

DATE

20 DECEMBER

2019

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) HAMPSHIRE COUNTY COUNCIL

and

**(3) PHILIP DYMOKE WHITE, FIONA ELIZABETH WHITE and ALEXANDER STUART
DYMOKE WHITE**

and

(4) BELLWAY HOMES LIMITED

DEED OF VARIATION

**PURSUANT TO SECTION 106 AND 106A OF THE TOWN AND
COUNTRY PLANNING ACT 1990**

**relating to a Section 106 Agreement dated 30 November 2016 associated with
the development of Land south of Bartons Road, Havant**

THIS DEED is dated

20 DECEMBER

2019

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);
2. **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire SO23 8UJ (**County Council**);
3. **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
4. **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) This Deed of Variation is made under section 106A of the Act and is supplemental to the section 106 agreement made on 23 November 2016 between (1) the First Owner (2) the Council and (3) the County Council (**Principal Agreement**).
- (B) For the purposes of the Act, the Council and the County Council are the local planning authorities for the area within which the Land is situated.
- (C) The County Council is the local highway authority for Hampshire (save for trunk roads and special roads) for the purposes of the Highway Act 1980, the transport authority for Hampshire for the purposes of the Transport Acts 1985 and 2000 and the local education authority for the area in which the Land is situate.
- (D) The First Owner and the Second Owner are together the freehold owners of the whole of the Land.
- (E) Without prejudice to the terms of the other covenants contained in the Principal Agreement the parties have agreed to modify the affordable housing obligations and highway obligations in the manner set out within this Deed of Variation.

AGREED TERMS

1 DEFINITIONS

- 1.1 In this Deed of Variation unless the context otherwise requires the following words and expressions shall have the following meanings:

"Deed of Variation" means this deed of variation

"Owners" means the First Owner and Second Owner together

"Principal Agreement"

means the Agreement entered into by (1) Philip Dymoke White, Fiona Elizabeth White and Alexander Stuart Dymoke White (as trustees of PD White) (2) the Council of the Borough of Havant and (3) Hampshire County Council pursuant to Section 106 of the Act and dated 23 November 2016

2 INTERPRETATION

- 2.1 Save where expressly stated otherwise the words and expressions used in this Deed of Variation shall have the meaning assigned to them as in the Principal Agreement.
- 2.2 The clause headings in this Deed of Variation are for reference only and do not affect its construction or interpretation.
- 2.3 References to clauses and Schedules are to the clauses and Schedules of this Deed of Variation, unless stated otherwise.
- 2.4 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.5 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.6 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.7 Unless this Deed of Variation 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.
- 2.8 References to the Land include any part of it.
- 2.9 References to any party in this Deed of Variation include the successors in title of that party and any references to the Council and the County Council include any successor local planning authority exercising planning powers under the Act.
- 2.10 References to "including" mean "including, without limitation".
- 2.11 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.
- 2.12 Where two or more people form a party to this Deed of Variation, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.13 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed of Variation shall be unaffected.

3 STATUTORY PROVISION

This Deed of Variation is made pursuant to section 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

4 VARIATIONS TO THE ORIGINAL AGREEMENT

4.1 From and including the date of this Deed of Variation the Principal Agreement shall be read and construed as varied by the provisions of the Schedule to this Deed of Variation.

4.2 Except as provided in this Deed of Variation, it is agreed between the parties that this Deed of Variation is supplemental to and not in substitution for the Principal Agreement and that the terms of the Principal Agreement will continue in full force and effect, subject only to the provisions of this Deed of Variation.

5 COVENANTS TO THE COUNCIL

The Owners covenant to observe and perform the covenants restrictions and obligations contained in the Principal Agreement as varied by this Deed of Variation.

6 COSTS

The Second Owner shall pay on or before the date of completion of this Deed of Variation the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

7 LAND CHARGES

This Deed of Variation shall be registered as a local land charge by the Council.

8 LIMITATION OF LIABILITY

Philip Dymoke White, Fiona Elizabeth White and Alexander Stuart Dymoke White enter into this Deed of Variation in their capacity as trustees of a settlement known as Philip's Leydene Settlement and not in their personal capacity.

9 INDEMNITY

The Second Owner indemnifies the First Owner and will keep the First Owner indemnified in respect of all liabilities, actions, claims, demands, costs, expenses and losses incurred by the First Owner in respect of any failure by the Second Owner to comply with its obligations under this Deed of Variation.

10 THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Variation.

11 GOVERNING LAW

This Deed of Variation and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

IN WITNESS whereof the parties hereto have sealed and/or executed this document as a deed the day and year first before written.

SCHEDULE

Variations to the Principal Agreement

1. at clause 3.1 of the Principal Agreement the following definitions shall be inserted:

"Chargee"

shall mean:

- *any mortgagee or chargee; or*
- *any receiver, administrative receiver or administrator appointed under the Law of Property Act 1925; or*
- *any housing administrator appointed under the Housing and Planning Act 2016; or*
- *any other person appointed under any security document to enable a mortgagee or chargee to realise its security*

of the Alternative Affordable Housing Provider and/or the Registered Provider of the whole of the Affordable Housing Land or any one or more of the Affordable Housing Units.

"Disposal"

in relation to each Dwelling means:

- a) *Occupation by anyone permitted or suffered to Occupy the Dwelling whether by:*
 - i. *a person who has acquired or has contracted to acquire any of the estates further defined in this definition at (b) (c) and (d) below in the Dwelling; or*
 - ii. *who otherwise occupies the Dwelling;*
- b) *the grant and/or assignment of a leasehold interest in respect of the Dwelling; or*
- c) *the transfer of a freehold interest in respect of the Dwelling; or*
- d) *the creation of a freehold interest in the Dwelling by constituting the Dwelling as commonhold land for the purposes of the Commonhold and Leasehold Reform Act 2002, and/or whichever shall first occur;*

and for the avoidance of doubt, such occupation shall not include occupation for the purpose of constructing fitting out decoration or marketing of or display or occupation in relation to security operations for the Development

and "Dispose" and "Disposed of" shall be construed accordingly;

2. Paragraph 1.7 of Schedule One to the Principal Agreement shall be deleted and replaced with the following:

"the Shared Ownership units shall be let to persons who have been nominated by the Help to Buy Agency"

3. Paragraph 1.9(b) of Schedule One to the Principal Agreement shall be construed as if the words *"and the creation of a legal charge or mortgage"* had been inserted following the words *"save for the disposal of the freehold or the long leasehold interest"*

4. Paragraph 1.11 of Schedule One to the Principal Agreement shall be deleted and replaced as follows:

1.11 The provisions of this Agreement relating to the Affordable Housing Units shall not be binding on a Chargee (or any person or bodies deriving title through such Chargee) PROVIDED THAT the Chargee will have first:

1.11.1 given written notice to the Council of its intention to exercise its powers of sale to Dispose of any of the Affordable Housing Units ("Notice"); and

1.11.2 used reasonable endeavours over a period of three months from the date the Notice is served to complete a Disposal of the relevant Affordable Housing Units (s) to either:

- another Affordable Housing Provider; or*
- to the Council.*

1.12 Any Disposal referred to in paragraph 1.11.2 shall be for a consideration not less than the amount properly due and outstanding under the terms of the Chargee's relevant security documentation. This sum shall include all accrued principal monies, interest and the Chargee's reasonable costs and expenses.

1.13 In the event that a Disposal referred to in paragraph 1.11 shall not have been completed within the period of three months referred to in paragraph 1.11.2, the Chargee will be entitled to Dispose of the relevant Affordable Housing Unit(s) free from the provisions of this Agreement relating to Affordable Housing which shall determine absolutely in respect of the relevant Affordable Housing Unit(s).

1.14 For the avoidance of doubt in respect of the relevant Affordable Housing Unit(s) Disposed of in accordance with paragraph 1.11 above the purchaser shall not be subject to the obligations of this Schedule 1 to this Agreement

5. paragraph 1.12 of Schedule One to the Principal Agreement shall be renumbered paragraph 1.15.

6. Paragraph 2.1 of Schedule Three to the Principal Agreement shall be deleted and replaced with the following:

"Not to Occupy or permit Occupation of the Development unless and until the Owners have entered into the Highway Works Agreements with the County Council for the Highway Works, the Site Access Works and the Off-Site Pedestrian/cycle Improvements"

7. Paragraph 2.3 of Schedule Three to the Principal Agreement shall be deleted and replaced with the following:

"Not to Occupy or permit Occupation of the Development unless and until the Site Access Works have been carried out and completed to Completion Certificate Standard"

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

in the presence of:

[Redacted Signature]

Authorised Signatory



**EXECUTED as a DEED by affixing
THE COMMON SEAL of the HAMPSHIRE
COUNTY COUNCIL**

in the presence of:

[Redacted Signature]

Authorised Signatory



Signed as a **DEED** by
PHILIP DYMOKE WHITE in the
presence of

)

)

)

)

Witness signature:

Name:

Address:

Occupation:

Signed as a **DEED** by
FIONA ELIZABETH WHITE in the
presence of

)

)

)

)

Witness signature:

Name:

Address:

Occupation:

Signed as a **DEED** by **ALEXANDER
STUART DYMOKE WHITE** in the
presence of

)

)

)

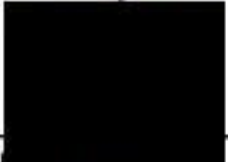
)

Witness signature:

Name:

Address:

Occupation:

Executed as a DEED by)
BELLWAY HOMES LIMITED)
acting by its attorney [~~NIGEL CLASBY/~~)
JAMIE HALL] )
Signed _____)
BELLWAY HOMES LIMITED)
By its attorney named above

in the presence of:

Signature of witness

Name:

Address:



BY THIS POWER OF ATTORNEY made on the 21st May 2019 BELLWAY HOMES LIMITED a Company registered in the United Kingdom under Company Registration number 670176 having its registered office at Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle upon Tyne NE13 6BE (the "Company") HEREBY APPOINTS NIGEL CLASBY (Group Legal Adviser) and JAMIE HALL (Assistant Group Legal Adviser) both of Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle upon Tyne NE13 6BE (the "Attorneys") jointly and severally to be the true and lawful Attorneys of the Company and in the name of and on behalf of the Company to do or execute all or any of the acts, documents and things hereinafter mentioned that is to say:

1. **TO EXECUTE**, settle, approve, sign, deliver and/or issue all deeds, transfers, leases, contracts, agreements, documents, certificates and instruments (all whether as a deed or not) which the Attorney in his absolute discretion considers desirable in connection with:

- 1.1. Agreements, unilateral undertakings, deeds of indemnity and deeds of confirmation pursuant to Section 106 Town and Country Planning Act 1990 (including to the extent that such agreements are entered pursuant to associated local government legislation, including, without limitation, section 111 Local Government Act 1972 and section 1 Localism Act 2011);
- 1.2. All sales contracts, leases, transfers, build contracts, parent company guarantees and associated documents relating to affordable housing sales by the Company;
- 1.3. Design and/or construction and/or engineering works-related documents, including (without limitation) consultant, labour and/or materials supplier, plant hire, contractor and sub-contractor appointments, contracts, terms and conditions and framework agreements; retention agreements and bonds; vesting agreements; collateral warranties and reliance letters; guarantees; letters of intent; novation and assignment agreements and deeds;
- 1.4. HM Land Registry forms and certificates;
- 1.5. HMRC Stamp Duty Land Tax, Revenue Scotland Land and Buildings Transaction Tax and Welsh Revenue Authority Land Transaction Tax returns, submissions and approval forms;
- 1.6. Agreements, bonds and sureties pursuant to Section 38 and 278 Highways Act 1980;
- 1.7. Site investigation licences and short term licencing agreements (being for an initial term of not more than 12 months in duration);
- 1.8. Management agreements and the appointment of management companies and agents in connection with the provision and maintenance of public open space and estate common parts or associated infrastructure;
- 1.9. Transfers of public open space, communal land and associated infrastructure, garden land and any other land considered surplus to the Company's requirements, provided the consideration for such transfer does not exceed £20,000;
- 1.10. Transfers of car parking spaces associated with any plot sales by the Company;
- 1.11. Non-disclosure, confidentiality, exclusivity and lock-out agreements and ~~undertakings~~ **undertakings** of a similar nature;

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FINAL

1.12. Statutory and simple declarations made in relation to excluding security of tenure under the provisions of the Landlord and Tenant Act 1954;

1.13. Any variations, amendments or supplemental agreements to any of the above documents.

2. TO TAKE any steps or do anything which the Attorney in his absolute discretion considers desirable in connection with the implementation and/or execution and delivery of any of the documents referred to at the clause numbered 1 above or the implementation of any of the transactions to which the above documents relate.

AND IT IS HEREBY DECLARED that the Company hereby agrees to ratify and confirm whatsoever the Attorneys shall lawfully do or purport to do by virtue of this Power of Attorney.

All actions authorised by this power of attorney may be taken by either of the Attorneys. Any and all acts done, decisions made and instruments or other documents executed pursuant to this Power of Attorney by either of the Attorneys shall therefore be as valid and effectual as though done by both Attorneys.

The Company declares that a person who deals with either Attorney in good faith may accept a written statement signed by that Attorney to the effect that this Power of Attorney has not been revoked as conclusive evidence of that fact.

AND IT IS FURTHER DECLARED that the power hereby created shall be irrevocable for a period of twelve months from and including the date hereof.

IN WITNESS whereof the Company has executed this Power of Attorney as a deed

Executed as a DEED by)

BELLWAY HOMES LIMITED)

acting by a director and its company secretary)

..... Director

Keith

..... Company Secretary

Simon

BELLWAY CERTIFIED
THIS COPY OF THE
ORIGINAL

Jamie Hall
Assistant Group Legal Adviser
Bellway Homes Limited
Seaton Burn House
Dudley Lane
Seaton Burn
Newcastle upon Tyne
NE13 6BE

21/5/14