

DATED

28 JANUARY

2019

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) PHILIP DYMOKE WHITE, FIONA ELIZABETH WHITE and ALEXANDER STUART DYMOKE
WHITE

and

(3) BELLWAY HOMES LIMITED

SECTION 106 AGREEMENT

relating to the access land at Bartons Road, Havant

THIS AGREEMENT is made on

28 JANUARY

2019

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);
2. **PHILIP DYMOKE WHITE, FIONA ELIZABETH WHITE and ALEXANDER STUART DYMOKE WHITE** of Chidden Farmhouse, Chidden, Hambledon, Hampshire PO7 4TD the trustees of PD White (**First Owner**); and
3. **BELLWAY HOMES LIMITED** incorporated and registered in England and Wales with company number 00670176 whose registered office is at Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle Upon Tyne NE13 6BE (**Second Owner**).

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated.
- (B) The First Owner and the Second Owner are the freehold owners of the whole of the Land.
- (C) The Second Owner has submitted the Application to the Council for permission to develop the Land in accordance with the Planning Permission.
- (D) The Owners enter into this Agreement in anticipation of the grant of Planning Permission being made subject to the Owners entering into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (E) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owners and their successors in title.

The parties agree as follows:

1 DEFINITIONS

From the date of this Agreement unless the context otherwise requires, the following definitions apply:

"the Act"	the Town and Country Planning Act 1990
"Agreement"	this deed of Agreement
"Application"	the application submitted by the Second Owner to the Council for planning permission to carry out the Development and given the Council's reference number APP/18/00565
"Bond"	means a bond issued by a Surety in the form annexed at Appendix 1 to this Agreement (or such other form as the Council shall approve) for the Bond Amount

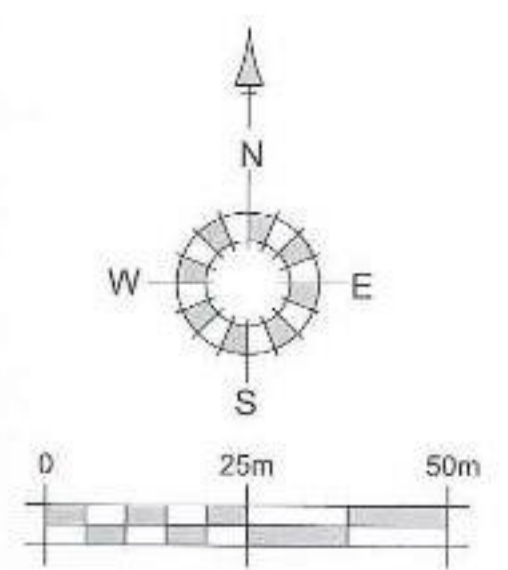
"Bond Amount"	10% of the open book construction costs for the SuDs as approved in accordance with para 2 of Schedule 1
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement 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, and "Commence" and similar expressions shall be construed accordingly
"Cash Deposit"	means a lump sum payment in cash of a sum being 10% of the open book construction costs for the SuDs as approved in accordance with paragraph 2 of Schedule 1
"Common Parts"	means the parts of the Land which comprise the unadopted roads, footways, footpaths, landscaped areas, street lighting, amenity spaces and drainage features
"Development"	the construction of an access road from Bartons Road to the proposed residential development site granted outline planning permission with Council's reference APP/15/01435
"Interest"	means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time
"Land"	means the freehold property being land on the south side of Bartons Road and registered at the Land Registry with title numbers SH34071 and SH48894 and shown edged red on the Plan.
"Management Agreement"	an agreement made between the Owners and the Management Company setting out the terms of appointment of the Management Company with respect to the Development, including the Management Company's responsibilities in implementing and performing the obligations as contained within the Management Plan
"Management Company"	a company limited by guarantee or by shares and established in accordance with the provisions of the Schedule to be charged with the management of the Common Parts and SuDs (if any)
"Management Plan"	a plan for the maintenance and management of the Common Parts and SuDs for the lifetime of the Development to be proposed by the Owners and approved by the Council in accordance with the provisions of Schedule 1
"Monitoring Fee"	the sum of £1386 as a contribution towards the costs incurred by the Council in the provision of a suitably qualified



KEY:

— Application Boundary Line

— Other Land within the Applicant's Control



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REV.	DATE	REVISIONS:
A	15/10/18	Access road design amended.

By
GE

Planning

CLIENT:	Bollway Homes Limited (Wessex)	PROJECT:	Land South of Bartons Road Havant
SCALE:	1:1250 (A3 ORIGINAL)	DRAWING:	Location Plan
DRAWN:	GE		
DATE:	21.05.18	17300	S01 A

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and experienced person(s) whose function is to monitor, coordinate and enforce the obligations contained within this Agreement

"Owners"

means the First Owner and Second Owner together

"Plan"

the site location plan attached to this Agreement with drawing number 17300 S01

"Planning Permission"

the conditional planning permission that may be granted in pursuance of the Application

"SuDs"

means a sustainable drainage system for the Development in accordance with the specification agreed in writing by the Council

"Surety"

means a bank or other financial institution as may be nominated by the Owners and approved by the Council

"Working Day"

a day other than a Saturday or Sunday or public holiday in England.

2 INTERPRETATION

- 2.1 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Land include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and any references to the Council include any successor local planning authority exercising planning powers under the Act.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owners not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.

2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.

3 STATUTORY PROVISIONS

3.1 This Agreement is made by deed pursuant to sections 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.

3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of those sections of the Act and are enforceable by the Council.

3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.

3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT

This Agreement shall have effect from the date hereof.

5 OWNERS COVENANTS

The Owners covenant with the Council to comply, observe and perform the obligations as set out in this Agreement.

6 REGISTRATION

This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

7 RELEASE

7.1 No party (excluding paragraph 1.6 of Schedule 1) shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all of its interest in the Land except in respect of any breach subsisting prior to parting with such interest.

7.2 No planning obligations contained in this Agreement shall be binding on any land held by any of the statutory utilities for their operational purposes.

8 NOTICES

8.1 The Owners agree with the Council to give the Council immediate written notice of any change in Ownership of any of its interests in the Land occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and

8.1.1 registered office where the transferee Owner is a company

8.1.2 usual address where the transferee is not a company

together with details of the area of the Land transferred by reference to a plan

- 8.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.
- 8.3 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council and the County Council shall be marked for the attention of the Head of Legal.
- 8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:
- 8.4.1 if delivered by hand, at the time of delivery; or
- 8.4.2 if sent by recorded delivery, at the time delivery was signed for.
- 8.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.
- 8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Owners shall pay to the Council their reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement up to a maximum sum of £1287.

10 DETERMINATION OF DISPUTES

- 10.1 If any dispute arises out of this Agreement the dispute shall be referred to an arbitrator appointed jointly by the parties if the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors.
- 10.2 The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction then equally).

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to his Agreement and their successors in title.

12 INTEREST

If any financial contribution due under this Agreement is paid late Interest will be payable from the date payment is due until the date of payment.

13 TERMINATION

13.1 The obligations in this Agreement (with the exception of clause 9) shall cease to have effect if before the Commencement of Development, the Planning Permission:

13.1.1 expires;

13.1.2 is varied or revoked other than at the request of the Owners; or

13.1.3 is quashed following a successful legal challenge.

14 FUTURE PERMISSIONS

14.1 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

14.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council or the circumstances in clause 13.1.2 arise.

15 WAIVER

No failure or delay by the Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owners in performing or observing any of the covenants, restrictions or obligations contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16 JURISDICTION

16.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.

16.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

EXECUTED as a DEED by affixing
THE COMMON SEAL of the COUNCIL OF THE
BOROUGH OF HAVANT

in the presence of:

Authorised Signatory



Signed as a DEED by)
PHILLIP DYMOKE WHITE as TRUSTEE)
for PD WHITE in the presence of)



Heidi M Dymoke *HEIDI DYMOK*

Name:

Address:

Occupation:



Signed as a DEED by)
FIONA ELIZABETH WHITE as)
TRUSTEE for PD WHITE in the)
presence of *Heidi M Dymoke*)



Name:

Address:

Occupation:

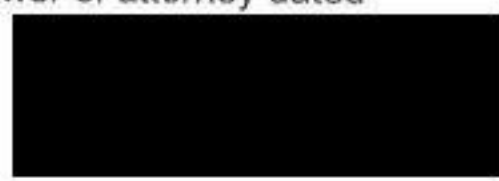


Signed as a DEED by PHILLIP DYMOKE)
~~WHITE and FIONA ELIZABETH WHITE~~)
~~as attorney for ALEXANDER STUART~~)
DYMOKE WHITE (a TRUSTEE for PD)
WHITE) under a power of attorney dated)



CRS

in the presence of



Name:

M. G. E. Morton

Address:

Occupation:



Executed as a DEED by
~~NIGEL CLASBY~~/JAMIE HALL
acting as attorney for
BELLWAY HOMES LIMITED
under a Power of Attorney
dated 21st May 2018



in the presence of:

.....
[SIGNATURE OF WITNESS]
[NAME OF WITNESS]
[ADDRESS OF WITNESS]
[OCCUPATION OF WITNESS]

Nigel Clasby
Group Legal Adviser
Bellway Homes Limited
Seaton Burn House
Dudley Lane
Seaton Burn
Newcastle upon Tyne
NE13 6BE

SCHEDULE 1

Common Parts and SuDs Management

The Owners (and the Council where relevant) covenant:

1. Management Company and Management Plan

1.1 not later than six months following Commencement of Development to submit to the Council in writing for its approval:

1.1.1 the Owners' proposal for the formation of the Management Company and such proposal shall include full details of the proposed structure and voting rights of the Management Company

1.1.2 the Owners' proposal for the Management Plan

1.2 paragraph 1.1 shall not apply where the Owners will be responsible for the maintenance arrangements for the Common Parts and SuDs

1.3 the Council covenants that it will notify the Owners that it either approves or rejects the proposals referred to in paragraph 1.1 within one month of receipt. If notification is not received within that time, the proposal/s will be deemed to be approved

1.4 not later than nine months from Commencement of Development the Owners shall take all necessary steps to secure the formation and registration of the Management Company at Companies House (taking into account any modifications reasonably required by the Council) and to notify the Council accordingly within fourteen days of the completion of the registration of the Company

1.5 to secure the proper maintenance of the Common Parts and SuDs to the reasonable satisfaction of the Council until such time as:

1.5.1 the Management Company is registered (where paragraph 1.1 applies) and the Management Plan has been approved by the Council; and

1.5.2 the maintenance arrangements for the Common Parts and SuDs in accordance with the Management Plan have been fully implemented; and

1.5.3 the transfer or the granting of a long leasehold interest of the Common Parts and SuDs to the Management Company is completed; or

1.5.4 the transfer of the Common Parts to a Management Company is completed (if any) and the SuDs is adopted by a statutory undertaker.

1.6 that if the Management Company ceases to exist as a company or if the Management Company at any time defaults in the performance of any of its covenants or obligations on its part as contained in the Management Plan and/or Management Agreement then the Owners shall (without prejudice to any other right or remedy of the Owners against the Management Company or any other person) perform the said covenants and obligations until the appointment by the Owners of a successor to the Management Company

2. SuDs

- 2.1 not less than two months prior to Commencement of Development to submit to the Council for its approval a bill of quantities detailing the open book construction costs for the SuDs
- 2.2 the Council covenants that it shall within ten Working Days notify the Owners that it either approve the open book construction costs as submitted or proposes such reasonable amendments as are considered necessary. In the event that the Council fails to respond to the open book construction costs within ten Working Days of receipt, the open book construction costs as submitted are to be deemed approved
- 2.3 where reasonable amendments to the bill of quantities are proposed by the Council, the Owners shall not more than ten Working Days after receiving the Council's proposed amendments revise the bill of quantities in accordance with the proposed amendments
- 2.4 on or before Commencement of Development to:
 - 2.4.1 provide to the Council a Bond for the Bond Amount; or
 - 2.4.2 pay the Cash Deposit.
- 2.5 the Bond shall endure, or the Cash Deposit shall be retained by the Council until:
 - 2.5.1 the SuDS is adopted by a statutory undertaker; or
 - 2.5.2 the SuDs is transferred to a Management Company; or
 - 2.5.3 if earlier the date of completion of construction of the SuDS to the satisfaction of the Council.
- 2.6 If:
 - i) the Owners fail to construct the SuDs in accordance with the details as approved by the Council in writing; or
 - ii) prior to completion of the SuDs the Owners are adjudicated bankrupt or goes into liquidation voluntarily or otherwise; or
 - iii) has executed a deed of assignment for the benefit of or otherwise compound with its creditors (except for the purpose of reconstruction or amalgamation)

the Council may (without prejudice to the Council's other rights remedies and powers against the Owners):

- by written notice require the Surety to pay for; or
- the Cash Deposit may be applied to:

any expenditure (including legal costs) which the Council may incur in carrying out the construction of the SuDs to its own design or the Owner's design to return the Land to the level of hydrological response as existed before the Commencement of Development.

SCHEDULE 2

Miscellaneous covenants

The Owners covenant with the Council:

1. Commencement

to give to the Council not less than ten Working Days written notice of their intention to Commence Development

2. Monitoring Fee

2.1 not later than Commencement of Development to pay to the Council the Monitoring Fee

2.2 not to Commence or permit Commencement of Development until the Monitoring Fee has been paid

3. Submission of Documents

to provide when submitting documents or details to the Council pursuant to the Schedules of this Agreement a reference to the Planning Permission, the date and parties to this Agreement, and the paragraph and Schedule under which approval is sought, together with a statement of the date by which a decision must be given by the Council

4. Access to adjoining land

4.1 not to permanently obstruct nor prevent vehicular access to the land to the immediate west of the Development being land at Helmsley House at any time

4.2 not to Commence or permit Commencement of Development until the Council has approved the Owners' proposal for the boundary treatment of the boundary of the Land with the land at Helmsley House

APPENDIX 1

Form of Bond

The Guarantee Bond is made as a deed between the following parties whose names and addresses are set out in the Schedule to this Bond (the 'Schedule'):-

- (1) The 'Contractor' as principal
- (2) The 'Guarantor' as guarantor, and
- (3) The 'Employer'

Whereas

- (1) By a contract (the 'Contract') entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the 'Works') upon and subject to the terms and conditions therein set out.
- (2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

Now this deed witnesses as follows:-

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge any damages sustained by the Employer ("the Damages") which relate to the obligation to carry out the works.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the 'Bond Amount') but subject to such limitation and to clause 4 the liability of the Guarantor to pay the Bond Amount shall be co-extensive with the liability of the Contractor to pay the Damages under the Contract.
- 3 The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond.
- 4 Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach and stating that the amount being demanded has been established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and takes into account all sums due or to become due to the Contractor has been made upon and received by the Guarantor before Expiry.
- 5 The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

