

DATED

23 MARCH

2022

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

**PLANNING OBLIGATION BY DEED UNDER SECTION
106 OF THE TOWN AND COUNTRY PLANNING ACT 1990**
relating to the development of land south of
Birch Avenue, Bacton

SHARED LEGAL SERVICES
MID-SUFFOLK DISTRICT COUNCIL
ENDEAVOUR HOUSE
8 RUSSELL ROAD
IPSWICH IP1 2BX

DATE

23 MARCH

2022

PARTIES

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich Suffolk IPI 2BX (the **District Council**);
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich Suffolk IPI 2BX (the **County Council**); and
- (3) **BELLWAY HOMES LIMITED** (incorporated in England and Wales with company registration number 00670176) whose registered office is at Bellway Group Office, Woosington House, Woosington, Newcastle-Upon-Tyne, NE13 8BF (the **Owner**).

INTRODUCTION

- (A) The District Council 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) and 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 County Council 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 title number SK406482 as more fully described in the First Schedule
- (D) The Application has been submitted on behalf of the Owner to the District Council for the Development and the District Council has resolved to grant planning permission for the Development pursuant to the Application subject to the prior completion of this Deed to secure the planning obligations contained in this Deed
- (E) The District Council enters into this Deed to the intent 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
- (F) The District 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
- (G) 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 of the Community Infrastructure Levy Regulations 2010 (as amended) (the **Regulation**)

NOW THIS DEED WITNESSES AS FOLLOWS:

1. **DEFINITIONS**

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

Access Estate Road Section

the section of estate road accessing and passing through the Community Hall Site indicated on the Detailed Development Layout Plan including all carriageway footway and engineered or landscaped surface works and all services in on under or over the same subject to such variations as shall be agreed between the Owner and the District Council or determined in default of agreement pursuant to clause 15

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 as defined in Annex 2 of the National Planning Policy Framework 2021

Affordable Housing Land

part(s) of the Site upon which the Affordable Housing Units for that Site shall be provided pursuant to the Planning Permission

Affordable Housing Nomination Agreement

an agreement substantially in the form set out in Seventh 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 "Nominations Agreement" shall have the same meaning

Affordable Housing Scheme

the written scheme shown on the affordable housing location plan reference BW233EC_PL-08_A a copy of which is annexed to this agreement subject to such variations thereto as may be agreed between the Owner and the District Council from time to time

Affordable Housing Units

at least 30 of the Dwellings to be provided on the Site as Affordable Housing of which at least 22 shall be Rental Dwellings and at least 8 of which shall be Shared Ownership Units or Shared Equity Dwellings (unless otherwise agreed in writing with the District Council) to be constructed in accordance with the Affordable Housing Scheme

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 including any service charges applicable (unless otherwise agreed in writing with the District Council)

Application

the application for full planning permission to develop the Site in accordance with the application plans and other materials deposited with the District Council as at the date hereof and bearing the District Council's reference number DC/21/03292

BLCM Date

the first anniversary of the date of this Agreement or the date of First Occupation of the first Dwelling to be Occupied WHICHEVER SHALL BE THE SOONER

BLCM Scheme

the 'Bacton Level Crossing Mitigation' Scheme being a scheme of such reasonable and proportionate measures to improve the safety of the Bacton level crossing as shall meet the tests set out in the Regulation and shall include a programme for the delivery of the measures

Boundary Fencing Scheme

a reasonable scheme of fencing on and inside the boundary of the Site adjacent to the existing railway corridor with an appropriate gate to improve the safety of the said boundary in the vicinity of the Bacton level crossing

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 District Council County Council and the Owner

BCIS Indexed

an increase by an amount equivalent to the increase in the BCIS Index from the date hereof until the date on which such sum is payable to be calculated in accordance with Clause 10 of this Deed

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 (or such other scheme as may be agreed) 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

CIL

the Community Infrastructure Levy or any replacement thereof

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 by or on behalf of the Owner on the Site 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 lay of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements although for the purposes of this Deed Commencement of Development shall not include any material operation or otherwise on the land described on the Site Plan for the provision of the Community Hall and "Commencement" and "Commence Development" shall be construed accordingly

Community Hall

the provision of a community hall and associated parking on the Community Hall Site for use by members of the public under Class DF2(b) of the Town and Country Planning (Use Classes) Order 1987 and as agreed pursuant to the Planning Permission

Notice of Actual Commencement

notice in writing to advise of the actual Commencement Date

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

Open Market Value

the value of any Market Housing Unit valued on the basis that it is a general market housing unit for sale on the open market free from any of the obligations, provisions and restrictions of this Deed in a transaction between a willing buyer and a willing seller each acting knowledgeably, prudently and without compulsion

Open Space

an area or areas of open space to be provided within the Site in accordance with the Planning Permission (unless otherwise agreed in writing with the District Council)

Open Space Maintenance Contribution

an agreed sum payable towards the maintenance of the Open Space

Open Space Scheme

the specification for delivery of the Open Space including the specifications plans and drawings showing but not limited to the layout and design of the Open Space, the phasing and timing of the delivery of the Open Space including when the Open Space shall be open and available for use by members of the public, details of the proposed play areas (including the locally equipped area or areas for play (LEAP) which will form part of this scheme) and equipment landscaping, paths and access arrangements, street furniture and fencing together with details of the proposed future management regime for the Open Space and for the avoidance of doubt the Open Space Scheme will include an obligation on the Owner to set out the Open Space to the reasonable satisfaction of the District Council and to remedy any defects in the setting out of the Open Space as requested by the District Council and for the Owner to be responsible for the maintenance of the Open Space to the reasonable satisfaction of the District Council until such time as the Open Space has been transferred to either a Management Company or a Public Body. The Open Space Scheme will include an obligation on the Owner to procure that there is public access to the Open Space subject to: (i) the right of the Owner to temporarily close any such part thereof as may be necessary to enable it to lay maintain repair replace or relocate Service Installations; and (ii) rules and regulations enacted by the Owner in the interests of health safety or wellbeing of users or good estate management

Open Space Transfer

a transfer of the Open Space to be approved in writing by the District Council (acting reasonably) and which shall include the following provisions

- (i) The Owner shall transfer the fee simple estate free from encumbrances save as those set out in the title;
- (ii) All easements and rights necessary to access for the benefit of the Open Space
- (iii) Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development and the use and enjoyment of the Development and the Owner's retained land;

- (iv) A reservation of all rights of access, maintenance and passage of services and rights of entry reasonably necessary for the purpose of the Development and to enable the Owner to comply with its obligations set out in this Deed;
- (v) Such other covenants and reservations as the Owner may reasonably require including but not limited to the preservation of the appearance of the Development once it is completed;
- (vi) The following restrictive covenants for the Public Body or Management Company (as appropriate)
 - (a) Not to use or permit the Open 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 space (save that this provision shall not apply to any part of the Open Space that includes any sustainable urban drainage system);
 - (b) Not to use or permit the Open Space to be used in a manner which may be or may become a nuisance (whether or not amounting to a legal nuisance) annoyance, disturbance or cause damage to the rest of the Development

and in the event that a Public Body is to maintain and manage the Open Space pursuant to the approved Open Space Scheme the Open Space Maintenance Contribution shall be paid to the Public Body on completion of the transfer of the Open Space AND FOR THE AVOIDANCE OF DOUBT there shall be no obligation to pay the Open Space Maintenance Contribution if the Management Company is to be responsible for the maintenance and management of the Open Space

Outline Planning Permission

the outline planning permission granted by the District Council bearing reference DC/18/05514

Outline Scheme Agreement

an agreement dated 11 June 2020 between: (1) the District Council (2) the County Council and (3) Andrew Richard Gooderham pursuant to section 106 of the Act in respect of the development authorised by the Outline Planning Permission

Planning Obligations

the obligations set out in the Second and the Third Schedules

Planning Permission

the planning permission subject to conditions as may be granted by the District Council pursuant to the Application such planning permission and any minor material and/or non material amendment effected thereafter pursuant to section 96A of the Act from time to time

Primary Education Contribution

the sum of up to four hundred and eleven thousand eight hundred and thirty one pounds (£411,831) (based on the Development including 85 Dwellings) to be calculated as four thousand eight hundred and forty five pounds and seven pence (£4,845.07) per Dwelling payable BCIS Indexed to the County Council to be used towards delivering a new Primary School serving the Development

Primary School

a new school with pre-school provision providing state education for primary aged children including for the avoidance of doubt a local authority-controlled school, academy and free school

Protected Tenant

any tenant who has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit or who staircases to 100% in the case of a Shared Ownership Unit

Public Body

the District Council or a local community group or the Parish Council for the area in which the Site is located

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 HE under Chapter 3 of that Act (unless otherwise agreed in writing)

Rental Dwellings

an Affordable Housing Unit which is to be let at an Affordable 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

RPI

the Retail Prices Index published by the Office for National Statistics 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 County Council and the Owner

RPI Indexed

an increase by an amount equivalent to the increase in the RPI from the date hereof until the date on which such sum is payable to be calculated in accordance with Clause 10 of this Deed

Secondary School Transport Contribution

the sum of up to £76,800 RPI Indexed (based on the Development including 85 Dwellings) to be calculated as £903.52 per Dwelling RPI Indexed for the purpose of providing free school transport to pupils (between the ages of 11 and 16 inclusive) that live on the Site to and from the nearest appropriate secondary school that has capacity to admit pupils living on the Site

Service Installations

any pipes, conduits, cables, tanks, chambers and associated infrastructure for the running of services including gas, water, foul, drainage, electricity and telecommunications services

Shared Equity Dwelling

Dwellings purchased on a shared equity basis whereby not more than 75% of the equity is sold to the purchaser with power to increase their percentage of ownership up to 100% (unless otherwise agreed in writing) after five years of acquisition of the initial share

Shared Ownership Lease

a lease in a form approved by HE or where there is no such form in a form approved by the District Council such lease to provide for the following: i) not more than 75% and not less than 25% of the equity (or such other percentages the District Council may agree) shall be initially sold to the purchaser by the Registered Provider

- (i) a right for the purchaser to increase their ownership up to 100% if they so wish;
- (ii) an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding the Retail Price Index (All Items)

published by the Office for National Statistics (or if such index ceases to be published such other index as the District Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of HE

Shared Ownership Unit

Affordable Housing Units to be let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time being in force in accordance with the terms as set out in the HE's capital funding guide unless otherwise agreed in writing with the District Council;

Site

the land against which this Deed may be enforced and as shown edged red on the Site Plan

Site Plan

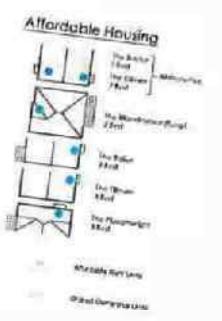
the filed plan in respect of registered title number SK406482 attached to this Deed;

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 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
- 2.6 References to any party to this Deed shall 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 District Council and or the County Council their successors to their respective statutory functions
- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the District Council or the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document
- 2.8 References to a "Plan" or "Drawing" in this Deed shall be references to the plans attached to this Deed bearing the relevant plan number or any amended plans or replacement plans as shall be agreed between the Owner the District Council and the County Council



Accommodation Schedule

Affordable Housing						
No	Ref	Block	Units	Storeys	sqm	Total sqm
1	SHD	Woodlander (Bulge)	2	3	828	2540
2	SO	Tricouster	1	3	550	1700
3	GO	the cluster	2	3	700	2100
17	BA	the cluster	2	3	876	2628
4	PIV	the highrises	2	3	1026	3078
0	TI	the hillman	2	2	328	1026
30						
total					2964	8972
85						8465

Bilwa y
 Building & Planning
 1000 Birch Avenue,
 Badon

Discription:
**Affordable Housing
 Location Plan**



Legend

- 26 Private Plot Number
- 26 Affordable Plot Number
- Affordable Housing
- 2.5m x 5m parking space
- VP Visitor Parking
- 6 Allocated parking space
- 3.5m Acoustic Fencing
- 1.8m high brick wall
- 1.8m high close board fence
- 1.8m high larch lap fence
- 1.0m high Estate railings
- 1.2m high Timber post & rail fence
- close board gate



Bellway

Bellway Homes Limited
10000 Highway 100
Edmonton, Alberta T6E 4E1
Canada
Tel: 780-429-2222

Project:
Land off Birch Avenue,
Boclan

Description:
**Detailed
Development
Layout**

Date:
Jan 2021
Drawing Scale:
1:500 @ A0
Drawing Number:
B14233EC_PL

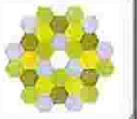
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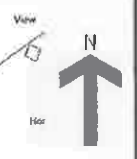


HM Land Registry
Official copy of
title plan

Title number **SK406482**
Ordnance Survey map reference **TM0566NE**
Scale **1:1250** enlarged from **1:2500**
Administrative area **Suffolk: Mid Suffolk**



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This official copy issued on 15 April 2021 shows the state of this title plan on 15 April 2021 at 14:54:00.
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 HM Land Registry, Durham Office.

2.9 None of the covenants contained in this Deed on the part of the Owner shall be enforceable against:-

2.9.1 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 any person deriving title from any of them (save only that the restrictions relating to Occupation set out herein in respect of the Affordable Housing Units in paragraphs 2.6 and 2.8 of Part 2 of the Third Schedule shall be enforceable against the owners and occupiers of such units unless and until they cease to be so enforceable by operation of that Third Schedule); or

2.9.2 any chargee or mortgagee (or any receiver or other person appointed by such a chargee or mortgagee to assist it to realise its security or any person deriving title through such a chargee or mortgagee or any such receiver or other person so appointed) unless and until it becomes a mortgagee in possession; or

2.9.3 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; or

2.9.4 any person whose only interest in the Site is in the nature of the benefit of a licence easement or covenant; or

2.9.5 the local highway authority.

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 and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 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 in respect of the matters set out in the Third Schedule and by the County Council in respect of the matters set out in the Fourth Schedule 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 agreed between the parties in the form of a deed

4. CONDITIONALITY

This Deed shall take effect on the date hereof save for the Planning Obligations which shall only take effect on:

4.1 the grant of the Planning Permission; and

4.2 the Commencement of Development

5. THE OWNER'S COVENANTS

5.1 The Owner 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 covenants with the County Council as set out in Schedule 3 so as to bind the Site and each and every part thereof

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

- 6.1 The District 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 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 either of the District Council and or the County Council and their duly authorised officers or agents to have reasonable access to any part or all of the Site or any reasonable 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 the 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
- 7.3 The Owner covenants 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 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
- 7.5 The Owner covenants to pay to the County Council on or before completion of this Deed a contribution of £824.00 (eight hundred and twenty-four 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.
- 7.6 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.7 This Deed shall be registerable as a local land charge by the District Council
- 7.8 Where an approval consent certificate or expression of satisfaction or a subsequent deed is required by the Owner from either the District Council or County Council under the terms of this Deed such approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and shall be given on behalf of the District Council by the Corporate Manager - Growth and Sustainable Planning and on behalf of the County Council by the Executive Director of Growth, Highways & Infrastructure or officer acting under his hand AND for the avoidance of any doubt any alleged breach of this obligation shall be capable of determination in accordance with Clause 15 as a decision of the expert pursuant thereto to approve consent or otherwise express satisfaction being deemed to be such approval consent certificate or other expression of satisfaction on the part of the Party from whom it was sought for the purposes of this Deed
- 7.9 Following the performance and satisfaction of all the obligations contained in this Deed the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 7.10 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

- 7.11 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 before the Commencement of the Development or is modified (without the consent of the Owner) and the District Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed
- 7.12 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 of the site in respect of which the 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 licences easements or the benefit of covenants, restrictions or reservations in respect of it
- 7.13 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 nor shall any sum be payable pursuant to this Deed in respect of development authorised by such other planning permission
- 7.14 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived
- 7.15 Save as otherwise provided in this Deed all works and activities to be carried out by the Owner in the performance of the Owner's obligations under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to either the District Council or the County Council
- 7.16 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 their functions as a local authority
- 7.17 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.
- 7.18 The District Council the County Council and the Owner agree and declare that the Outline Scheme Agreement shall not be enforceable against the Owner in respect of the Site with effect from the Commencement of Development such that the implementation construction completion and use of the Development by the Owner in accordance with the Planning Permission shall not in any circumstances constitute a breach of the Outline Scheme Agreement accordingly PROVIDED THAT the Owner shall not carry out any development on the Site pursuant to the Outline Planning Permission

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 the 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 any of its freehold interests in the Site occurring before all the positive obligations under this Deed have been discharged

such notice to be served within twenty one (21) days of such transfer and 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 or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to transfers to any person against whom this Deed is not enforceable including without limitation transferees of individual Dwellings within the Development or the transfer or grant of leases of electricity substations or gas governors or the like

10. **INDEXATION**

Any sum referred to in this Deed which is expressed to be either BCIS Indexed or RPI Indexed shall be increased by an amount equivalent to the increase in the BCIS Index or the RPI Index (as appropriate and unless the context reads otherwise) from the Indexation Start Date until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

- 10.1 A is the sum payable under this Deed;
- 10.2 B is the original sum calculated as the sum payable;
- 10.3 C is the BCIS Index or RPI Index (as appropriate) for the month two (2) months before the date on which the sum is payable; and
- 10.4 D is the BCIS Index or RPI Index (as appropriate) for the Indexation Start Date.

11. **INTEREST**

If any payment due under this Deed is paid late Late Payment Interest will be payable from the date payment is due to the date of payment

12. **RIGHT OF ENTRY**

12.1 At all times on not less than twenty-four (24) hours written notice except in case of emergency with or without notice the Owner shall allow any employee or agent of either or both 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:

- 12.1.1 such employee or agent on arrival at the Site shall if requested by any person present who appears to be the Owner the manager or person in charge thereof produce evidence of identity (but entry may be made if there is or appears to be no such person on the Site)
- 12.1.2 such entry shall be effected between 08.00 and 17.00 on any day
- 12.1.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary
- 12.1.4 such employee or agent may take photographs measurements and levels
- 12.1.5 such employee or agent may not remain on the Site for longer than is reasonably such employee or agent and any other accompanying persons shall comply with the Owner's or the Owner's representative's reasonable directions and precautions in the interests of safety

13. **VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable provided that no person shall be liable for any value added tax other than on receipt of a valid value added tax invoice addressed to them.

14. **NOTICES**

14.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 14.2

14.2 The address for any notice or other written communication in the case of each party to this Deed shall be as follows:-

The District Council	The Corporate Manager - Growth and Sustainable Planning Council Offices Endeavour House 8 Russell Road Ipswich IP12BX
The County Council	The Executive Director of Growth, Highways & Infrastructure (or a duly appointed successor) Endeavour House 8 Russell Road Ipswich Suffolk IP12BX
The Owner	Laura Spriggs Senior Technical Coordinator Bellway Homes Limited (Eastern Counties) 3 Percy Road Huntingdon Cambridgeshire PE29 6SZ

14.3 Any notice or other written communication to be given by either the District Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the District Council or the County Council by a duly authorised officer of the District Council or the County Council as appropriate

15. **DISPUTE RESOLUTION**

15.1 Any dispute or difference of any kind whatsoever arising between any or all of the parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) shall be referred to arbitration before a single Expert (the "Expert")

15.2 The parties shall jointly appoint the Expert not later than twenty-eight (28) days after service of a request in writing by either party to do so

- 15.3 If the parties are unable to agree within twenty-eight (28) days as to the appointment of such Expert then the Expert shall be appointed within a further period of fourteen (14) days on the application of either of the parties as follows:
- 15.3.1 difference or question relates to the rights and liabilities of either party or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society; or
 - 15.3.2 difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers; or
 - 15.3.3 difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the parties but in default of agreement appointed at the request of either party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or
 - 15.3.4 if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute
- 15.4 In the event of a reference to arbitration the parties agree to:
- 15.4.1 prosecute any such reference expeditiously; and
 - 15.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable
- 15.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award
- 15.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing
- 15.7 The award shall be final and binding in the absence of manifest error both on the parties and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be and the Expert's 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
- 15.8 Unless this Deed has already been terminated each of the parties shall in every case continue to comply with its obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause 15 but without prejudice to the rights and obligations of the parties in relation to the termination of the Deed
- 15.9 Nothing in this clause 15 shall affect the ability of the District Council or the County Council or the Owner 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 the terms of this Deed and consequential and interim orders and reliefs

16. **SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED**

Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the District Council or the County Council for a certificate to that effect and upon the District Council or County Council being reasonably satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied the District Council or the County Council shall forthwith issue a certificate to such effect

17. **APPROVALS**

Where any details, programmes, plans, strategies, reports, matters or materials are approved by the District Council or the County Council under the terms of this Deed further or amended details programmes plans strategies reports matters or materials may be submitted from time to time and if approved by the District Council or the County Council shall replace those previously approved

18. **DECLARATION OF COMPLIANCE: COMMUNITY INFRASTRUCTURE LEVY REGULATIONS 2010**

The parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 (as amended) the obligations imposed in this Deed are (a) necessary to make the development permitted pursuant to the Application acceptable in planning terms (b) directly relate to the development permitted pursuant to the Application and (c) fairly and reasonably relate in scale and kind to the development permitted pursuant to the Application

19. **NOTICE OF DEVELOPMENT**

The Owner covenants to inform the County Council by way of written notice of the following:

- 19.1 The Commencement of Development within (10) ten Working Days of the Commencement of Development;
- 19.2 Notice of the first Occupation of the first Dwelling 30 Working Days prior to the first Occupation of the first Dwelling
- 19.3 Notice of the first Occupation of the 40th Dwelling 30 Working Days prior to the first Occupation of the 40th Dwelling.
- 19.4 Notice of first Occupation of the final Dwelling.

20. **JURISDICTION**

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

21. **DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

22. **COMMUNITY INFRASTRUCTURE LEVY**

If after the date of this Agreement there shall be enacted or applied to the Site any "tax" related to the grant of planning permission (whether the community infrastructure levy or otherwise) and the terms of such tax mean that any obligations under this Agreement or under any condition attached to the Planning Permission change or that the Owner must pay a sum to any person (whether HMRC or other central Government entity or to the Council or to the County Council or otherwise) which would duplicate, add to or overlap with any obligation of a party under this Agreement then the parties agree that the terms of this Agreement may at the election of the party affected be modified to such extent (if any) as is necessary to ensure that the party affected shall not be required to contribute (whether by

financial contribution or works in kind or both) more than once (in whole or in part) for any item of infrastructure or matter unless such sum is payable pursuant to an Additional Tax

23. COUNTERPARTS

This Deed may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE EXECUTED THIS DEED ON THE DAY AND YEAR FIRST BEFORE WRITTEN

<p>THE COMMON SEAL of MID SUFFOLK DISTRICT COUNCIL was affixed in the presence of</p>	<p>)))</p>	<p>.....</p>
		<p>Authorised Officer</p>

THE COMMON SEAL of SUFFOLK COUNTY COUNCIL was affixed in the presence of)))
	Authorized Officer
	Anna Mulholland



EXECUTED AS A DEED by **BELLWAY HOMES LIMITED** acting by an Attorney

ATTORNEY

Signature:

.....

Name (in block capitals)

.....

IN THE PRESENCE OF:

Signature:

Name: (in block capitals)

Address: