

DATED 9 December 2021

- (1) MID SUFFOLK DISTRICT COUNCIL
- (2) SUFFOLK COUNTY COUNCIL
- (3) BELLWAY HOMES LIMITED

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**DEED OF VARIATION**

Under Section 106 and Section 106A of the Town and  
Country Planning Act 1990 and other powers in relation to  
Land on the East side of The Street, Bramford, Ipswich,  
Suffolk

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THIS DEED OF VARIATION is made on the 9<sup>th</sup> day of December 2021

**BETWEEN**

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX (the "District Council"); and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX (the "County Council"); and
- (3) **BELLWAY HOMES LIMITED** (Company Registration Number: 00670176) whose registered office address is at Woosington House, Woosington, Newcastle Upon Tyne, England, NE13 8BF (the "Owner")

**RECITALS**

- (A) The District Council is the local planning authority for the area in which the Site is situated and is the appropriate statutory body to enforce the planning obligations contained in this Deed for the purposes of section 106 of the Act.
- (B) The County Council is the local highway authority (except for trunk roads) and is the local education authority for the purposes of the Act for the area in which the Site is situated and can also enforce the planning obligations contained in this Deed.
- (C) The Owner is the registered proprietor of the freehold interest in the Site which is registered at the HM Land Registry under title number SK405767.
- (D) On 9 July 2019, the Planning Permission was granted to the Owner pursuant to the Application.
- (E) This Deed is made pursuant to S106 and S106A of the Act and varies the Principal Deed.
- (F) On 2 March 2021, the District Council validated an application for reserved matters pursuant to the Planning Permission registered under planning reference DC/21/01220 (the **Reserved Matters Application**) submitted by the Owner.
- (G) The District Council has agreed to grant the Reserved Matters Approval on completion of this Deed and agreed to vary the planning obligations contained in the Principal Deed. The Parties have agreed that the terms of the Principal Deed as amended by this Deed shall apply in relation to the Development.

NOW THIS DEED WITNESSES as follows:-

## 1 DEFINITIONS

1.1 All words and phrases defined in the Principal Deed shall have the same meaning in this Deed unless otherwise specified or amended in this Deed.

"Deed" means this deed of variation;

"Principal Deed" means the section 106 agreement dated 8 July 2019 and made between (1) the District Council, (2) the County Council and (3) CEMEX UK OPERATIONS LIMITED

"Reserved Matters Approval" means the permission to be granted by the District Council pursuant to the Reserved Matters Application

## 2 INTERPRETATION

2.1 Save as expressly varied by this Deed, the provisions in the Principal Deed regarding interpretation and definitions shall apply to this Deed.

2.2 References to clauses, recitals, and schedules are unless otherwise stated references to clauses and recitals of and schedules to this Deed.

2.3 This Deed is a planning obligation made pursuant to Section 106 and Section 106A of the Act to the intent that it shall bind the Owner and their successors in title to the Site and any persons claiming under or through them subject to the terms of the Principal Deed and shall be enforceable by the District Council and/or the County Council.

2.4 This Deed takes effect upon the date of this Deed.

## 3 AMENDMENTS TO THE PRINCIPAL DEED

3.1 The District Council, the County Council and the Owner agree that on and from the date of this Deed the Principal Deed is varied as follows:

3.1.1 The following additional definitions shall be added to clause 1 of the Principal Deed:

"Footpath Creation Works" the works to construct a footpath to the Footpath Specification from the Site in the location shown indicatively dashed yellow on Plan 3

"Footpath Improvement Works" the works to improve the part of public footpath 26A indicatively shown dashed blue on Plan 3 and surface it to the Footpath Specification

Footpath Specification means Bound Breedon Gravel footpath

“Licence”	a licence between (1) the Owner and (2) Bramford Parish Council for the PC Footpath Works
“PC Footpath Works”	the works to remove the earth bund and install a footpath to the Footpath Specification on the PC Land, the location of the latter shown indicatively dashed green on Plan 3
“PC Land”	the land in the ownership of Bramford Parish Council shaded green on Plan 3 on which the PC Footpath Works shall be undertaken
“Plan 3”	the plan attached to this Deed with Drawing Number 8882-PA-01
“Play Area Contribution”	the sum of £40,830 (forty thousand eight hundred and thirty pounds) to be paid to the District Council to be used by Bramford Parish Council for the required works to their existing play area located in Playing Field, Off Acton Road, Bramford
“TRO Contribution”	means the sum of £15,000 (fifteen thousand pounds) to be paid to the County Council towards the provisions of implementation, the reasonable legal and administrative costs including officer time of any Traffic Regulation Order (TRO) required for the Development
“Variation”	the deed of variation in connection with the application for reserved matters pursuant to the Planning Permission registered under planning reference DC/21/01220

