

DATE 30<sup>th</sup> March 2020

**(1) WEST SUFFOLK COUNCIL**

**(2) SUFFOLK COUNTY COUNCIL**

**(3) COUNTRYSIDE PROPERTIES (UK) LIMITED**

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

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relating to

**Land known as Parcels A & B Marham Park  
Bury St. Edmunds Suffolk**

West Suffolk Council  
West Suffolk House  
Western Way  
Bury St. Edmunds  
Suffolk

DATE

30<sup>th</sup> March

2020

**PARTIES:**

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **COUNTRYSIDE PROPERTIES (UK) LIMITED** (company registration number 0061486) whose registered office is at Countryside House The Drive Brentwood Essex CM13 3AT (hereinafter called the "**Owner**")

**INTRODUCTION**

- A The Council is the successor in function to St. Edmundsbury Borough Council and is a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the covenants and obligations contained in this Deed are enforceable.
- B The County Council is the local highway authority (except for trunk roads), the local education authority, the local library authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the covenants and obligations contained in this Deed are enforceable.
- C The Owner is the freehold owner of the Site which is registered with the Land Registry under the title number SK370757.
- D The Owner has submitted the Application to the Council and Council officers have, under delegated authority, recommended that planning permission for the Development pursuant to the Application should be granted subject to the prior completion of this Deed intended to regulate the Development and to secure the planning obligations contained herein.
- E The Site forms part of a wider area of land that benefits from an existing planning permission granted on 8 October 2014 under the refence DC/13/0932/HYB (hereinafter called the "**2014 Permission**") and is subject to an agreement under Section 106 of the Act dated 8 October 2014 and made between (1) St.



Edmundsbury Borough Council; (2) Suffolk County Council; (3) Countryside Properties (UK) Limited and (4) John Charles Browne, Peter John Browne and Fiona Margaret Browne (hereinafter called the "2014 S106").

- F It is intended that following implementation of the Planning Permission, the Development will supersede the part of the development permitted by the 2014 Permission which is located on the Site.
- G The Council and the County Council enter into this Deed to the intent that the requirements of the Council's and the County Council's policies are met and that any objections by the Council or the County Council to the grant of planning permission on the basis of those policies are overcome.
- H The Council and the County Council consider, and the Owner acknowledges, that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to Section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- I The Council is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended).

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS**

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

- "2014 S106 750th Dwelling Payment" means the sum that is payable to the County Council pursuant to paragraph 3.4 of Part 2 of Schedule 7 of the 2014 S106 (750 DP)
- "Act" the Town and Country Planning Act 1990 (as amended)
- "Affordable Housing" subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market
- "Affordable" twenty-four percent (24%) of the Dwellings (which



Housing Units"	shall not exceed seventy-nine (79) of the Dwellings) that are to be Affordable Housing delivered in accordance with the Tenure Mix
"Affordable Rent"	housing made available by a Registered Provider as low cost rental accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% of the equivalent market rent and also at a level that does not exceed local housing allowance rate
"Application"	the application for planning permission to develop the Site in accordance with the application plans deposited with the Council on the 13 <sup>th</sup> August 2019 and bearing the Council's reference number DC/19/1652/OUT
"BCIS Index"	the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto
"BCIS Indexed"	the increase in any sum referred to in the Second Schedule and the Third Schedule by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 10 of this Deed
"Chargee"	any mortgagee or chargee of the Registered Provider's interest or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of the whole or any part of the Affordable Housing Units or any person or bodies deriving title through such mortgagee or charge
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site but excluding the following:

- a) site investigations, testing or surveys;
- b) site decontamination and remediation;
- c) the provision of infrastructure boreholes permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 or any amendment or replacement thereof;
- d) the clearance of the Site including demolition;
- e) excavation, deposition, compaction, levelling of materials to new contours and works connected with infilling;
- f) works for the provision of underground drainage, sewers or other mains services to prepare the Site for development and the laying and diversion of other services and service medium;
- g) erection of fencing or boarding (including the erection of an enclosure for the purpose of site security);
- h) erection of temporary facilities for security personnel and the erection of security cameras;
- i) erection of boards advertising the development;
- j) construction of temporary accesses and/or temporary highway works to facilitate the carrying out of the Development;
- k) archaeological investigations and digs;
- l) ecological surveys, investigations assessments and mitigation works including any ongoing arboricultural management and maintenance work;
- m) works and operations to enable any of the foregoing to take place; and
- n) the construction of a temporary site compound and welfare facilities/buildings/enclosures or a temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a



temporary marketing suite

"Commenced" and "Commence Development" shall be construed accordingly.

"Community Hall Contribution" means the sum of one hundred and four thousand nine hundred and sixteen pounds (£104,916.00) BCIS Indexed

"Completion of Development" the date that the last Dwelling is first Occupied

"Development" the development of the Site as approved under the outline application described as including up to 330 dwellings associated landscape highways drainage and other infrastructure works

"Discounted Amount" means the amount (A) that is calculated by applying the following formula:

$$750 \text{ DP} - ((750 \text{ DP} / 237.50) \times 91.5) = A$$

Where 750 DP is the 2014 S106 750th Dwelling Payment

"Dwelling" a dwelling (including a house flat or bungalow and including both Open Market Dwellings and Affordable Housing Units) to be constructed pursuant to the Planning Permission and "Dwelling" and "Dwellings" shall be construed accordingly

"First Secondary and Sixth Form Education Contribution" means the sum of six hundred thirty-five thousand eight hundred ninety-nine pounds and twenty-six pence (£635,899.26) BCIS Indexed

"First Primary Education Contribution" means the sum of four hundred four thousand seven hundred forty-seven pounds and eighty-two pence (£404,747.82) BCIS Indexed

"Highways Contribution" means the sum of seventy-two thousand five hundred pounds (£72,500.00) BCIS Indexed

"Implementation"	means the carrying out of any material operation within the meaning of section 56(4) of the Act
"Intermediate Dwelling"	Affordable Housing Units for sale and rent provided at a cost above social rent but below market levels which meet the definition of Affordable Housing and may include Shared Ownership and equity products other low cost homes for sale and intermediate rent but not Affordable Rent
"Late Payment Interest"	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
"Library Contribution"	seventy-one thousand two hundred and eighty pounds (£71,280.00) BCIS Indexed
"NHS Contribution"	eighty-eight thousand four hundred sixty-three pounds (£88,463.00) BCIS Indexed
"Nomination Agreement"	a deed of agreement dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units substantially in the form of the draft in the Seventh Schedule
"Occupation"	means beneficial occupation for the purposes permitted by the Planning Permission and shall not include occupation for the construction of the Development and shall not include daytime occupation by workmen involved in the construction of the Development or, in so far as such uses are ancillary to the construction of the Development, the use of finished buildings for sales purposes, for use as temporary offices or for show homes or for the storage of plant and materials or in relation to security operations and "Occupy" and "Occupied" shall mutatis mutandis be construed accordingly
"Open Market Dwellings"	those Dwellings that are not Affordable Housing Units
"Planning Permission"	the outline planning permission subject to conditions as may be granted by the Council pursuant to the Application
"Pre School"	one hundred and thirty-two thousand seven hundred



Contribution"	and sixty-eight pounds (£132,768.00) BCIS Indexed
"Protected Person"	Any person who has either: <ul style="list-style-type: none"> <li>(a) exercised the right to acquire pursuant to the Housing Act 1996, the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of an Affordable Housing Unit (as defined in the Second Schedule)</li> <li>(b) exercised any statutory right to buy (or any equivalent contractual right) in respect of an Affordable Housing Unit</li> <li>c) a 100% Staircaser</li> </ul>
"Registered Provider"	a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by the RSH under Chapter 3 of that Act
"Relevant RM"	the reserved matters approvals pursuant to the Planning Permission for such parts of the Site which includes approval of Dwellings
"Rental Dwelling"	an Affordable Housing Unit which is to be let at an Affordable Rent or Social Rent and is let on the Registered Provider's standard form of letting in accordance with the terms of this Deed by a Registered Provider
"RSH"	the Regulator of Social Housing whose registered office is Level 1A City Tower Piccadilly Plaza Manchester M1 4BT or any statutory successor thereof or other government body with the function of regulating social housing development
"Second Secondary and Sixth Form Education Contribution"	means the sum of four hundred fifty-two thousand nine hundred sixty-nine pounds and thirty-three pence (£452,969.33) BCIS Indexed
"Second Primary	means the sum of three hundred and thirty-one



School Contribution"	thousand nine hundred and twenty pounds (£331,920.00) BCIS Indexed
"Shared Ownership Dwelling"	where the purchaser buys an initial share in the Dwelling from the Registered Provider who retains the remainder and may charge a rent with the purchaser being able to purchase additional shares (staircasing) and the payment for this is recycled for more Affordable Housing
"Shared Ownership Lease"	a lease of a Shared Ownership Dwelling substantially in the form of the RSH's model shared ownership lease
"Site Plan"	the plan of the Site which is inserted in the First Schedule
"Site"	the land described in the First Schedule against which this Deed may be enforced and as shown edged red for identification purposes only on the Site Plan in the First Schedule
"Social Rent"	social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008) for which guideline target rents are determined through the national rent regime and it may also be owned by other persons and provided under equivalent rental arrangements to the above as agreed with the Council or with the RSH
"100% Staircaser"	a lessee under a Shared Ownership Lease who has exercised his or her right under that Shared Ownership Lease to purchase 100% of the equity in the Shared Ownership Dwelling
"Tenure Mix"	the tenure mix of the Affordable Housing Units being 70% Rental Dwellings and 30% Intermediate Dwellings unless otherwise agreed with the Council
"Third Secondary and Sixth Form Education Contribution"	means the sum of four hundred thousand one hundred eighty-eight and eighty pence (£400,188.80) BCIS Indexed

"Waste Contribution"	means the sum of sixteen thousand eight hundred thirty (£16,830.00) BCIS Indexed
"Working Days"	Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England

## **2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, sub-clause, schedule, paragraph, sub-paragraph or recital, such reference (unless the context otherwise requires) is a reference to a clause sub-clause, schedule, paragraph, sub-paragraph or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 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 as interchangeable in that manner.
- 2.4 Wherever 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 reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act of Parliament 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 of Parliament or deriving validity from it.
- 2.6 References to any party to this Deed shall, unless the context indicates otherwise, include the successors in title to that party and to any party deriving title through or under that party and in the case of the Council and or the County Council the successors to their respective statutory functions.
- 2.7 References to a "Site Plan" in this Deed shall be references to the plans attached to this Deed bearing the relevant plan number or any amended plans as shall be agreed between the Owner, the Council and the County Council.



2.8 The obligations in this Deed shall not be enforceable (SAVE in respect of paragraph 1.7 of Second Schedule dealing with Affordable Housing which shall be enforceable in respect of the relevant Affordable Housing Units) against:

2.8.1 any individual person who is the owner and/or an occupier for residential purposes of a Dwelling or any mortgagee of such a Dwelling;

2.8.2 any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunications services or public transport services

2.8.3 any person to whom the Registered Provider grants a Shared Ownership Lease or any successor in title to any such person and who has acquired all of the beneficial interest in their Dwelling a tenant exercising any right to acquire under a purchase grant scheme or right to buy or similar right conferred by statute or any successor in title to such person

2.8.4 any mortgagee of a tenant or person to whom the Registered Provider has granted a Shared Ownership Lease or any receiver appointed by such mortgagee or any person deriving title through any such mortgage or receiver

2.8.5 any person who has an interest in the Site only by way of an easement

2.9 The Affordable Housing obligations within the Second Schedule shall not be binding on:

2.9.1 a Protected Person

2.9.2 a 100% Staircaser

2.9.3 a mortgagee of a Shared Ownership Lease or shared equity lease lawfully exercising the mortgage protection provision within that lease

2.9.4 a Chargee of the whole or any part of the Affordable Housing Units or any persons deriving title through such mortgagee or Chargee or receiver PROVIDED THAT:

2.9.4.1 such mortgagee or Chargee or receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of



three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses; and

2.9.4.2 if such disposal has not completed within the three month period, the mortgagee, Chargee or receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing obligations within the Second Schedule which provisions shall determine absolutely in respect of those Dwellings

2.9.5 any person or body deriving title through any of the parties referred to in clauses 2.9.1 to 2.9.4 above

2.10 The headings are for reference only and shall not affect construction.

2.11 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

### **3. LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable as set out in this Deed by the Council (in respect of those covenants made by the Owner with the Council) and the County Council (in respect of those covenants made by the Owner with the County Council) as local planning authorities against the Owner and their successors in title.

3.3 This Deed shall only be capable of being varied by a supplemental deed made under Section 106A of the Act between:

4.3.1 the local planning authority who has the power to enforce the obligations that are proposed to be varied; and

4.3.2 the person(s) against whom those obligations are enforceable

and those respective parties' successors in title or assigns or their respective successors in statutory functions (as applicable).



#### **4. CONDITIONALITY**

4.1 This Deed is conditional upon:

4.1.1 the grant of the Planning Permission and

4.1.2 the Commencement of Development

SAVE FOR the provisions of this clause and clauses 7.2, 7.3, 7.4, 7.5, 7.6, 7.8, 7.9, 7.10, 7.11, 7.15, 7.16, 7.17, 9, 13, 14, 17, 18, 19 and 20 which shall come into effect immediately upon completion of this Deed.

4.2 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:

4.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved, the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development if the Owner does not undertake any further works to implement the Planning Permission following the issue of such proceedings;

4.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed, this Deed will cease to have any further effect; and

4.2.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Deed will apply in full.

4.3 Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used) the following provisions will apply:

4.3.1 proceedings by way of judicial review are concluded

4.3.1.1 when permission to apply for judicial review has been refused and no further application can be made;

4.3.1.2 when the court has given judgement in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused; or

4.3.1.3 when any appeal(s) is or are finally determined

4.3.2 proceedings under Section 288 of the Act are concluded

4.3.2.1 when the court has given judgement in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

4.3.2.2 when any appeal(s) is or are finally determined.

## **5. THE OWNER'S COVENANTS**

5.1 The Owner covenants with the Council as set out in the Second Schedule.

5.2 The Owner covenants with the County Council as set out in the Third Schedule.

## **6. THE COUNCIL'S AND THE COUNTY COUNCIL'S COVENANTS**

6.1 The Council covenants with the Owner as set out in the Fourth Schedule.

6.2 The County Council covenants with the Owner as set out in the Fifth Schedule.

## **7. MISCELLANEOUS**

7.1 The Owner shall act in good faith and shall co-operate both with the Council and the County Council to facilitate the discharge and performance of all obligations contained herein.

7.2 The Owner agrees, declares and covenants to pay to the Council on completion of this Deed the proper and reasonable legal costs of the Council incurred in the negotiation, preparation and execution and completion of this Deed.

7.3 The Owner agrees, declares and covenants to pay to the County Council on completion of this Deed the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed.

7.4 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

7.5 This Deed shall be registered as a local land charge by the Council.

7.6 Where an approval agreement, consent or expression of satisfaction or a subsequent deed is required by the Owner from either the Council or County Council under the terms of this Deed, such



approval or agreement or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such consent approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Growth or officer acting under his/her hand and on behalf of the County Council by the Executive Director of Growth Highways and Infrastructure (or duly appointed successor) or officer acting under his/her hand.

- 7.7 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.8 Insofar as any clause or other provision of this Deed is 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.
- 7.9 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires by effluxion of time for the Commencement of the Development or is modified (without the consent of the Owners) and the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed.
- 7.10 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants restrictions or reservations in respect of it.
- 7.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.12 The Owner agrees that any rights to claim compensation in respect of any diminution in value of the Site arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived.
- 7.13 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council or the County Council under all statutes by-laws