

DATED 17th December 2020

between

EAST SUFFOLK COUNCIL (1)

AND

THE HAVEBURY HOUSING PARTNERSHIP (2)

AND

SUFFOLK COUNTY COUNCIL (3)

**Supplemental Deed under Section 106A of the Town and Country Planning Act
1990 and all other enabling powers**

relating to Land at Fairfield Road, Framlingham, Suffolk

THIS DEED is dated 17th day of December 2020

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House, Station Road, Melton, Woodbridge, IP12 1RT ("**the Council**");
- (2) **THE HAVEBURY HOUSING PARTNERSHIP** of (Registered Society Number RS007648) whose registered office is at Havebury House, Western Way, Bury St Edmunds, Suffolk, IP33 3SP ("**the Owner**")
- (3) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ("**the County Council**")

Background

- (A) The Owner (as defined in this Deed of Variation) is the freehold owner of part of the Site comprising the Affordable Dwellings and registered at the Land Registry with title absolute under title number SK390517
- (B) The Council is the local planning authority for the purposes of the Act in which the Site is situated
- (C) The County Council is the local highways authority for the area within which the Property is situated and is also a local planning authority by whom the planning obligations contained in the Original Agreement are enforceable.
- (D) On 4 February 2016 the Original Agreement was entered into
- (E) On 4 December 2018 the First Deed of Variation was entered into
- (F) On 4 December 2018 the Supplemental Agreement was entered into
- (G) The parties to this Deed have agreed that the Original Agreement should be further amended in order and to ensure that the planning obligations contained in the Original Agreement are complied with save for the provisions as set out in this Deed
- (H) This Deed is made under S106A of the Town and Country Planning Act 1990 ("**the Act**") and is supplemental to the Original Agreement

NOW THIS DEED WITNESSES AS FOLLOWS:

1. Definitions

- 1.1 In this Deed, unless the context otherwise requires:
- 1.1.1. First Deed of Variation means the agreement under s106 of the Act dated 4 December 2018 between (1) Suffolk Coastal District Council (2) Taylor Wimpey UK Limited (3) The Havebury Housing Partnership
 - 1.1.2. The Supplemental Agreement means the agreement under s106A dated 4 December 2018 between (1) Suffolk Coastal District Council (2) Taylor Wimpey UK Limited and (3) Suffolk County Council
 - 1.1.3. Original Agreement means the agreement under s106 of the Act dated 4 February 2016 given by (1) Trustees of the Kerr A and B Land Settlements (2) Suffolk Coastal District Council and (3) Suffolk County Council
 - 1.1.4. References to clauses paragraphs and schedules are references to those in the Original Agreement and
 - 1.1.5. Words and phrases whose meanings are not varied by this Deed have the same meanings as in the Original Agreement and where the context so requires:-
 - 1.1.5.1. the singular includes the plural and vice versa
 - 1.1.5.2. the masculine includes the feminine and vice versa
 - 1.1.5.3. persons includes bodies corporate associations and partnerships and vice versa
- 1.2. This Deed binds each and every part of the Site and is supplemental to the Original Agreement and the First Deed of Variation and is enforceable by the Council
- 1.3. For purposes of this Deed the Site shall mean the site detailed within the First Schedule of this Deed

2. Planning Obligations

The covenants restrictions and requirements created by this Deed are planning obligations for the purposes of Section 106 of the Act

3. Statutory provisions

This Deed is made pursuant to Sections 106 and 106A of the Act Section 111 of the Local Government Act 1972 and all other enabling powers and has been entered into by the Council pursuant to those powers

4. **Variation to the Original Agreement**

IT IS HEREBY AGREED between the parties to this Deed that with effect from the completion of this Deed the following variations shall take effect as if the provisions that have been amended were originally incorporated into the Original Agreement in place of those provisions for which they are substituted:

4.1 The definition of Mortgagee shall be deleted and replaced with the following:

"Mortgagee" means any mortgagee or charge (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 (each a Receiver)) of the whole or any part of the Affordable Housing Units

4.2 a new clause 14 shall be added in the following words

"14 The obligations in this agreement will not be enforceable against:

- (a) any individual person who is the owner/or an occupier for residential purposes of a Dwelling or any mortgagee, successors in title or their mortgagee.
- (b) Any statutory undertaker or other person who acquires any part of the Property or interest therein for the purposes of the supply of electricity gas water drainage telecommunications services or public transport services.
- (c) Any Affordable Housing Provider or their Mortgagee save for the obligations contained in Schedule 1

4.3 Paragraph 6.2 shall be amended by adding in the words 'or any persons or bodies deriving title through such Mortgagee' after the first 'Mortgagee'

4.4 Schedule 1 Part II shall be deleted in its entirety and replaced with the following words:

"1. A Mortgagee wishing to exercise any power of sale 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. if such disposal has not completed within the three month period, the Mortgagee shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely”

4.5 A new definition of Section 73 Consent shall be added to the Definitions being “Section 73 Consent” shall mean means a planning permission granted pursuant to Section 73 of the TCPA 1990 which varies and./or removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to Section 73 of the TCPA 1990 was granted

4.6 A new paragraph 5.13 shall be added under Legal Effect to read:

Unless the Local Planning Authority requires otherwise if a Section 73 Consent is granted by the Council (or the Secretary of State) in relation to the Development, then with effect from the date that each such Section 73 Consent is granted

(a) the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent Section 73 Consents and the Site itself without any further act by the Parties;

(b) the definitions of Development, Application and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the TCPA 1990, the Section 73 Consent granted pursuant to any such application and the development permitted by such Section 73 Consent

PROVIDED THAT

(i) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the TCPA 1990; and

(ii) to the extent that any of the obligations in this Deed have already been discharged at the date that any Section 73 Consent is granted

they shall remain discharged for the purposes of the Section 73 Consent

(iii) if the Council considers that the obligations contained in this Deed shall be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations

4.7 Nothing in this Deed affects the Council's powers in respect of any antecedent breach or omission in relation to the Original Agreement

5. Covenants to the Council

The Owner covenants with the Council to observe and perform the covenants restrictions and obligations contained in the Original Agreement as further varied by this Deed

6. Registration

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

7. Costs

The Owner covenants with the Council that on execution of this Deed it will pay the Council's reasonable costs incurred in the negotiation preparation and execution of this Deed

8. Third Party Rights

A person who is not named in this Deed or is not a party to this Deed does not have any right to enforce any term of this Deed under the Contracts (Rights of Third Parties) Act 1999

9. Jurisdiction

This Deed is governed by and interpreted in accordance with the Law of England

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

FIRST SCHEDULE

The Land shown for identification purposes edged red in the Site Plan comprising of the Owners land forming part of land registered with the Land Registry under title number SK390517

SITE PLAN

These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 20 January 2020 shows the state of this title plan on 20 January 2020 at 10:51:06. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

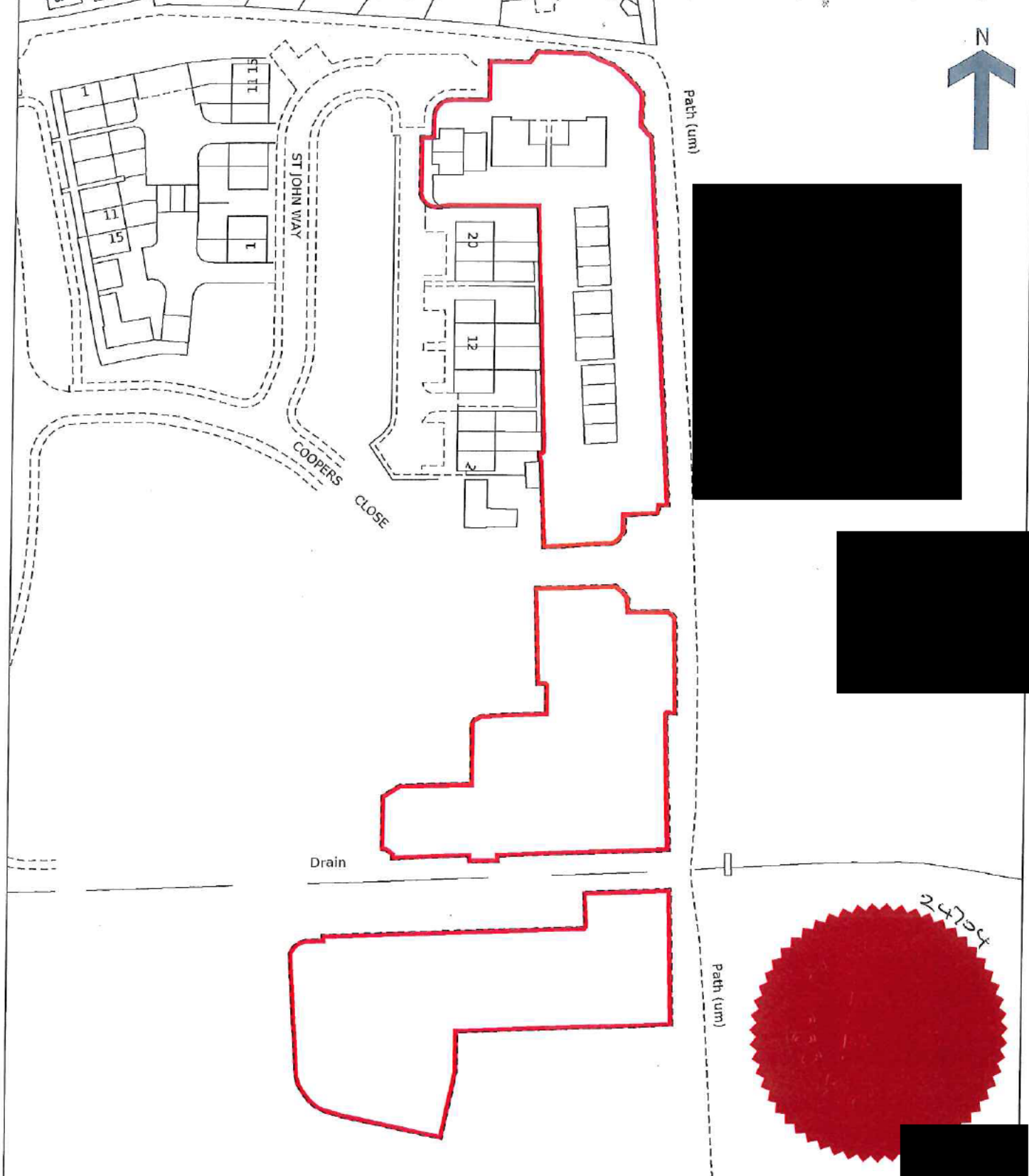
This title is dealt with by the HM Land Registry, Kingston Upon Hull Office .

HM Land Registry
Official copy of
title plan

Title number **SK390517**
Ordnance Survey map reference **TM2862NE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Suffolk : East Suffolk**

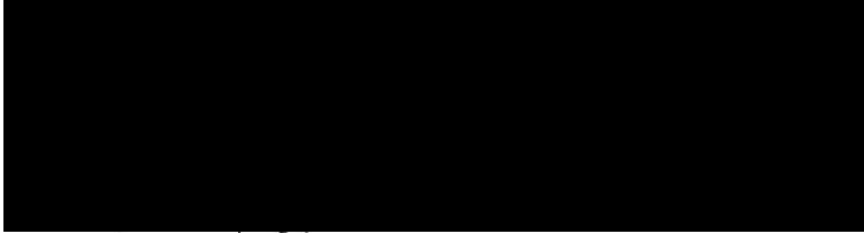


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**THE COMMON SEAL OF
EAST SUFFOLK COUNCIL**

was hereunto affixed in
the presence of:

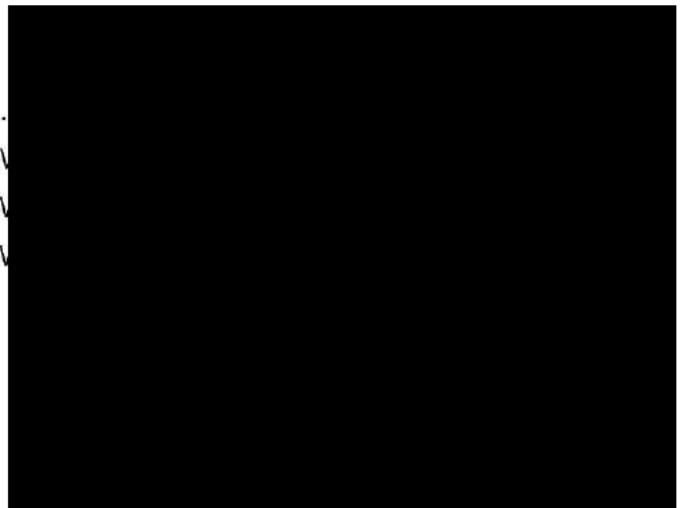
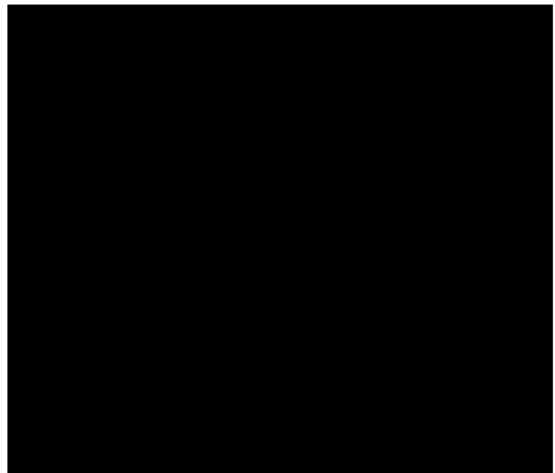


Authorised Signatory



350

Executed as a deed by
**THE HAVEBURY HOUSING
PARTNERSHIP** acting by its Attorney
In the presence of:



THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL

was hereunto affixed in
the presence of:



Authorised Signatory