3.1.2 The following definitions shall be deleted and replaced as follows:

“Footpath Improvements Contribution”	the sum of £21,750 (twenty-one thousand seven hundred and fifty pounds) Index Linked to be paid to the County Council to fund upgrading and resurfacing to Bramford FP27 and FP33
“Plan 2”	the plan attached to this Deed with Drawing Number 8882 / 03 Rev H
“Pre-school Land”	the area of land shown marked “Pre School Facility” for indicative purposes only for the provision of Pre-school Facility

3.1.3 The Principal Deed shall be interpreted as if the plan annexed to this Deed at Schedule 1 and labelled Plan 2 has been appended to the Principal Deed on its completion (in place of the plan with Drawing Number J0010676\_508\_REV6 which was so appended)

3.1.4 References to "Open and Play Space", "Open and Play Space Plan", "Open and Play Space Specification" and "Open and Play Space Transfer" shall be interpreted as referring to "Open Space", "Open Space Plan", "Open Space Specification" and "Open Space Transfer" respectively

3.1.5 In the definitions of Open Space and Open Space Transfer, the words "and play" shall be deleted

3.1.6 The following new clause shall be added at clause 7.15:

In the event that the District Council grants a planning permission pursuant to an application made under section 73 of the Act in respect of any condition of the Planning Permission (or a subsequent permission to which this clause relates) references in this Deed to the Application, the Planning Permission and/or the Development shall be deemed to include any such subsequent planning application, planning permission and/or development granted as aforesaid and this Deed shall take effect and be read and construed accordingly.

3.1.7 The following paragraphs shall be added to the end of Part 3 of the Second Schedule:

2.1 The Owner covenants to pay the Play Area Contribution to the District Council prior to Commencement of the Development.

2.2 The Owner covenants not to Commence the Development until the Play Area Contribution has been paid in full to the District Council.

2.3 The Play Area Contribution shall be Index Linked SAVE THAT for the purpose of clause 11.4, "D" shall mean the Index at the date of the Variation.

2.4 The Owner covenants to use reasonable endeavours to enter into the Licence with the Bramford Parish Council for the PC Footpath Works before Occupation of the Dwellings and to provide a copy of the Licence to the District Council with 1 month of completion of that agreement.

2.5 Subject to the entry of the Licence pursuant to paragraph 2.4, the Owner shall undertake the PC Footpath Works prior to the Occupation of the 50th Dwelling.

3.1.8 The following paragraphs shall be added to the end of Part 4 of the Third Schedule:

3. The Owner covenants to use reasonable endeavours to carry out the Footpath Creation Works prior to the first Occupation of the 50th Dwelling.

4. The Owner covenants to use reasonable endeavours to enter into a section 278 agreement of the Highways Act 1980 with the County Council in respect of the Footpath Improvement Works prior to first Occupation of the Dwellings.

5. Subject to the entry of the section 278 agreement of the Highways Act 1980 pursuant to paragraph 4, the Owner shall undertake the Footpath Improvement Works prior to the first Occupation of the 50th Dwelling.

6. Subject to paragraph 2.4 of Part 3 of the Second Schedule, the Owner and the County Council shall use reasonable endeavours to enter into a section 25 agreement of the Highways Act 1980 with the Parish Council in respect of the footpath arising as a result of the Footpath Creation Works and the PC Footpath Works before first Occupation of the 75th Dwelling.

3.1.9 The following paragraph shall be added as a new Part 5 (TRO Contribution) of the Third Schedule:

1. The TRO Contribution shall be Index Linked SAVE THAT for the purpose of clause 11.4, "D" shall mean the Index at the date of the Variation
2. The Owner covenants to pay the TRO Contribution to the County Council on Commencement of Development.
3. The Owner covenants not to Commence Development unless and until the TRO Contribution has been paid in full to the County Council.

3.1.10 The following clauses shall be added as a new Part 3 (Play Area Improvement) of the Fourth Schedule:

1. To provide the Play Area Contribution to the District Council PROVIDED THAT the District Council shall only pass the sums to Bramford Parish Council on terms whereby:

1.1 the Play Area Contribution shall only be used by Bramford Parish Council for the purpose of improving the play area at Playing Field, Off Acton Road, Bramford;

1.2 Bramford Parish Council shall on request in accordance with paragraph 2 provide the Owner with such evidence as the Owner shall reasonably require to confirm the proper expenditure of the Play Area Contribution;

1.3 Bramford Parish Council shall on request in accordance with paragraph 2 repay any proportion of the Play Area Contribution which remains unexpended to the District Council;

2. Subject to paragraph 1, the District Council may after the expiry of five (5) years from the date that the Play Area Contribution was paid to the Parish Council, request that the Parish Council repay any unexpended funds and

then use any unexpended Play Area Contribution towards play provision in the locality.

3. The District Council shall if requested to do so in writing after the expiry of ten (10) years of the date that the Play Area Contribution was paid by the Owner, repay or procure that Bramford Parish Council repays such amount of the Play Area Contribution which has not been committed or expended by the District Council and/or Bramford Parish Council in accordance with the provisions of this Deed to the Owner or such other person who made the payment such repayment to be made within twenty (20) Working Days' of such request.

4. In the event that the Play Area Contribution has been spent or committed by the District Council and/or Bramford Parish Council, the District Council shall upon written request after the expiry of ten (10) years of the payment of that sum notify or procure that Bramford Parish Council notifies the Owner (or such other person who made the payment) that such monies have been spent or committed within a further period of twenty (20) Working Days', such notice to include full details of what the said monies were spent on or committed to.

3.1.11 The following paragraphs shall be added as a new Part 5 (TRO Contribution) of the Fifth Schedule:

1. The County Council covenants to use the TRO Contribution it receives under the terms of this Deed for the purposes specified in this Deed for which they are to be paid unless specified otherwise in this Deed.

2. If requested to do so in writing after the expiry of ten (10) years of the Completion of the Development within a further period of one (1) year to pay to any person such amount of the TRO Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable..

3. When the TRO Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the Completion of the Development within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to.

#### **4 WAIVER**

No waiver (whether express or implied) by the District Council and/or County Council of any breach or default by the Owner in performing or observing any of the covenants

undertakings obligations or restrictions contained in the Principal Deed as Varied by this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council and/or County Council from enforcing any of the said covenants undertakings or obligations or restrictions from acting upon any subsequent breach or default in respect thereof by the Owner.

## **5 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Nothing in this Deed is intended to confer any benefit on any party other than the parties executing this Deed and any rights or benefit provided under the Contract (Rights of Third Parties) Act 1999 is hereby excluded.

## **6 LEGAL FEES**

The Owner shall pay on the date hereof the District Council's reasonable legal costs properly incurred in the negotiation of this Deed.

The Owner covenants to pay to the County Council on or before completion of this Deed a contribution of £412.00 (four hundred and twelve pounds) (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Deed.

## **7 MISCELLANEOUS**

7.1 The covenants on behalf of the parties hereto to be observed and performed under this Deed shall be treated as Local Land Charges and registered at the Local Land Charges Registry by the District Council for the purpose of the Local Land Charges Act 1975.

7.2 Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the District Council and/or County Council in the exercise by it of its respective statutory functions and the rights powers duties and obligations of the District Council and/or County Council under private or public statutes bye-laws orders and regulations may be as fully and effectively exercised as if it were not respectively a party to this Deed.

7.3 Nothing in this Deed shall affect the validity of any act taken by any party to comply with or discharge any obligation contained in the Principal Deed and any matters which have been approved under the Principal Deed or obligations which have been complied with or discharged pursuant to the Principal Deed shall be deemed to have been approved under the Principal Deed or complied with or discharged pursuant to the Principal Deed as varied by this Deed as the case may be.

7.4 Except as varied by this Deed all the covenants terms and conditions contained in the Principal Deed shall remain in full force and effect.

## **8 SEVERANCE**

8.1 If any court or other competent authority finds any provisions of this Deed (or part of any provision) to be invalid, illegal or unenforceable, that provision or part provision



shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of this Deed shall not be affected.

**9 GOVERNING LAW**

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

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

The Common Seal of )  
**SUFFOLK COUNTY** )  
**COUNCIL** )  
was hereunto affixed in the )  
presence of: )



Authorised Signatory

The Common Seal of **MID** )  
**SUFFOLK DISTRICT** )  
**COUNCIL** )  
was affixed in the presence )  
of: )



←  
Authorised Signatory

Executed as a deed by  
**BELLWAY HOMES LIMITED**  
Acting by its attorney  
**NIGEL CLASBY/ ~~DUNCAN FISHER~~**

Signed: \_\_\_\_\_  
BELLWAY HOMES LIMITED by its attorney named above  
In the presence of:

[SIGNATURE OF WITNESS]

.....  
[NAME OF WITNESS]

Becky Lee  
Bellway Homes Limited  
Woolsington House  
Woolsington  
Newcastle upon Tyne  
NE13 8BF

.....  
[ADDRESS OF WITNESS]

SCHEDULE 1

Plan 2

NO	REVISIONS	DATE
1	Issue for Approval	10/10/2017
2	Issue for Approval	10/10/2017
3	Issue for Approval	10/10/2017
4	Issue for Approval	10/10/2017
5	Issue for Approval	10/10/2017
6	Issue for Approval	10/10/2017
7	Issue for Approval	10/10/2017
8	Issue for Approval	10/10/2017
9	Issue for Approval	10/10/2017
10	Issue for Approval	10/10/2017



LAND EAST OF LORAIN WAY, BRAMFORD, SUFFOLK



DETACHED RESIDENTIAL PLOTS

Planning

**UAE**  
 URBAN AND ARCHITECTURAL ENGINEERS  
 100, THE GARDENS, BRAMFORD, SUFFOLK, IP11 2JG  
 www.uae-engineers.co.uk

Land East of Loraine Way,  
 Bramford,  
 Suffolk

Defton House (Bramford) Ltd

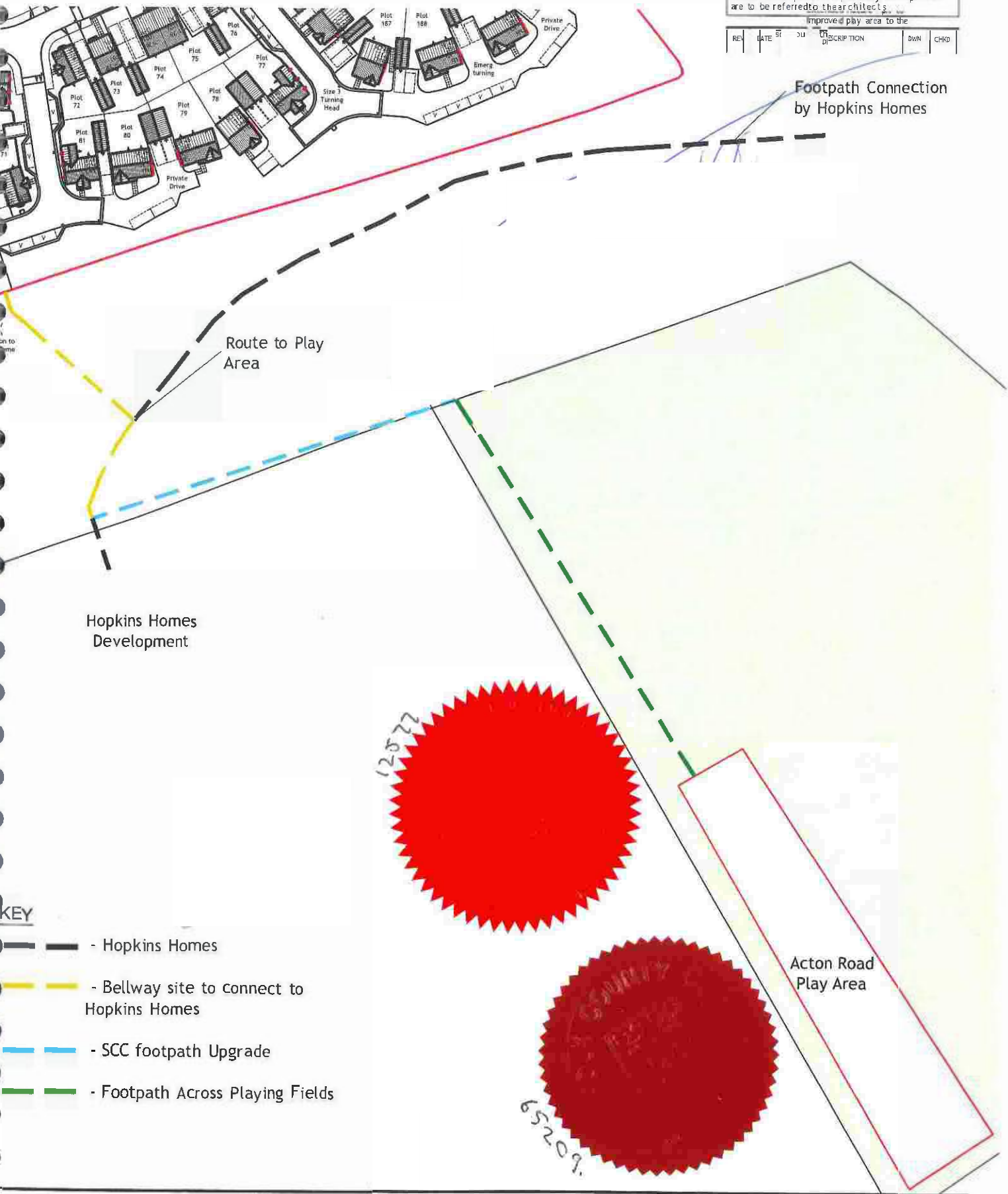
Site No: 100/100

000 / 10	10
10	10

## Plan 3

Contractors are to check all levels and dimensions before work is put in hand, and any discrepancies are to be referred to the architects.

REV	DATE	BY	CHKD	DESCRIPTION
				Improved play area to the



Footpath Connection by Hopkins Homes

Route to Play Area

Hopkins Homes Development

Acton Road Play Area

KEY

-  - Hopkins Homes
-  - Bellway site to connect to Hopkins Homes
-  - SCC footpath Upgrade
-  - Footpath Across Playing Fields



Architects + Interior Designers Limited  
 123 NE WINDON ROAD, CHELMSFORD,  
 ESSEX, CH2 0JF  
 TEL: +44(0)1245 269755 FAX: +44 (0) 1245 250110  
 E: info@lap.architects.co.uk

www.lap.architects.co.uk

project Land East of Loraine Way,  
 Bramford,  
 Suffolk

client Bellway Homes (Essex) Ltd

drawing title Play Area Route

drawing number	revision
8882 -PA-01	
checked ARH	
scale 1 : 1250 @ A4	drawn JWE
	date September 21

**SCHEDULE 2**

**Principal Deed**

DATED 8th July

2019

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Deed pursuant to Section 106 of the Town and  
Country Planning Act 1990

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**MID SUFFOLK DISTRICT COUNCIL (1)**

and

**SUFFOLK COUNTY COUNCIL (2)**

and

**CEMEX UK OPERATIONS LIMITED (3)**

---

Relating to

Land on the East side of The Street, Bramford, Ipswich, Suffolk

**Birketts**



This Deed is made the 8th day of July 2019

**Between:**

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the District Council") and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the County Council") and
- (3) **CEMEX UK OPERATIONS LIMITED** (Company Registration No. 00658390) of Cemex House, Evreux Way, Rugby CV21 2DT ("the Owner")

**Together "the Parties"**

**INTRODUCTION**

1. The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
2. The County Council is the local highway authority (except for trunk roads) and is the local education 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 obligations contained in this Deed are enforceable.
3. The ownership and other interests in the Site are as set out in the First Schedule.
4. The Owner submitted the Application to the District Council for the Development and on 27 March 2019 the District Council resolved to grant the Planning Permission for the Development pursuant to the Application subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed.
5. The District Council enters into this Deed content that the requirements of the District Council's policies are met and that any objections by the District Council to the grant of planning permission on the basis of those policies are overcome.
6. The District Council and the County Council consider and the Owner acknowledges that the Development should not proceed unless certain restrictions regulating the use of the Site are imposed in the manner hereinafter 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.

