

DATED 9 DECEMBER 2024

GIVEN BY:

(1) BENNETT PLC

TO:

(2) SUFFOLK COUNTY COUNCIL

UNILATERAL UNDERTAKING UNDER SECTION 106 OF THE
TOWN AND COUNTRY PLANNING ACT 1990

relating to the development of land off Keightley Way, Tuddenham St Martin, Suffolk

DC/22/3748/FUL



Howes Percival LLP
Flint Buildings
1 Bedding Lane
Norwich, NR3 1RG

JZC/213413.0045

WE CERTIFY THIS TO BE A
TRUE COPY OF THE ORIGINAL

SIGNED: [REDACTED]

DATED: 09/12/2024

HOWES PERCIVAL LLP
FLINT BUILDINGS, 1 BEDDING LANE
NORWICH NR3 1RG

THIS DEED is made this

9

day of

December

2024

BY:

- (1) **BENNETT PLC** (Company registration number: 01031743) whose registered office is situated at Low Green Barn, Nowton Bury St Edmunds, Suffolk IP29 5ND ("**the Owner**");

TO:

- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("**the County Council**")

RECITALS

1. The County Council is the local highway authority (except for trunk roads), 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.
2. The Owner is the registered proprietor of the freehold of the Site which is registered at the Land Registry with title number SK433361.
3. The Application was made to East Suffolk Council by the Owner and the Former Owners.
4. The Owner and the Former Owners have appealed against the failure of East Suffolk Council to determine the Application within the requisite time.
5. The Owner has entered into this Deed in order to secure the obligation to pay the Pedestrian Facilities Contribution to the County Council in the manner set out in the Second Schedule in the event the Inspector or Secretary of State consider that the Pedestrian Facilities Contribution complies with the CIL Tests and is a material consideration in the determination of the Appeal.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PROVISIONS

1 DEFINITIONS

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

"Act"	the Town and Country Planning Act 1990 (as amended)
"Appeal"	means the appeal made to the Secretary of State against the non-determination of the Application and allocated appeal reference APP/X3540/W/24/3352886 by the Planning Inspectorate
"Application"	the planning application for the Development validated by East Suffolk Council on 22 November 2022 and allocated reference number DC/22/3748/FUL
"BCIS Index Linked"	the increase in any sum referred to in this Deed by an amount equivalent to the increase in the BCIS Index calculated in accordance with Clause 10 of this Deed
"BCIS Index"	the All In Tender Price Index published by the Building Cost Information Service 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 Owner and the County Council
"CIL Regulations"	Community Infrastructure Levy Regulations 2010 (as amended)
"CIL Tests"	the tests set out in regulation 122(2) of the CIL Regulations
"Commencement"	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, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence" shall be construed accordingly

"Decision Letter"	means the decision letter issued by the Inspector in determining the Appeal or where the Secretary of State recovers the Appeal for determination the decision letter of the Secretary of State;
"Default Interest Rate"	4% per annum above the base lending rate of the Bank of England from time to time unless otherwise provided by this Deed
"Development"	the development of the Site for residential development for 25no. new dwellings pursuant to the Planning Permission
"Dwelling"	any dwelling (including a house flat maisonette or bungalow) to be constructed in accordance with the Planning Permission
"East Suffolk Council"	means East Suffolk Council of East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT
"Former Owners"	means Mr William Lawrence Pipe and Monica Daphne Pipe of Popular Farm, Westerfield Lane, Tuddenham, Ipswich IP6 9BH who were formerly the freehold owners of the Site before the Site was acquired by the Owners pursuant to a transfer dated 22 October 2024 which has been registered at the Land Registry
"Inspector"	an inspector appointed by the Secretary of State to determine the Appeal

"Location Plan"	means the plan attached to this Deed at the first schedule titled "Site Location Plan" with reference 0445-1000
"Occupation" "Occupy" and "Occupied"	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
"Pedestrian Facilities Contribution"	means the sum of £100,000 (one hundred thousand pounds) to be paid to the County Council (subject to Clause 8.9 and Paragraph 1.2 of the Second Schedule of this Deed) as a contribution towards the Pedestrian Facilities Contribution Works
"Pedestrian Facilities Contribution Works"	means the provision or improvement of pedestrian and/or cycle facilities from the Site to local amenities (which may include the provision of local bus stops and/or right of way creation and improvement and which may include the creation of a pedestrian and/or cycle link to the playing fields to the east of the Site) <i>and for the provision of traffic calming and/or speed reduction measures in the vicinity of the Site</i>
"Planning Permission"	the planning permission that may be granted by the Secretary of State or the Inspector pursuant to the Appeal
"Secretary of State"	the Secretary of State for Housing, Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the 1990 Act
"Site"	means the land off Keightley Way, Tuddenham St Martin, Suffolk against which this Deed may be enforced and shown for identification purposes only edged red on the Location Plan to the extent such land is registered at the Land Registry under title number SK433361

“Working Day(s)”	Mondays to Fridays (excluding days that in England and Wales are public holidays and the period between Boxing Day and New Year’s Day) inclusive
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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 any gender include any other genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Unless stated otherwise in this Deed 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 person deriving title through or under that party and in the case of the County Council the successor to their statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

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 County Council as appropriate in the case of covenants made with it as local planning authority against the Owner and their successors in title.

4 CONDITIONALITY

The obligations set out in the Second and Third Schedule are conditional upon:

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

and the rest of the provisions set out in this Deed shall take effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

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

6 LEGAL AND MONITORING FEES

6.1 Immediately prior to the completion of this Deed the Owner shall pay the County Council's reasonable legal costs properly incurred in connection with the negotiation preparation and execution of this Deed.

6.2 Within 10 Working Days of the grant of Planning Permission the Owner shall pay the County Council the total sum of £476 towards the monitoring of the performance of the planning obligations that the Owner is required to observe and perform to the County Council PROVIDED THAT such sum shall not be payable where the Pedestrian Facilities Contribution is not payable pursuant to Clause 8.9 or Paragraph 1.2 of the Second Schedule.

7 INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the County Council by the date it is due, the Owner shall pay interest on that amount at the Default Interest Rate. Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

8 MISCELLANEOUS

- 8.1 The Owner covenants and warrants to the County Council that they are the freehold owners of the legal and beneficial title to the Site respectively and have full power and capacity to enter into this Deed and that 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.
- 8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.3 This Deed shall be registerable as a local land charge by East Suffolk Council.
- 8.4 Any notice or written communication to be served or given by one party to any other party under the terms of this Deed shall be deemed to have been properly served or given if delivered by hand or sent by first class post or registered or recorded delivery to the following addresses:
- 8.4.1 Owner: at the address at the beginning of this Deed;
- 8.4.2 County Council: shall be addressed to the Executive Director of Growth Highways and Infrastructure at the address at the beginning of this Deed; or
- 8.4.3 such other address as may be notified in writing from time to time.
- 8.5 Following the performance and satisfaction of all the obligations contained in this Deed the County Council shall forthwith affect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

- 8.6 Insofar as any clause or clauses 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.
- 8.7 Subject to clause 8.6 and clause 15 of this Deed, 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 Development.
- 8.8 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 to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT neither the reservation of rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or part of the Site) shall constitute an interest for the purposes of this Clause.
- 8.9 Any obligation contained in this Deed shall not apply and not have any force nor effect if the Inspector appointed to determine the Appeal finds in his/her Decision Letter in respect of the Appeal that a particular obligation or part thereof is not a material consideration in the granting of the Planning Permission pursuant to the Appeal or in accordance with the CIL Tests or should the Inspector find in his/her Decision Letter that a particular obligation as defined or provided for in this Deed should be deleted or amended so as to ensure compliance with the CIL Tests or to otherwise enable the grant of Planning Permission such contribution and/or obligation in this Deed shall be treated as so amended in accordance with the Inspector's decision.
- 8.10 The covenants, restrictions and requirements contained in this Deed shall not be enforceable against:
- 8.10.1 owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them;
- 8.10.2 a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker;

- 8.10.3 any mortgagee or chargee of the whole or any part of the Owner's interest in the Site unless such mortgagee or chargee takes possession of the Site or part thereof in which case it will be bound by the obligations as a person deriving title from the Owner.
- 8.11 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.
- 8.12 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 8.13 The Owner covenants from the date that this Deed takes effect to allow the County Council, and their duly authorised officers or agents at all reasonable times on reasonable notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed and in doing so the County Council shall have regard to all health and safety requirements when visiting the Site.
- 8.14 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.

9 WAIVER

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

10 INDEXATION

Any sum referred to in the Second Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS Index from the date

hereof until the date on which such sum is payable using the application of the formula
 $A = B \times (C/D)$ where:

A is the sum payable under this Deed;

B is the original sum calculated as the sum payable;

C is the BCIS Index for the month two (2) months before the date on which the sum is payable;

D is the BCIS Index as of the date of this Deed;

C/D is equal to or greater than 1.

11 VAT

11.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable.

11.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

12 CHANGES IN OWNERSHIP OF THE SITE

The Owner shall give the County Council within ten (10) Working Days written notice quoting reference DC/22/3748/FUL of any change in ownership of their freehold interest in the Site or of any other disposal of any part of the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan save that this requirement shall not apply to any such disposals to individual Dwelling purchasers or disposals of any part of the Site to a statutory undertaker.

13 NOTICES

The Owner covenants to inform the County Council by way of written notice within fourteen (14) Working Days following:

- (i) Commencement of Development; and
- (ii) First Occupation of the first (1st) Dwelling.

14 JURISDICTION

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

15 FUTURE PERMISSIONS

15.1 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

15.2 In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that such new planning permission is granted pursuant to section 73 of the Act:

15.2.1 the obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission relate to and bind the Site in respect of any planning permission granted pursuant to Section 73 of the Act; and

15.2.2 the definitions of Application and Planning Permission shall be assumed to include references to any applications under section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of East Suffolk Council in determining any applications under section 73 of the Act and the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section

73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification pursuant to section 106A of the Act.

16 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.

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

FIRST SCHEDULE

Location Plan



Issued for:

PLANNING

Project/Client:

Proposed Residential Development
Land off Keightley Way
Tuddenham
(Bennett Homes)

Project No:

0445

Dwg No:

1000

Rev:

-

Scale:

1:1250 @ A3

Drawing:

Site Location Plan

North:



Drawn By:

PJA

Date:

06/2022

Checked By:

PJA

Date:

06/2022

aa
ashendenarchitecture

SECOND SCHEDULE

The Owner's covenants to the County Council

1 Pedestrian Facilities Contribution

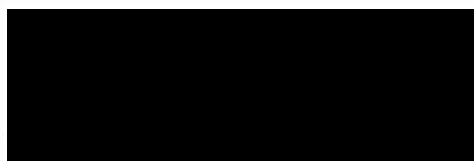
1.1 Subject to paragraph 1.2 of this Second Schedule the Owner hereby covenants as follows (unless otherwise agreed in writing by the Owner and the County Council):

1.1.1 To pay the Pedestrian Facilities Contribution to the County Council in a single lump sum payment prior to the Occupation the first Dwelling.

1.1.2 Not to Occupy any Dwellings on the Development or allow the Occupation of any Dwelling on the Development until the Pedestrian Facilities Contribution has been paid to the County Council.

1.2 The obligation to pay the Pedestrian Facilities Contribution in paragraph 1.1 of this Second Schedule shall not apply and shall determine absolutely where a planning condition which includes restrictions or limitations on the Development in connection with the Pedestrian Facilities Contribution Works (including where compliance with a planning condition gives rise to a requirement to carry out any Pedestrian Facilities Contribution Works) is included on any Planning Permission

Executed as a deed by)
BENNETT PLC)
acting by a director)



.....
Director

in the presence of:

Signature of Witness



Name (in BLOCK CAPITALS): *BETHANY BOUCHER*

Address

**HOWES PERCIVAL LLP
FLINT BUILDINGS
1 BEDDING LANE
NORWICH NR3 1RG**