettings of such dwellings and the Society hereby undertakes to accept the Council’s nominations unless good reason for not doing so is proved by the Society and accepted by the Council

1.7 Clause 10 of the Schedule will be renumbered to be clause 9 and will be substituted to read as follows:

“(a) The Society will notify the Chief Housing Officer of the Council in writing of each dwelling for which the Council becomes entitled to nominate occupants and within 14 working days of receipt of the written notice the Council will ensure as far as it is able that the proposed occupant or occupants will accept the tenancy offered by the Society; and

(b)The Council shall have the discretion if necessary to permit under-occupation of the dwelling by one bedroom where such under-occupation will ensure the sustainability of the Development and its occupation by persons with a strong local connection”

IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written

THE COMMON SEAL of WINCHESTER)

CITY COUNCIL was hereunto affixed in)

the presence of:-)

Head of Legal Services

THE COMMON SEAL of THE HAMPSHIRE

VOLUNTARY HOUSING SOCIETY

was hereunto affixed)

in the presence of:-)

Director

Secretary