7. The District Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 and Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended).

**NOW THIS DEED WITNESSES AS FOLLOWS:  
OPERATIVE PART**

**1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings and shall be read in conjunction with the definitions set out in the Second Schedule:

"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 in accordance with Annexe 2 of the National Planning Policy Framework 2019
"Affordable Housing Contribution"	the sum calculated in accordance with the District Council's affordable housing policies in place at the time to be paid to the District Council to spend on Affordable Housing within the administrative district of the District Council in the event that the Owner is unable to dispose of the Affordable Housing in accordance with the Second Schedule
"Affordable Housing Nomination Agreement"	an agreement substantially in the form set out in the Sixth Schedule (subject to such amendments as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of that agreement are met) dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units and "Nomination Agreement"

shall have the same meaning

"Affordable Housing Scheme"

a written scheme approved by the District Council as part of the reserved matters application for the written approval of the District Council identifying the location number of bedrooms, mix and tenure of each Affordable Housing Unit (unless otherwise agreed in writing with the District Council)

"Affordable Housing Units"

the Dwellings identified in Paragraph 1.1 of Part 2 of the Second Schedule to this Deed all of which shall be provided on the Site pursuant to the Planning Permission to be Occupied as Affordable Housing in accordance with the Affordable Housing Scheme and for the avoidance of doubt and unless otherwise agreed in writing with the District Council will have a tenancy split of seventy-five per cent (75%) Affordable Rent and shall be Occupied by persons allocated in accordance with a Choice Based Letting Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to the deed of nomination rights as varied from time to time and twenty-five per cent (25%) Shared Ownership and shall be Occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme)

"Affordable Rent"

housing made available by a Registered Provider as low-cost rental accommodation (as defined by section 69 of the Housing and Regeneration Act 2008) with a rent charged at a level up to 80% of the equivalent market rent including any service charges applicable or the local housing rate allowance

"Application"

the application for outline planning permission for the Development validated by the District Council on 18 January 2018 and allocated reference DC/18/00233

“Chargee of the Registered Provider”	any mortgagee or chargee of a Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or housing administrator pursuant to section 101 of the Housing and Planning Act 2016
“Chargee’s Duty”	the tasks and duties set out in paragraph 1.9 of part 2 of the Second Schedule
“Choice Based Lettings Scheme”	an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the District Council is a party
“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 other than (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, any underground works, construction of access road (whether temporary or permanent), construction of temporary site compound and temporary marketing suite, erection of any temporary means of enclosure/ site security and the temporary display of site notices or advertisements and any other preparatory works as may be agreed with the District Council and “Commence”, “Commenced” and “Commencement” shall be construed

	accordingly
“Completion of the Development“	the date that the last Dwelling is first Occupied
“County Council Nominee“	any person company body or organisation that the County Council shall employ fund or work in partnership with in connection with the design construction commissioning running or maintenance of the Pre-school Facility AND FOR THE AVOIDANCE OF DOUBT the County Council’s Nominee may include any providers of free state education or childcare of any type
“Development“	the residential development of up to one hundred and ninety (190) Dwellings including affordable homes, a site for the pre-school facility, with areas of landscaping and public open space, new access from Loraine Way and pedestrian and cycle links as set out in the Application
“Dwelling”	any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission and “Dwellings“ shall be construed accordingly
“Footpath improvements Contribution“	the sum of £21,750 (twenty-one thousand seven hundred and fifty pounds) to be paid to the County Council to fund upgrading resurfacing and widening to Bramford FP11 (approximately 340 metres in length)
“Habitats Sites“	those sites on the Suffolk Coast which will be included within the definition of “European site“ provided in regulation 8 of the Conservation of Habitats and Species Regulations 2017 (as amended) for the purpose of those regulations
“Habitats Sites Mitigation Contribution“	the sum of up to £38,000 (thirty eight thousand pounds) to be calculated using the Habitat Mitigation Contribution Calculation to be paid to the District Council as a contribution towards the impact of development on the Habitats Sites

"Habitats Sites Mitigation Contribution Calculation"	the sum of £200 (two hundred pounds) multiplied by the total number of Dwellings proposed pursuant to the Planning Permission to calculate the Habitats Sites Mitigation Contribution
"HE"	Homes England or such other organisation as may from time to time be the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers
"Index"	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
"Index Linked"	the increase in any sum referred to in the Second and Third Schedules by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 11 of this Deed
"Late Payment Interest"	interest at 4 per cent above the minimum lending rate of the Bank of England from time to time
"Management Company"	a company or body who will take over responsibility for the future maintenance of the Open Space and which definition may include a resident's association established for this purpose or a private limited company
"Market Housing Units"	those Dwellings which are general market housing for sale or rent on the open market and which are not Affordable Housing Units
"Nominated Body"	one or any of the following as determined by the District Council: a) Bramford Parish Council; b) the Management Company; or c) such other body as the District Council or Bramford Parish Council may elect and "Nominated Bodies" shall be construed

	accordingly
“Notice of Actual Commencement”	notice in writing to advise of the actual date of Commencement
“Notice of Expected Commencement”	notice in writing to advise of the expected date of Commencement
“Occupation”	occupation for the purposes permitted by the Planning Permission 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 and “Occupied” and “Occupy” shall be construed accordingly
“Off-Site Highway Works Contribution”	<p>the sum of £184,610 (one hundred and eighty-four thousand six hundred and ten pounds) Indexed Linked to be paid to the County Council to be used for the following purposes only:</p> <ul style="list-style-type: none"> <li>i) to fund junction improvements at the A1071/ B1113 Beagle Roundabout;</li> <li>ii) to fund a new zebra crossing on the B1113 north of the Wild Man access;</li> <li>iii) to fund pedestrian safety on the B1113/ Burstall Lane; and</li> <li>iv) to fund a new cycle link between Sproughton and Bramford;</li> </ul>
“Open and Play Space”	the areas of open and play space shown indicatively on the Open and Play Space Plan
“Open and Play Space Plan”	a plan to be submitted to the District Council for approval indicating the location of the Open and Play Space
“Open and Play Space Specification”	the specification for delivery of the Open and Play Space including the specifications plans and drawings showing but not limited to the layout and design of the Open and Play Space,

the phasing and timing of the delivery of the Open and Play Space including details of any landscaping, paths and access arrangements together with details of the proposed future management regime for the Open and Play Space to be agreed in writing with the District Council in accordance with Part 3 of the Second Schedule

“Open and Play Space Transfer”

a transfer of the Open and Play Space to be approved in writing by the District Council and which inter alia shall contain the following provisions:

- a) The Owner shall transfer the fee simple estate free from encumbrances save those set out in the title;
- b) All easements and rights necessary in relation to access for the benefit of the Open and Play Space;
- c) Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;
- d) Restrictive covenants by the Nominated Body or the Nominated Bodies:
  - (i) Not to use or permit the Open and Play Space to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open and play space as defined in this Deed and shown on the Open and Play Space Plan;
  - (ii) Not to use or permit the Open and Play Space to be used in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of the Development;



"Plan 1"	the plan attached to this Deed Drawing Number J0010676_507_REV2
"Plan 2"	the plan attached to this Deed Drawing Number J0010676_508_REV6
"Planning Permission"	the outline planning permission subject to conditions which may be granted by District Council pursuant to the Application
"Practical Completion"	the issue of a certificate of practical completion by the Owner's architect or project manager or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect or project manager
"Pre-school Contribution"	the sum of £281,293 (two hundred and eighty one thousand two hundred and ninety three pounds) (Index Linked) to be paid to the County Council in accordance with the Third Schedule
"Pre-school Facility"	indoor and outdoor facilities for the education and care of pre-school children
"Pre-school Land"	the area of land shown coloured orange for indicative purposes only on Plan 2 for the provision of Pre-school Facility
"Pre-school Land Notice"	the written notice served by the County Council on the Owner: <ul style="list-style-type: none"> <li>(i) affirming the need for the Pre-school Facility; and</li> <li>(ii) requiring transfer of the Pre-school Land to the County Council or if so directed to by the County Council to the County Council's Nominee;</li> </ul>
"Pre-school Land Transfer"	a transfer of the Pre-school Land to be approved in writing by the County Council and which inter alia shall contain the following provisions:

	lease shall include arrangements enabling the lessee to acquire up to one hundred percent (100%) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates
"Site"	the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Plan 1;
"Travel Plan Implementation Figure"	the sum of seventy three thousand six hundred and twenty five pounds (£73,625) Indexed Linked to be paid to the County Council and to be used in accordance with Part 3 of the Fifth Schedule;
"Travel Plan"	a long-term management strategy that seeks to deliver sustainable transport objectives that is regularly monitored, reviewed and updated;
"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, 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 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 interchangeably 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 reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that act or Directive 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 Directive or deriving validity from it.

- 2.6 Any 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 District Council and the County Council any successors to its statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 References to a "Plan" or "Drawing" in this Deed shall be reference to the plans attached to this Deed bearing the relevant plan number or any amended plans as shall be agreed in writing between the Owner the District Council and the County Council.
- 2.9 None of the covenants contained in this Deed on the part of the Owner shall be enforceable against:-
- (a) those persons who purchase (including purchasers by way of long lease) any Dwelling for occupation by themselves or their lessees tenants or individuals of the Dwellings; or
  - (b) any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.
- 2.10 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 by the District Council and the County Council as appropriate as local planning authorities against the Owner or their successors in title.
- 3.3 This Deed is a Deed and may be modified or discharged in part or in total at any time after the date of this Deed by Deed between the Parties in the form of a Deed.
- 3.4 This Deed is a local land charge and upon completion shall be registered by the District Council as such.

#### 4. **CONDITIONALITY**

The obligations set out in this Deed are conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of the Development

save for the provisions of Clauses **3.4, 7.3, 7.4, 7.5, 7.8, 7.13, 7.14, 9, 15, 18, 21, 22, paragraph 1 of Part 1 of the Second Schedule and paragraph 4 of part 2 of the Third Schedule** and any other relevant provisions 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 PROVIDED THAT the Owner shall 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 and is not superseded by a subsequent planning permission accepted by the Owner 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:

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

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

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

4.3.2 proceedings under Section 288 of the Act are concluded:

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

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

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

5.1 The Owner hereby covenants with the District Council as set out in the Second Schedule so as to bind the Site and each and every part thereof.

5.2 The owner hereby covenants with the County Council as set out in the Third Schedule so as to bind the Site and every part thereof.

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

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

6.2 The County Council hereby 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 District Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the District Council and or the County Council and their duly authorised officers or agents to have access to any part or all of the Site (provided that at all times they comply with the requirements set out in clause 10) or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.

7.2 The Owner agrees declares and covenants both with the District Council and County Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Deed and further shall indemnify the District Council and/or the County Council (as appropriate) for any expenses or liability arising to the District Council and/or the County Council in respect of breach by the Owner or any obligation contained herein save to the extent that any act or omission of the District Council and/or the County Council its employees or agents has caused or contributed to such expenses or liability.

- 7.3 The Owner agrees to pay to the District Council on completion of this Deed the proper and reasonable legal costs of the District Council incurred in the negotiation preparation and execution and completion of this Deed.
- 7.4 The Owner agrees 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.
- 7.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.6 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the District Council by the Professional Lead or officer acting under his hand and on behalf of the County Council by the Director of Resource Management or officer acting under his hand and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.7 Following the performance and satisfaction of all the obligations contained in this Deed the District Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.8 Insofar as any clause or clauses or paragraphs of this Deed are 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 (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of the Development and the District 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 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as local authorities.
- 7.13 The Owner hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.
- 7.14 The Owner covenants and warrants to the District Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

## **8. WAIVER**

No waiver (whether expressed or implied) by the District Council the County Council or the Owner 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 District Council County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **9. CHANGE IN OWNERSHIP**

The Owner agrees with the District Council and the County Council to give each of them independently written notice of any transfer in ownership of its freehold interest in the Site (save for disposals of individual Dwellings or to any statutory undertaker) occurring before all the obligations under this Deed have been discharged such notice to be served within twenty (20) Working Days' of such transfer quoting the District Council's reference DC/18/00233 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 Site purchased by reference to a plan and a copy of the registered title and plan thereto.

## **10. RIGHTS OF ENTRY**

- 10.1 At all times on not less than forty eight (48) hours written notice except in case of emergency with or without notice the Owner shall allow any employee or agent of the District Council or the County Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT: