

DATED

25th September

2014

BELLWAY HOMES LIMITED

and

HAMPSHIRE COUNTY COUNCIL

and

THE COUNCIL OF THE BOROUGH OF HAVANT

DEED OF VARIATION

Pursuant to Section 106 and Section 106A
of the Town and Country
Planning Act 1990 (as amended)

relating to

**Land north of Goldring Close and My Lords Lane,
east of Margarets Road and south of Beech Grove
and Hawthorne Grove, Hayling Island**

THIS DEED is made the 28th day of September 2014
BETWEEN:

- (1) **BELLWAY HOMES LIMITED (Co. Regn. No. 00670176)** whose registered office is at Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle NE13 6BE ("**the Owner**")
- (2) **HAMPSHIRE COUNTY COUNCIL** of the Castle, Winchester, Hampshire SO23 8UJ ("**the County Council**")
- (3) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza, Civic Centre Road, Havant, Hampshire PO9 2AX ("**the Council**")

WHEREAS:

- (1) The Council is the local planning authority for the purposes of the Planning Act for the area within which the Land is situate and by whom the obligations in this Deed are enforceable
- (2) The County Council is a local planning authority for the purposes of the Planning Act and is the highway authority for Hampshire (save for trunk roads and special roads) for the purposes of the Highways Acts 1980 and the transport authority for Hampshire for the purposes of the Transport Acts of 1985 and 2000 for the area in which the land is situate and considers that the Development will necessitate the highway obligations contained and referred to in this Deed
- (3) The Owner is the freehold owner of the Land.
- (4) The Council is the local authority for the purpose of section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this deed will facilitate be conducive and incidental to the Council's functions.
- (5) The Original Planning Permission was granted in respect of the Land subject to the completion of the Original S106 Agreement.
- (6) Owner has submitted the Reserved Matters Application in relation to the Original Planning Permission for the Development to the Council and which was registered by the Council on 16 June 2014 with planning reference APP/14/00488.
- (7) The parties agree that the Original S106 Agreement should be varied pursuant to this Deed

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. Definitions

- 1.1 In this Deed where the context so admits all expressions shall have the same meanings as given to them in the Original S106 Agreement unless otherwise varied by the terms of this Deed and save that the following expressions shall have the following meanings:

"Deed"	means this deed;
"Original Planning Permission"	means the outline planning permission given reference APP/12/00966 for the Development and granted on appeal by the Secretary of State on 18 July 2013;
"Original S106 Agreement"	means the section 106 agreement made under the Planning Act in relation to the Original Planning Permission and dated 4 June 2013;
"Reserved Matters Application"	means the reserved matters application for planning permission submitted by the Owner and registered on 16 June 2014 and given reference APP/14/00488;
"Reserved Matters Permission"	means the grant of reserved matters permission by the Council in respect of the Reserved Matters Application

2. Interpretation

In this Deed (except where the context otherwise requires):

- 2.1 The clause headings do not affect the construction or interpretation of this Deed.
- 2.2 References to the masculine gender shall incorporate the feminine and neuter genders and references to the singular shall include the plural and vice versa unless the contrary intention is expressed.
- 2.3 References to natural persons are to include corporations and vice versa.
- 2.4 References to any statute or section of a statute includes any modification extension or re-enactment of that statute 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

the statute or deriving validity from it.

- 2.5 Any reference to a clause paragraph or schedule is unless the context otherwise requires a reference to a clause paragraph or schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears.
- 2.6 References to the Land include any part of it.
- 2.7 Where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.8 References to any party in this Deed shall include the successors in title to that party and to any person deriving title through or under that party and their assigns and in the case of the Council and the County Council the successors to their functions.
- 2.9 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.

