Planning Obligation by Deed under Section 106 of the Town and Country Planning Act 1990

relating to the development of land at the Daedalus Site, Chark Lane, Lee-On –The –Solent, Hampshire

Dated : 28 January 2016

GOSPORT BOROUGH COUNCIL (the Council) (1)

HOMES AND COMMUNITIES AGENCY (the First Owner) (2)

FAREHAM BOROUGH COUNCIL (the Second Owner) (3)

CERTIFIED TO BE A TRUE AND COMPLETE COPY OF THE ORIGINAL
DATED THIS 2nd DAY OF Feb 2016
Pinsent Masons LLP Pinsent Masons

Gosport Borough Council
Town Hall
High Street
Gosport
PO12 1EB

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DATE 28 January 2016

PARTIES

(1) **GOSPORT BOROUGH COUNCIL** of Town Hall, High Street, Gosport, PO12 1EB ("the Council")

(2) **HOMES AND COMMUNITIES AGENCY** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH ("the First Owner")

(3) **FAREHAM BOROUGH COUNCIL** of Civic House, Civic Way, Fareham PO16 7AZ ("the Second Owner")

RECITALS

A The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.

B The First Owner is the freehold owner of the First Owner's Land being registered (along with other land) with title absolute at the Land Registry under Title Numbers HP668344, HP667125 and HP757225.

C The First Owner is also the freehold owner with title absolute at the Land Registry under Title Number HP665927of the Manor Way Open Land.

D The Second Owner is the freehold owner of the Second Owner's Land being part of the land transferred from the First Owner to the Second Owner by a transfer dated 27 March 2015 and registered at the Land Registry under Title Number HP784241.

E The First Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

F The Council has resolved to grant the Permission subject to the prior completion of this Deed.

G The First Owner and the Second Owner have agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Deed.

H The First Owner and the Second Owner have agreed to be a party to this Deed and consent to this Deed being entered into and to the obligations becoming binding on the First Owner's Land the Second Owner's Land and the Manor Way Open Land in the manner hereinafter appearing.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990 (as amended)
"Additional Amount"	means the amount calculated in accordance with Clause 17.1 hereof (and references to "the Revised Amount" shall mean the original amount of any Contribution plus the Additional Amount)
"Additional Open Space Contribution"	means the contribution (if any) to be calculated in accordance with paragraph 1.6.1 of Schedule 1 and to be paid to the Council pursuant to paragraph 1.6.2.1 of Schedule 1 and to be applied by the Council towards the cost of the Council facilitating the provision improvement or retention of children's play space in the Lee Area
"Affordable Housing"	means housing to meet the needs of people whose incomes are insufficient to enable them to buy or rent suitable housing, without subsidy, on the open market
"Affordable Housing Management Scheme"	means arrangements for the management of the Affordable Housing Units in a Phase (by an Affordable Housing Provider) to ensure that they are retained as Affordable Housing in perpetuity subject to the terms of Schedule 1 (as may be varied or substituted from time to time by the First Owner with the

	Council's prior approval in writing)
"Affordable Housing Provider"	means an organisation that is involved in the delivery and management and ownership of affordable housing which is either registered under the Housing Act 1996 and/or registered under the Housing and Regeneration Act 2008 or such other body approved in writing by the Council which is capable of managing affordable housing and who have entered into (or agreed to enter into) a nomination agreement with the Council in respect of the Affordable Housing Units
"Affordable Housing Scheme"	means the scheme for a Residential Phase to be submitted to and approved by the Council which unless otherwise agreed with the Council is to be broadly in accordance with the Indicative Affordable Housing Plan with details of the Affordable Housing Units to be provided in that Residential Phase including:- 1. The number of Affordable Housing Units in that Residential Phase 2. The location of each Affordable Housing Unit in that Residential Phase 3. A breakdown of the type, size and tenure mix of the Affordable Housing Units in that Residential Phase (as may be varied or substituted from time to time by the First Owner with the Council's prior approval in writing)
"Affordable Housing Units"	means 40% (rounded to the nearest number) of the Residential Units to be provided on the Application Site on a phased basis as Affordable Housing in accordance with Schedule 1 the location and details of which in each Residential Phase to be identified in the Affordable Housing Scheme for that Residential Phase
"Affordable Rented	means Affordable Housing let by local authorities or private

Housing"	registered providers of social housing to households who are eligible for social rented housing where the rent is subject to rent controls so that the rent payable by the tenant is no more than the lower of 80% of the local market rent or local housing allowance (including service charges, where applicable) and for the avoidance of doubt the Affordable Rented Housing must be let at a rent which is no more than the lower of 80% of the local market rent or local housing allowance (including service charges, where applicable) and "Affordable Rented Housing Unit" shall be construed accordingly
"Application"	means the application for outline planning permission dated 6 April 2011 submitted to the Council for the Development and allocated reference number K.17976 also known as reference number 11/00282/OUT
"Application Site"	means the land shown for identification purposes only edged red on Plan 1
"B1/B2/B8 Unit"	means a unit constructed adapted or converted pursuant to the Permission which has a permitted use pursuant to the Permission for Use Class B1, B2 and/or B8
"B2/B8 Unit"	means a unit constructed adapted or converted pursuant to the Permission which has a permitted use pursuant to the Permission for Use Class B2 and/or B8
"Borough"	means the administrative area of the Council
"Commencement"	means commencement of Development pursuant to the Permission by the carrying out of a "material operation" (as defined in section 56(4) of the Act) (and "Commence" and "Commenced" shall be construed accordingly)
"Complete"	means practically complete save for minor snagging items such that it is reasonably fit for occupation or use (as the context so requires) (and "Completed" and "Completion" shall be construed

	accordingly)
"Community Facility Contribution"	means the sum of £30,000 (thirty thousand pounds) to be paid as set out in Schedule 1 to be used by the Council to facilitate the provision or improvement of community facilities in the Lee Area
"Contributions"	means the Open Space Contribution; Additional Open Space Contribution; Community Facility Contribution; and Health Infrastructure Contribution
"Deed"	means this planning obligation made by deed
"Development"	means the development of the Application Site pursuant to the Permission for employment led mixed use including up to 69992 square metres of commercial floor-space in new buildings and re-use of existing buildings (use classes B1 B2 and B8); up to 1075 square metres of retail (use classes A1 A2 A3 and/or A4); up to 200 residential units (use class C3); up to 32 units of care accommodation (use class C2); up to 1839 square metres of community uses (use class D1); up to 8320 square metres of hotel use (use class C1); up to 2321 square metres of leisure (use class D2); new and upgraded vehicular and pedestrian access arrangements; hard standing and car parking; open space provision; landscaping and associated works
"Employment and Skills Plan"	means a plan (including any variation or substitution thereof agreed in writing by the parties from time to time) for and in connection with the Development that may include: ▪ arrangements setting out how the First Owner and its contractors will seek to work with local Employment and Training Agencies in respect of the Development. ▪ provisions for training opportunities and other initiatives in respect of the vocational and employability skills

	required by the First Owner and its contractors for some new jobs and business opportunities created by the Development including but not limited to: ▪ apprentices; ▪ employment targets (including NEET and long term unemployed); ▪ Pre employment training; ▪ Work experience placements; ▪ Curriculum support activities; ▪ Training plans for employees and subcontractors; ▪ the provisions for financial contributions to be paid to the Council (if and to the extent that, at the First Owner's absolute discretion, the Council is to undertake obligations in place of the First Owner) to cover specific costs incurred by the Council in the implementation of the Employment and Skills Plan including matters on which such expenditure may be incurred together with the timings for such expenditure and the trigger for these payments
"Employment and Training Agencies"	means training agencies which may include the following but is not limited to: ▪ Jobcentre Plus; ▪ voluntary and private sectors providers; ▪ schools; ▪ sixth form colleges; ▪ colleges of further education; and ▪ universities

"Enabling Powers"	means Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers which may be relevant for the purpose of giving validity to or facilitating the enforcement of the obligations created by this Deed
"First Owner's Land"	means the land within the Application Site owned by the First Owner shown for identification purposes only edged red on Plan 2
"Health Infrastructure Contribution"	means the sum of £28,160 (twenty eight thousand one hundred and sixty pounds) to be paid as set out in Schedule 1 to be used by the Council to facilitate the provision improvement or retention of primary care health facilitates in the Lee Area
"Hovercraft Museum"	means buildings 40 and 31 on the Application Site shown for identification purposes on Plan 3
"Implementation"	means commencement of Development pursuant to the Permission by the carrying out of a "material operation" (as defined in section 56(4) of the Act) save that for the purposes of this Deed and for no other purpose operations consisting of: ▪ site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services; ▪ the provision of access and alterations to existing accesses (with the exception of the creation of the access to the Application Site from Brambles Road, Drake Road, Manor Way, Norwich Place, Nottingham Place, and Richmond Road); ▪ the construction of the internal east west spine road between Broom Way and Marine Parade West and

	related access stubs/bell mouths to connect with proposed service roads and ancillary works, ▪ the erection of signage, erection of any temporary means of enclosure, the temporary display of site notices or advertisements shall not ~~not~~ constitute a material operation (and "Implement" and "Implemented" shall be construed accordingly)
"Intermediate Housing"	has the meaning given to it in Annex 2 of the NPPF and "Intermediate Housing Unit" shall be construed accordingly
"Indicative Affordable Housing Plan"	means a plan identifying the amount of Affordable Housing to be provided on each Residential Phase as part of the Development (as varied from time to time with the prior approval in writing of the Council)
"Indicative Open Space Plan"	means a plan identifying the approximate amount of children's play space to be provided on each Residential Phase as part of the Development (as varied from time to time with the prior approval in writing of the Council)
"Inflationary Index"	means the Retail Prices Index issued by the Office for National Statistics or during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as the Council shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation
"Interpretation Boards"	means two interpretation boards setting out details of the influences hovercraft has historically had in relation to the Application Site
"Interest"	means interest at 2 per cent above the base lending rate of the Nat West (calculated on a daily basis from the date on which it

	fell due)
"Land"	means the First Owner's Land, the Second Owner's Land and the Manor Way Open Land
"Lease"	means a short lease (not less than 2 years and not more than 5 years and otherwise on the same terms and conditions as the last lease of the Hovercraft Museum) of the Hovercraft Museum and on the expiry or earlier determination of the same (save where the lease is forfeited) the First Owner will offer the lessee a new lease (which unless otherwise agreed with the Council is of sufficient length to enable the lessee to obtain funding including grant funding and is of a rent which is the lesser of the market rent payable for equivalent premises in the area for B8 or D1 use) of alternative premises in a location within the Application Site or the same location to be approved by the Council (such approval not to be unreasonably withheld or delayed and when considering whether to approve the location the Council will have due regard to the wider development proposals for the Application Site)
"Lee Area"	means the area edged green on Plan 3
"Main Runway"	means runway 05/23 labelled for identification purposes on Plan 5
"Manor Way Open Land"	means the open land on Manor Way owned by the First Owner and edged brown on Plan 4
"Monitoring Costs"	means the costs of the Council for monitoring compliance with the terms of this Deed in the sum of £21,000 (twenty one thousand pounds)
"NPPF"	means the National Planning Policy Framework published by the Department for Communities and Local Government in March 2012 or any document amending or replacing it
"Occupation" and	means occupation for the purposes permitted by the Permission

"Occupied"	but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
"Open Space Contribution"	means the contribution to be calculated in accordance with paragraph 1.6.1 of Schedule 1 and to be paid to the Council pursuant to paragraph 1.6.2.2 of Schedule 1 and to be applied by the Council towards the cost of the Council providing or facilitating the provision improvement or retention of sports pitches and other sports facilities in the Lee Area
"Open Market Unit"	means any Residential Unit which is not an Affordable Housing Unit
"Open Space Scheme"	means the scheme for a Residential Phase to be submitted to and approved by the Council which unless otherwise agreed with the Council is broadly in accordance with the Indicative Open Space Plan with details of the children's play space to be provided on the Land including:- 1. Location 2. Size 3. Layout including finished levels 4. Play equipment and seating 5. Hard and soft landscaping including boundary treatment 6. Pedestrian and vehicular access routes 7. Materials 8. Lighting 9. Timetable for provision 10. Management arrangements (as maybe varied or substituted from time to time by the First Owner with the Council's prior approval in writing)
"Permission"	means the outline planning permission to be granted by the Council pursuant to the Application