3. Statutory Authority and Legal Effect of this Deed

- 3.1 This Deed varies the Original S106 Agreement and is entered into pursuant to section 106 and 106A of the Planning Act and to the extent that they fall within the terms of section 106 of the Act the obligations contained in this Deed are planning obligations for the purposes of section 106 of the Planning Act and are enforceable by the Council and the County Council.
- 3.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Planning Act, they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972 and all other enabling powers
- 3.3 No person shall be bound by any obligations right or duties contained in this Deed and/or be liable for any breach of covenant and/or obligations contained in this Deed after they shall have parted with all interest in the Land or the part in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest
- 3.4 For the avoidance of doubt the provisions of clauses 7.1 and 7.2 of the Original S106 Agreement shall apply equally to this Deed.
- 3.5 Nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Reserved Matters

Permission) granted (whether or not on appeal) after the date of this Deed

- 3.6 Nothing in this Deed shall be construed as restricting the exercise by the Council or the County Council of any powers exercisable by them under the Planning Act or under any Act or any statutory instrument order or byelaw in their exercise of their statutory functions

4. Conditionality

- 4.1 The covenants undertakings obligations and restrictions set out in this Deed shall become binding on the parties subject to and conditional upon the:

- 4.1.1 Grant of the Reserved Matters Permission; and
4.1.2 Implementation of the Development.

5. Variation of the Original S106 Agreement

- 5.1 Unless varied by this Deed the obligations contained in the Original S106 Agreement shall remain in full force and effect to the extent that they remain to be performed and for the avoidance of doubt it is not intended that there will be any duplications of the Owner's obligations.
- 5.2 The parties to this Deed hereby agree that the terms of the Original S106 agreement shall be varied as follows:
- 5.2.1 Within the meaning of the definition of "Development" shall **REPLACE** the words "10No. 1 bed flats, 4No. 2 bed flats, 48No. 2 bed houses, 49No. 3 bed houses, 20No. 4 bed houses" **WITH** the words "10No. 1 bed houses, 25No. 2 bed houses, 52No. 3 bed houses, 40No. 4 bed houses and 4No. 5 bed houses"
- 5.2.2 The meaning of the definition of "Land" shall be **DELETED** and **REPLACED** with the words "means the and lying to the north of Mengham Lane, Mengham, Hayling Island and shown for identification purposes only edged by heavy red line on Plan A and registered at the Land Registry within title number HP115698"
- 5.2.3 The "Residential Travel Plan" at Annex 3 of the Original S106 Agreement shall at paragraph 4.2 (page 15) **REPLACE** the four bullet points **WITH** the following bullet points:
- 10 x 1 bed house;
 - 16 x 2 bed house; and
 - 13 x 3 bed house.

5.2.4 The "Residential Travel Plan" at Annex 3 of the Original S106 Agreement shall at paragraph 4.3 (page 15) **REPLACE** the four bullet points **WITH** the following bullet points:

- 9 x 2 bed house;
- 39 x 3 bed house;
- 40 x 4 bed house; and
- 4 x 5 bed house.

6. Miscellaneous

6.1 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.

6.2 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or assign or a statutory successor to a party hereto.

6.3 This Deed is a local land charge and shall be registered as such.

6.4 No waiver (whether express or implied) by the Council or the County Council of any breach or default by the Owner in performing or observing any of the terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing at any time any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner.

6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Reserved Matters Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires before Implementation and whereupon the Council shall procure the cancellation of any entries relating to it in the register of local land charges.

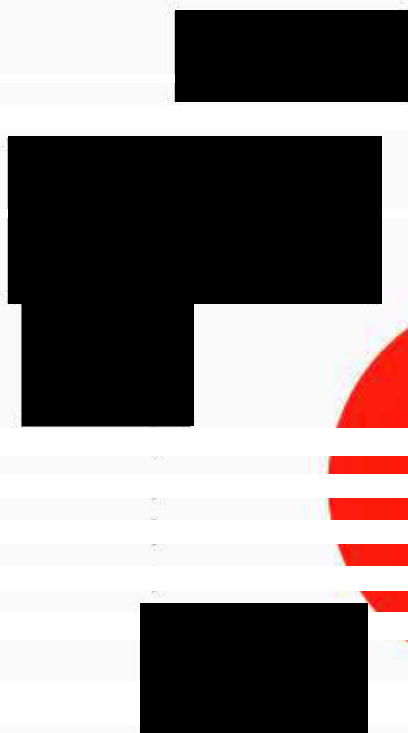
6.6 Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council or the County Council of any powers exercisable by them under the Planning Act or under any other act or authority.

7. Legal Costs

- 7.1 The Owner covenants to pay the Council's reasonable legal costs in negotiating and attending to the completion of this Deed on or before the date of the completion of this Deed.
- 7.2 The Owner covenants to pay the County Council's reasonable legal costs in negotiating and attending to the completion of this Deed on or before the date of the completion of this Deed.

8. Jurisdiction

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



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