"Phase"	means a part of the Application Site
"Plan 1"	means the plan labelled "Plan 1" and attached to this Deed
"Plan 2"	means the plan labelled "Plan 2" and attached to this Deed
"Plan 3"	means the plan labelled "Plan 3" and attached to this Deed
"Plan 4"	means the plan labelled "Plan 4" and attached to this Deed
"Plan 5"	means the plan labelled "Plan 5" and attached to this Deed
"Residential Phase"	means a Phase which includes Residential Units
"Residential Unit"	means any unit built converted or adapted for residential use in each case pursuant to the Permission within Use Class C3 including the Affordable Housing Units
"Runways"	means the Main Runway and the Secondary Runway
"Second Owner's Land"	means the land within the Application Site owned by the Second Owner shown for identification purposes only edged blue on Plan 2
~~"Secondary Runway"~~	~~means runway 17/35 labelled for identification purposes on Plan 5~~
"Value of the Manor Way Open Land"	means the open market value which has been agreed by the Parties as being £200,000 (two hundred thousand pounds)
"Working Day(s)"	means days on which banks in the City of London are open to the public
"Works"	means any works operations or activities pursuant to the Permission comprising the construction conversion development or otherwise the creation of a Residential Unit

2 CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits includes the plural meaning and vice versa.

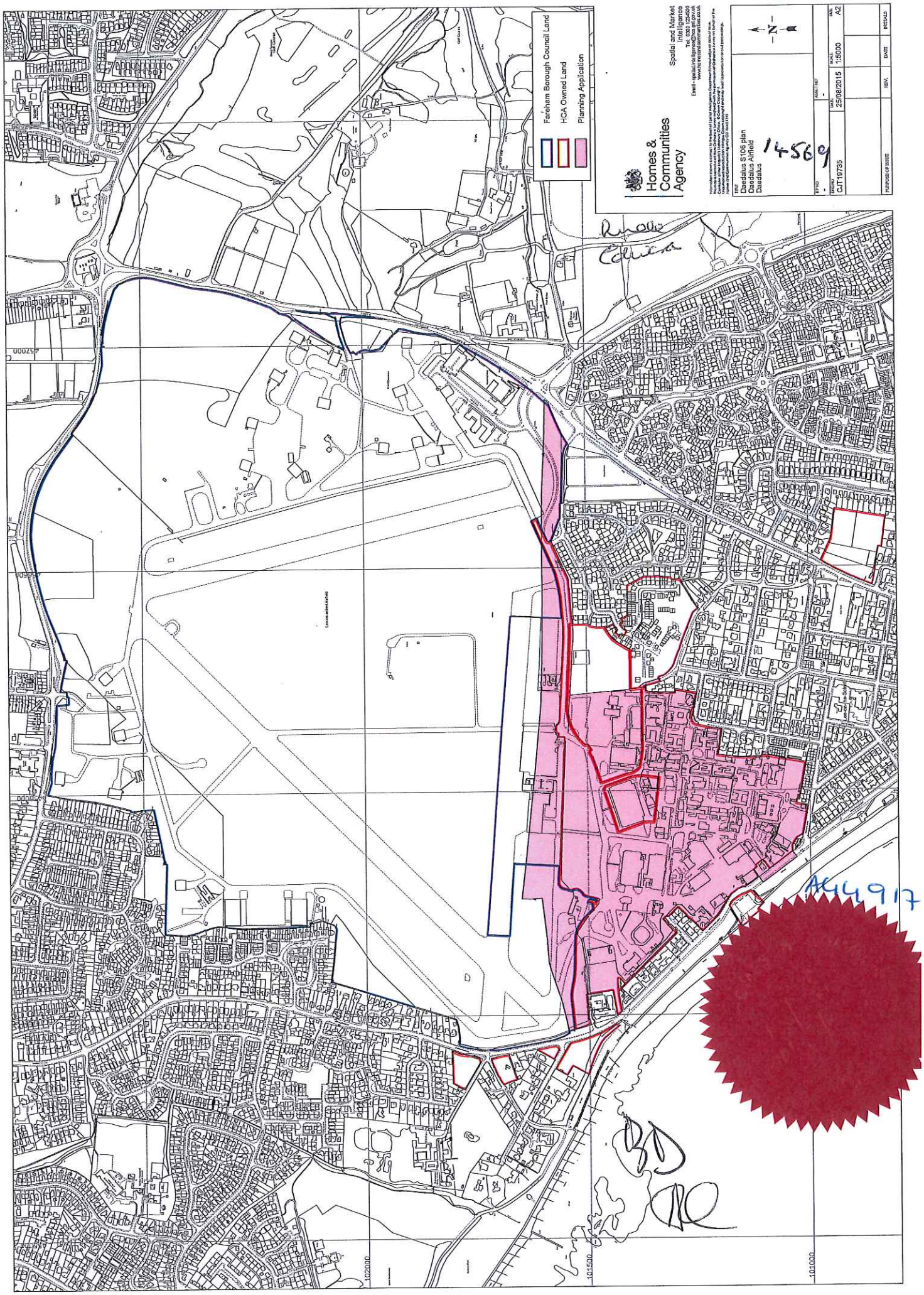
Plan 1

Rudle
Edwara

14569



Plan 2



Fareham Borough Council Land
HCA Owned Land
Planning Application
Homes & Communities Agency
Spatial and Market Intelligence
Daedalus S106 plan
Daedalus Airfield
Daedalus
14569
CJT19735
25/08/2015
1:5000
A2
A44917
BD
RC
102000
101500
101000

Plan 3



A44917

BD

180

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GOSPORT Borough Council

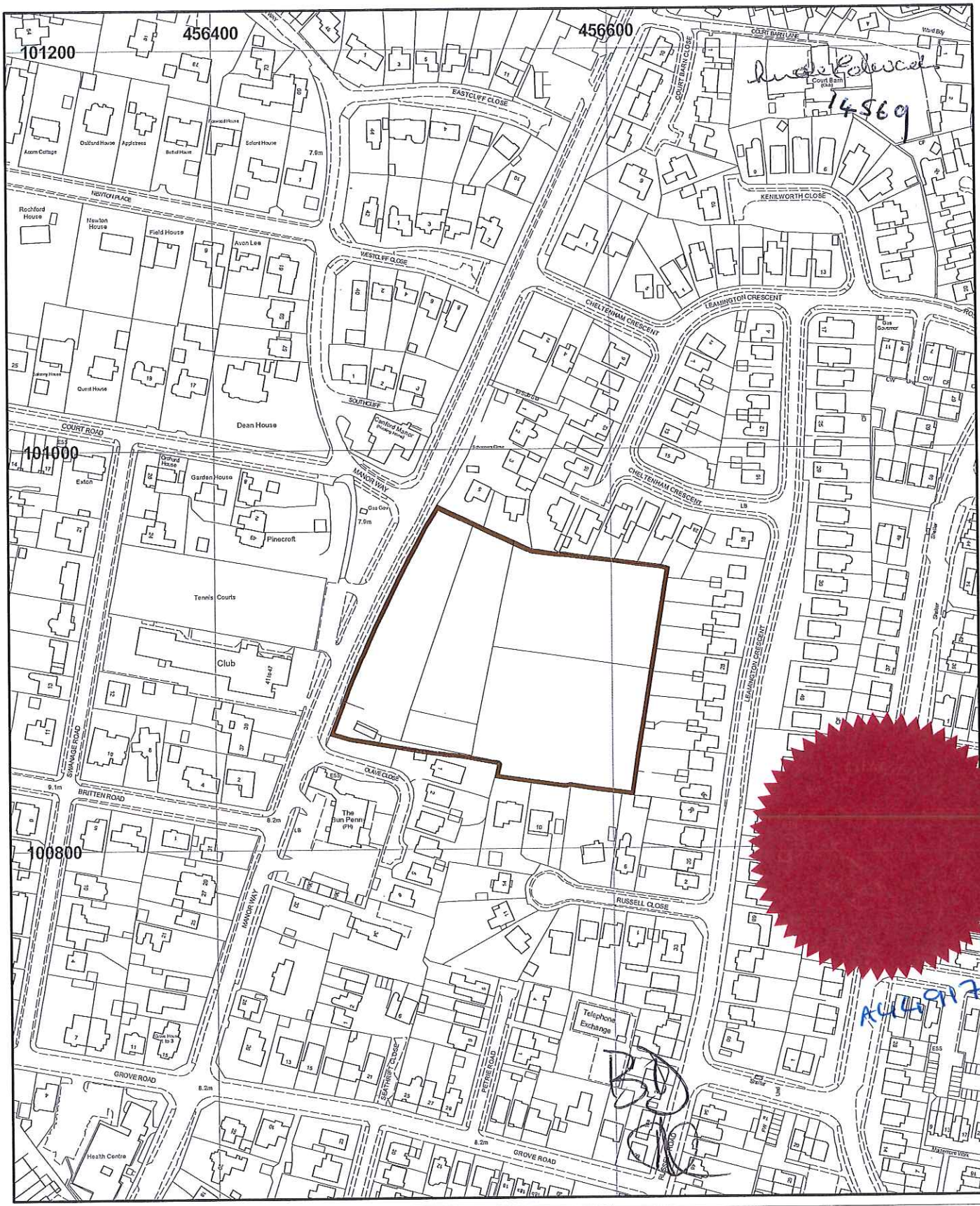
DATE : 21/08/2015

Scale 1:22940

0 200 400 600 800 1000 m

If this map has been transmitted electronically, use the scale bar in preference to the written scale

Plan 4



TITLE Manor Road Daedalus				
ITP NO. -	ASSET REF 3776			
DRG NO. KJR19736	DATE 24-08-2015	SCALE 1:2500	SIZE A4	

Homes & Communities Agency

Spatial and Market Intelligence
Tel: 0300 1234500
Email - spatial.intelligence@hca.gsi.gov.uk
www.homesandcommunities.co.uk

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Plan 5

Dundee Edwards
14569

LEGEND

HCA landholding minus FBC application boundary

REV. DESCRIPTION APP. DATE

LDĀDESIGN

T: 020 7467 1470
DRAWN
CHECKED
APPROVED

PROJECT TITLE
DAEDALUS

DRAWING TITLE
PLAN 1

ISSUED BY London
DATE 8th March 2013
SCALE@A1 1:2,000
STATUS Sketch

DWG. NO 2780_1001

No dimensions are to be scaled from this drawing.
All dimensions are to be checked on site.
Area measurements for indicative purposes only.

#LDA Design Consulting LLP. Quality Assured to BS EN ISO 9001:2008

Source: Ordnance Survey

Runway 17/35

Runway 05/23

AA4917

Reference number: 100063525.

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0 500m 1km

XJOBS\2780_DAEDALUS_ESSEX\CAD\DRAWINGS\2013 PLANS FOR CARTER JONAS\2780_1001_F80_OWNERSHIP.DWG

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

2.5 Any covenant obligation or requirement not to do something also includes a requirement not to permit suffer or procure the same.

2.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.7 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.

2.8 The headings and contents list are for reference only and shall not affect construction.

2.9 "Including" means "including without limitation".

3 LEGAL BASIS

3.1 This Deed is a planning obligation made pursuant to Section 106 of the Act and the Enabling Powers.

3.2 The covenants, restrictions and requirements imposed upon the First Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the First Owner and its successors in title to the First Owner's Land and the Manor Way Open Land SAVE THAT only the obligations relating to the

Manor Way Open Land are enforceable against the First Owner and Successors in title of the Manor Way Open Land as hereinafter provided.

3.3 The covenants, restrictions and requirements imposed upon the Second Owner under this Deed in relation to the Runways and Use of Land (paragraphs 7 and 8 of Schedule 1) create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Second Owner and its successors in title to the Second Owner's Land as hereinafter provided.

4 CONDITIONS PRECEDENT

This Deed is conditional upon:-

4.1 the grant of the Permission; and

4.2 the Implementation of the Permission

save for the provisions of Clauses 1 to 4, 7 to 14, 16, 20, 22, 23, 24 and Clauses 5 and 6 for the purposes only of paragraphs 1.1; 1.2; 1.10; 1.11; 2.1; 2.2; 3.1; and 6.1 of Schedule 1 and Schedule 4 which shall come into effect immediately upon completion of this Deed.

5 THE FIRST OWNER'S AND THE SECOND OWNER'S COVENANTS

5.1 The First Owner **HEREBY** covenants with the Council so as to bind the First Owner's Land and the Manor Way Open Land that it will observe and perform the covenants on its part contained in paragraphs 1 to 6 (inclusive) and 8 of Schedule 1.

5.2 The Second Owner **HEREBY** covenants with the Council so as to bind the Second Owner's Land that it will observe and perform the covenants on its part contained in paragraphs 7 and 8 of Schedule 1.

5.3 The Second Owner warrants to the Council that no person other than the Second Owner has any legal or equitable interest in the Second Owner's Land.

6 THE COUNCIL'S COVENANTS

Subject to the performance by the First Owner of its obligations under this Deed the Council hereby covenants with the First Owner that it will observe and perform the covenants on its part set out in Schedules 1 and 2.

7 RELEASE AND LAPSE

7.1 No person shall be liable for any breach of any of the planning obligations or other provisions in this Deed after it shall have parted with its entire interest in the Land or the part of the Land in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.2 No person shall be liable for any breach of any of the planning obligations or other provisions in this Deed occurring when they have no interest in the Land or the part of the Land in respect of which the breach occurs.

7.3 This Deed shall not be enforceable against the owners, occupiers, mortgagees or tenants of individual Residential Units or commercial units save that:

7.3.1 Subject to paragraph 2.9 of Schedule 1, paragraph 2.8 of Schedule 1 shall be enforceable in respect of the Affordable Housing Units; and

7.3.2 Paragraph 8 of Schedule 1 shall be enforceable in respect of the B2/B8 Units.

7.4 This Deed shall not be enforceable against any statutory undertaker which has an interest in the Land.

7.5 It is further agreed that this Deed shall lapse and be of no further effect if:

7.5.1 the Permission shall lapse without having been Implemented; or

7.5.2 the Permission shall be varied or revoked or otherwise withdrawn other than with the consent of the Owner; or

7.5.3 the Permission is quashed following a successful legal challenge

7.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) before or after the date of this Deed.

8 LOCAL LAND CHARGE

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

8.2 Upon the full satisfaction of all the terms of this Deed the ~~Owner~~ First Owner and Second Owner shall request that the Council procure that all entries in the register of local land charges relating to it other than those obligations which are of continuing effect be removed as soon as reasonably practicable.

9 DUTY TO ACT REASONABLY

All parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any agreement consent approval or expression of satisfaction is due from one party to another under the terms of this Deed the same shall not be unreasonably withheld or delayed.

10 NO FETTER ON DISCRETION OR WAIVER

10.1 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

10.2 Nothing in this Deed shall impose any contractual or other obligations on the Council to grant the Permission.

10.3 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of

this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

11 WARRANTY AS TO TITLE

The First Owner, **hereby warrants** to the Council that the title details referred to in Recitals B and C are complete and accurate in every respect as at the date of this Deed.

The Second Owner, **hereby warrants** to the Council that the title details referred to in Recital D are complete and accurate in every respect as at the date of this Deed.

12 SEVERABILITY

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

13 THE COUNCIL'S COSTS

The First Owner hereby covenants with the Council that it will before the date of this Deed pay the Council's reasonable legal and planning officer costs and further covenants that within 20 working days of Implementation of the Development will pay the Monitoring Costs to the Council.

14 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed (or a successor in title to a party) and for the avoidance of doubt the terms of this Deed may be varied by Deed between the parties and the Council without the consent of any such third party.

15 NOTIFICATION OF IMPLEMENTATION/OCCUPATION

The First Owner covenants with the Council that it will:

15.1 notify the Council in writing of the date of Implementation within five Working Days of it occurring; and

15.2 notify the Council in writing of the date of Occupation of the first Residential Unit on the Application Site within five Working Days of it occurring.

16 NOTICES

Any notices required to be served by one party on another under this Deed shall be served by First Class prepaid post in the following manner:

16.1 on the Council at the address shown above marked "for the attention of the Borough Solicitor and Deputy Chief Executive" and bearing the reference K.17976 Daedalus;

16.2 on the First Owner at the address as detailed above or as notified by the First Owner in writing to the Council; and

16.3 on the Second Owner at the address as detailed above or as notified by the Second Owner in writing to the Council.

17 CALCULATION OF THE ADDITIONAL AMOUNT

The formulae in Clause 17.1 shall apply in relation to the Contributions

17.1 In the event of any increase (but not decrease) in the Inflationary Index the Additional Amount shall be the difference between the amount of the whole or any part of the relevant Contribution and the sum calculated as follows:-

Amount after variation = $(A \times \underline{(B \div C)}) - A$

Where:-

A = the relevant Contribution to be varied;

B = the Inflationary Index at the date at which the relevant Contribution was paid; and

C = the Inflationary Index at the date of this Deed

18 PAYMENT OF THE CONTRIBUTIONS

18.1 The First Owner must pay the Contributions and the Additional Amount (if any) as detailed in Schedule 1 to the Council by either:

18.1.1 cheque made payable to Gosport Borough Council;

18.1.2 by BACS or telegraphic transfer.

18.2 All payments pursuant to paragraph 18.1.1 must state the Application reference number and the address to which this Deed relates.

18.3 Payment by the method referred to in 18.1.1 must be made for the attention of the Borough Solicitor and Deputy Chief Executive at Gosport Borough Council, Town Hall, High Street, Gosport, PO12 1EB.

18.4 Payment by either BACS or TT must also include in its reference that payment is for the attention of the Borough Solicitor and Deputy Chief Executive.

19 INTEREST ON LATE PAYMENTS

Any amount due from the First Owner under this Deed which is not paid on the due date shall be payable with Interest in addition to the Additional Amount from the date the amount should have been paid to the date the amount is received by the Council.

20 NOTIFICATION OF SUCCESSORS IN TITLE

20.1 The First Owner covenants with the Council that it will give immediate written notice to the Council of any change of ownership of the First Owner's Land and the Manor Way Open Land and the Second Owner covenants with the Council that it will give immediate written notice to the Council of any change

of ownership of the Second Owner's Land if at such time the obligations contained within this Deed in relation to the relevant land have not fully been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan provided that the obligation to notify the Council shall not apply to the disposal of any part of the First Owner's Land, the Manor Way Open Land and/or the Second Owner's Land to a statutory undertaker or to the Council or the disposal of an interest in any existing building on the Land or the disposal of an interest in a individual Residential Unit or the disposal of a leasehold interest or tenancy in a commercial unit.

20.2 The First Owner covenants with the Council to give the Council written notice of the following:

20.2.1 occupation of the 100th Residential Unit.

21 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

22 DISPUTE PROVISIONS

22.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference may be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert

shall determine and failing such determination shall be borne by the parties in equal shares.

22.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 22.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

22.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

22.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

22.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

23 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

24 DELIVERY

This Deed is for the purposes of the Regulatory Reform (Execution of Deeds and Documents) Order 2005 a deed and for the avoidance of doubt the Deed shall be deemed not delivered despite being executed by the parties until such time as actual delivery of the Deed is authorised and agreed between the respective parties' appointed legal representatives or in the absence of one or more parties appointing a legal representative between the parties directly.

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

SCHEDULE 1

The First Owner's and the Second Owner's Covenants with the Council

1. Open Space

The First Owner covenants with the Council as follows:-

1.1 Not to Implement the Development until an Indicative Open Space Plan has been submitted to the Council for approval and the Council has approved it

1.2 To submit the Open Space Scheme for a Residential Phase to the Council before any Works are carried out on that Residential Phase

1.3 Not to carry out any Works on a Residential Phase until the Open Space Scheme for that Residential Phase has been submitted to and approved by the Council

1.4 To Complete the Open Space Scheme for a Residential Phase (excluding ongoing management arrangements) before the Occupation of more than 75% of the Residential Units on that Residential Phase

1.5 Not to Occupy more than 75% of the Residential Units on a Residential Phase until the Open Space Scheme for that Residential Phase (excluding ongoing management arrangements) has been Completed

1.6 Not to Occupy any Residential Units until:

1.6.1 the First Owner has submitted to the Council for approval the amount (if any) of the Additional Open Space Contribution payable in relation to the Development and the amount of the Open Space Contribution payable in relation to the Development such sums to be calculated using:

1.6.1.1 the details of open space provided in the Open Space Schemes approved pursuant to paragraph 1.2; and

1.6.1.2 in respect of those parts of the Application Site in which no Open Space Scheme has been submitted to the Council, the Indicative Open Space Plan; and

1.6.1.3 the respective formulae set out in Parts I and II of Schedule 3

1.6.2 the First Owner has paid to the Council:

1.6.2.1 the Additional Open Space Contribution (if any) calculated in accordance with paragraph 1.6.1.; and

1.6.2.2 the Open Space Contribution calculated in accordance with paragraph 1.6.1.

PROVIDED THAT the amount payable under this paragraph and paragraph 1.7 shall be reduced by the Value of the Manor Way Open Land and where the amount payable is the same or less than the Value of the Manor Way Open Land it shall be nil.

1.7 On the Occupation of 95% of the Residential Units within each Residential Phase, the First Owner shall review the amount of open space provided within that Residential Phase and:

1.7.1 if the amount of open space provided within that Residential Phase is more than that identified for the purposes of the calculation of the Additional Open Space Contribution in paragraphs 1.6.1.1 or 1.6.1.2 (as applicable) for that Residential Phase then the Council shall within 28 days of receipt of notice to that effect from the First Owner repay to the person who made the payment for that Residential Phase pursuant to paragraph 1.6.2.1 such proportion of the Additional Open Space Contribution (calculated using the formula set out in Part 1 of Schedule 3) as reflects that over provision of open space; and

1.7.2 if the amount of open space provided in that Residential Phase is less than that identified for the purposes of the calculation of the Additional Open Space Contribution in paragraphs 1.6.1.1 or 1.6.1.2 (as applicable) for that Residential Phase then the First Owner shall pay to the Council within 28 days of the Occupation of 95% of the Residential Units within that Phase such further Additional Open Space Contribution (calculated using the formula set out in Part 1 of Schedule 3) as reflects that under provision of open space

1.8 Not to Occupy more than 95% of the Residential Units within each Residential Phase until the review in paragraph 1.7 has been completed and any further Additional Open Space Contribution has been paid to the Council in accordance with paragraph 1.7.2

1.9 Following the completion of the Open Space Scheme on a Residential Phase, not to use or manage the land in a Residential Phase included in the Open Space Scheme for that Residential Phase other than in accordance with the Open Space Scheme for that Residential Phase

1.10 Not to Commence the Development until the Manor Way Open Land has been transferred with vacant possession to the Council in accordance with the provisions of Schedule 4.

1.11 To transfer the Manor Way Open Land (with vacant possession in accordance with the provisions of Schedule 4 and subject to the matters referred to in the form of transfer at Schedule 4) to the Council within 3 months of the date of this Deed

2. Affordable Housing

The First Owner covenants with the Council as follows:-

2.1 Not to Implement the Development until an Indicative Affordable Housing Plan has been submitted to the Council for approval and the Council has approved it

2.2 To submit the Affordable Housing Scheme and the Affordable Housing Management Scheme for a Residential Phase to the Council before any Works are carried out on that Residential Phase

2.3 The tenure mix of the Affordable Housing Units shall (unless otherwise agreed in writing by the Council) be as follows over the entire Development:

2.3.1 75% as Affordable Rented Units; and

2.3.2 25% as Intermediate Housing Units

2.4 The size of Affordable Housing Units shall (unless otherwise agreed in writing by the Council) be as follows:

2.4.1 30% 1 bed units of a size suitable to be occupied by 2 persons;

2.4.2 50% 2 bed units of a size suitable to be occupied by 4 persons;

2.4.3 15% 3 bed units of a size suitable to be occupied by 5/6 persons; and

2.4.4 5% 3 bed units of a size suitable to be occupied by 6 persons

2.5 Not to carry out any Works on a Residential Phase until the Affordable Housing Scheme and the Affordable Housing Management Scheme for that Residential Phase has been submitted to and approved by the Council

2.6 Unless otherwise agreed in writing by the Council, not to Occupy more than 50% of the Open Market Units in a Residential Phase until:

2.6.1 50% of the Affordable Housing Units in that Residential Phase have been Completed in accordance with the Affordable Housing Scheme for that Residential Phase (as approved by the Council); and

2.6.2 50% of the Affordable Housing Units in that Residential Phase have been transferred to an Affordable Housing Provider or alternative management arrangements have been put in place to ensure the management of the Affordable Housing Units in accordance with the Affordable Housing Management Scheme (as approved by the Council)

2.7 Unless otherwise agreed in writing by the Council, not to Occupy more than 90% of the Open Market Units in a Residential Phase until:

2.7.1 100% of the Affordable Housing Units in that Residential Phase have been Completed in accordance with the Affordable Housing Scheme for that Residential Phase (as approved by the Council); and

2.7.2 100% of the Affordable Housing Units in that Residential Phase have been transferred to an Affordable Housing Provider or alternative management arrangements have been put in place to ensure the management of the Affordable Housing Units in accordance with the Affordable Housing Management Scheme (as approved by the Council)

2.8 Subject to paragraph 2.9, unless otherwise agreed in writing by the Council not to permit the Affordable Housing Units in a Residential Phase to be used other than in accordance with the Affordable Housing Scheme for that Residential Phase (as approved by the Council)

2.9 Paragraphs 2.1 to 2.8 of this Schedule shall not be binding or enforceable against:

2.9.1 any person who shall acquire the freehold or leasehold interest in any Affordable Housing Unit pursuant to any statutory right to buy or right of acquisition and any successor in title or mortgagee of that person; and

2.9.2 a chargee which shall have the benefit of a legal mortgage or charge secured against an estate or interest in the Affordable Housing Units who wishes to exercise a power of sale and its successors in title PROVIDED THAT the chargee or receiver appointed by the chargee has notified the Council in writing that it wishes to exercise its statutory power of sale and within one month of such written notification the chargee or receiver having used reasonable endeavours is unable to enter into a contract for sale of the relevant Affordable Housing Units to an Affordable Housing Provider; and

2.9.3 any person who acquires 100% of the leasehold or freehold interest of an individual Affordable Housing Unit through staircasing or similar means and any successor in title or mortgagee of that person

3. Employment and Skills Plan

The First Owner covenants with the Council as follows:-

3.1 Not to Implement the Development until the Employment and Skills Plan has been submitted to and approved by the Council

3.2 Upon and from Implementation (unless otherwise agreed with the Council) to use reasonable endeavours to implement and promote the objectives of the approved Employment and Skills Plan (as may be varied by the agreement of the parties from time to time) in respect of the Development and use reasonable endeavours to

ensure that (so far as is reasonably practicable) the objectives are met in respect of the Development

3.3 In respect of each Phase, to provide a written report to the Council 12 months after the first Occupation of that Phase setting out actions and proposals which have been taken or are to be taken to achieve the targets activities and objectives contained in the Employment and Skills Plan for that Phase

4. Community Facilities

The First Owner covenants with the Council as follows:-

4.1 Not to Occupy more than 100 Residential Units until the Community Facility Contribution has been paid to the Council

4.2 To pay the Community Facility Contribution to the Council before the Occupation of the 101st Residential Unit

5. Health Infrastructure

The First Owner covenants with the Council as follows:-

5.1 Not to Occupy more than 100 Residential Unit until the Health Infrastructure Contribution is paid to the Council

5.2 To pay the Health Infrastructure Contribution to the Council before the Occupation of the 101st Residential Unit

6. Hovercraft Museum

The First Owner covenants with the Council as follows:-

6.1 Not to Implement the Development until the First Owner has offered a Lease of the Hovercraft Museum to the Hovercraft Museum Trust (registered charity number 1003689) such offer to be open for acceptance for a period of 6 months from and including the date of offer and to be made in writing and sent to the Hovercraft Museum Trust, Daedalus Site, Chark Lane, Lee-on the Solent Hampshire PO13 9NY

6.2 If the Hovercraft Museum Trust fails to enter into the Lease within 6 months of the end of the 6 month period referred to in paragraph 6.1, the First Owner shall notify the Council to that effect and following service of such notice by the First Owner on the Council the obligations in paragraphs 6.3 and 6.4 shall instead apply.

6.3 Within 3 months after the date of the notice referred to in paragraph 6.2 to submit to the Council details of the Interpretation Boards (including details of their ongoing maintenance) to be provided on the Application Site in the vicinity of Seaplane Square

6.4 Within 6 months after the date of the Council's approval of the details of the Interpretation Board (and their ongoing maintenance) submitted pursuant to paragraph 6.3 to erect the Interpretation Boards and thereafter maintain them in accordance with the approved details of maintenance

7. Use of Runway

The Second Owner covenants with the Council as follows:-

7.1 Subject to the Second Owner and the airfield operator receiving payment of their reasonable charges for such use, and the Runways in the reasonable opinion of the Second Owner being a commercially viable operation, not to prevent the lawful occupier of any B1/B2/B8 Unit from using the Main Runway for aviation use where such use is in connection with their occupation of their respective unit PROVIDED THAT such use may be restricted or prohibited if:

7.1.1 It is not or would not be fully in accordance with the terms of this Deed and the requirements of the Permission;

7.1.2 It is not or would not be fully in accordance with the rules or reasonable requirements of the operator of the Runways;

7.1.3 It is or may be contrary to any Act of Parliament, statute, statutory instrument, order, plan, regulation, direction, or policy relating to aviation use, the operation of an airfield or otherwise; or

7.1.4 It would in the reasonable opinion of the Second Owner be unsafe or present an unacceptable risk to the Application Site (or part thereof) or members of the public

7.2 ~~If the Main Runway is unfit for use then for such time as the Main Runway is unfit for~~ use but subject to the Second Owner and the airfield operator receiving payment for their reasonable charges for such use and the Runways in the reasonable opinion of the Second Owner being a commercially viable operation, not to prevent the lawful ~~occupier of any B1/B2/B8 unit from using the Second Runway for aviation use where~~

~~such use is in connection with their occupation of their respective unit PROVIDED~~ THAT: such use may be restricted or prohibited if:

7.2.1 It is not or would not be fully in accordance with the terms of this Deed and the requirements of the Permission;

7.2.2 It is not or would not be fully in accordance with the rules or reasonable requirements of the operator of the Runways;

7.2.3 It is or may be contrary to any Act of Parliament, statute, statutory instrument, order, plan, regulation, direction, or policy relating to aviation use, the operation of an airfield or otherwise; or

7.2.4 It would in the reasonable opinion of the Second Owner be unsafe or present an ~~unacceptable risk to the Application Site (or part thereof) or members of the public~~

8. Use of Land in accordance with its status as an Enterprise Zone

The First Owner and the Second Owner covenant with the Council as follows:-

8.1 Unless otherwise agreed in writing by the Council, for such time as the Application Site (or relevant part thereof) is designated by the Government as part of the Solent Enterprise Zone, not to use each B2/B8 Unit constructed pursuant to the Permission on that land (or relevant part thereof which is within the Solent Enterprise Zone) other than primarily for one or more of the following sectors (or such use incidental or ancillary thereto):

- Aviation;
- information and communications technology;
- communications;
- environmental technologies;
- advanced manufacturing;
- green technologies;
- aerospace;
- marine industries;
- defence; and/or
- business services.

SCHEDULE 2

The Council's Covenants with the First Owner

The Council covenants with the First Owner as follows:-

1. To use each payment received from the First Owner under the terms of this Deed for the purpose specified in this Deed for which it was paid or for such other purpose for the benefit of the Development as the First Owner and the Council shall agree.

2. At the written request of the First Owner the Council shall within 20 Working Days of receipt of such request provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

3. At the written request of the First Owner the Council shall within 20 Working Days of receipt of such request provide the First Owner with details of how the sums paid by the First Owner under this Deed have been spent.

4. The Council covenants with the First Owner that it will pay to the person who made the payment such amount of any payment made by the First Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within 10 years of the date of receipt by the Council of such money together with any interest accrued thereon such payment by the Council to be made within 20 Working Days of a request to do so is received after the expiry of the said 10 year period.

5. To pay any contribution which falls due pursuant to paragraph 1.7.1 of Schedule 1 in respect of a Residential Phase to the person who paid the Additional Open Space Contribution for that Residential Phase in accordance with the requirements set out in that paragraph.

6. To accept a transfer of the Manor Way Open Land from the First Owner in accordance with the provisions of Schedule 4 on the terms set out in paragraph 1.11 of Schedule 1 within 3 months of the date of this Deed and the Council acknowledges that it has had the opportunity to investigate title to the Manor Way Open Land prior to the date of this Deed and shall not raise any enquiries or requisitions in relation to the Manor Open Way Land after the date of this Deed save for requisitions relating to information revealed by pre-completion Land Registry priority searches.

SCHEDULE 3

OPEN SPACE

Part I

Formula for calculating the Additional Open Space Contribution

The Additional Open Space Contribution shall be calculated as follows:-

- $D = (A_1 \times A_2) + (B_1 \times B_2) + (C_1 \times C_2)$
- $F = D - E$
- $G\% = (F/D) \times 100$
- $J = (A_1 \times H_1) + (B_1 \times H_2) + (C_1 \times H_3)$
- $K = (J) \times G\%$

Where:

A_1 =Number of one bedroom residential units

A_2 = children's open space requirement (in sqm) per one bedroom dwelling being 9 sqm

B_1= Number of two bedroom residential units

B_2= children's open space requirement (in sqm) per two bedroom dwelling being 13 sqm

C_1= Number of three or more bedroom residential units

C_2= children's open space requirement (in sqm) per three or more bedroom dwelling being 19.8 sqm

D= Total children's open space requirement for development (in sq.m)

E = Total children's open space to be provided on-site (in sq.m)

F= Total children's open space <u>not</u> provided on-site (in sq.m)

G= Proportion (%) of children's open space not provided on-site compared to total requirement

H_1= Open space developer contribution for 1 bedroom house for children's play space being £448

H_2 = Open space developer contribution for 2 bedroom house for children's play space being £603

H_3= Open space developer contribution for 3 or more bedroom house for children's play space being £861

J= Total potential contribution if all children's space was to be paid in-lieu

K= Total developer contribution required for children's play space in-lieu of on-site provision

Part II

Formula for calculating the Open Space Contribution

The Open Space Contribution shall be the total of the following:-

Number of 1 bedroom Residential Units x £895; and

Number of 2 bedroom Residential Units x £1203; and

Number of 3+ bedroom Residential Units x £1718

SCHEDULE 4

Transfer of Manor Way Open Land

Land Registry
Transfer of whole of registered title(s)

TR1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

1 Title number(s) of the property:

HP665927

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

2 Property:

The Sports Ground, HMS Daedalus, Broom Way, Lee-on-the-Solent

3 Date:

Give full name(s).

4 Transferor:

HOMES AND COMMUNITIES AGENCY

Complete as appropriate where the transferor is a company.

For UK incorporated companies/LLPs
Registered number of company or limited liability partnership including any prefix:

For overseas companies
(a) Territory of incorporation:

(b) Registered number in the United Kingdom including any prefix:

Give full name(s).

5 Transferee for entry in the register:

GOSPORT BOROUGH COUNCIL

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

For UK incorporated companies/LLPs
Registered number of company or limited liability partnership including any prefix:

For overseas companies
(a) Territory of incorporation:

(b) Registered number in the United Kingdom including any prefix:

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

6 Transferee's intended address(es) for service for entry in the register:

Gosport Borough Council, Town Hall, High Street, Gosport, Hampshire, PO12 1EB

7 The transferor transfers the property to the transferee

charges so far as they relate to the Property, subsist and are enforceable and will keep the Transferor indemnified against all actions, proceedings, costs, claims demands and liabilities in respect of them.

11.2 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Transfer has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Transfer but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

12 Execution

EXECUTED as a deed)
(but not delivered until dated))
by)
affixing the common seal of)
HOMES AND COMMUNITIES AGENCY)
in the presence of:-

Authorised Signatory

EXECUTED as a deed by
GOSPORT BOROUGH COUNCIL
in the presence of:

Authorised Signatory

.....

.....

.....

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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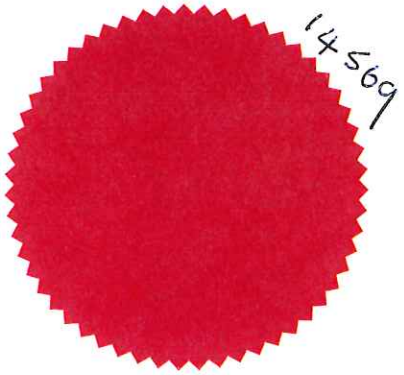
EXECUTED as a Deed by)
Affixing the Common Seal of)
GOSPORT BOROUGH COUNCIL)
in the presence of:)



Linda Edwards

AUTHORISED SIGNATORY

EXECUTED as a deed ~~by affixing~~)
The Common Seal of the HOMES AND)
COMMUNITIES AGENCY)
was hereunto affixed
In the presence of:)

A44917



Authorised Signatory:

The Common Seal of)
FAREHAM BOROUGH COUNCIL)
was hereunto affixed in the presence of:)
)
)



Authorised signatory