

DATED

12 November

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 at Barncroft Infant School, Barncroft Way, Havant, Hampshire

THIS DEED is made the 12 day of November 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) This Deed of Variation ("the Deed") is supplemental to the Section 106 Deed of Agreement made between (1) the County Council and (2) the Council and dated 18 June 2013 ("the Original S106 Agreement") relating to the land at Bamcroft Infant School Bamcroft Way Havant in Hampshire ("the Land") as shown edged red on plan no A/13/687/B attached to the Original S106 Agreement.
- (2) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ("the Act") for the area within which the Land is situate.
- (3) The Owner acquired the County Council's interest in part of the Land and this part was registered at HM Land Registry with title absolute under title no SH38754 and is as shown cross-hatched red on the location plan attached to this Deed ("the Location Plan") (hereinafter referred to as the "Bamcroft Way Site")
- (4) The County Council is the freehold owner of that part of the Land which remains unregistered and is as shown identified cross-hatched blue on the Location Plan (hereinafter referred to as the "Park Lane Site").
- (5) The Council is a local planning authority for the purposes of section 106 of the Act and a local housing authority for the purposes of the Housing Act 1985 and 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 be conducive and incidental to the Council's functions.
- (6) The County Council is also a local planning authority for the purposes of section 106 of the Act the highway authority for Hampshire for the purposes of the Highways Act 1980 (save for trunk roads and special roads) the transport authority for Hampshire for the purposes of the Transport Acts of 1985 and 2000 and the local education authority for the administrative area of Hampshire

- (7) The County Council has appointed the Council to act as its agent for highways under an agency agreement made under Section 9 of the Highways Act 1980
- (8) The outline planning permission reference number APP/11/01802 ("**Original Planning Permission**") was granted in respect of the Land subject to the completion of the Original S106 Agreement.
- (9) The Owner has submitted a reserved matters application reference number APP/14/00774 ("**Reserved Matters Application**") in respect of the development of the Bamcroft Way Site for 34 open market and affordable dwellings following the Original Planning Permission (hereinafter referred to as the "**Phase 1 Development**").
- (10) 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.

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.

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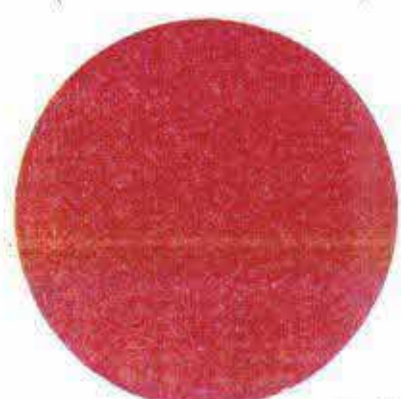
Land at Barncroft Way and Park Lane, Havant

location plan

U4



Scale: 1 x 2500 @ A4



- 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 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 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 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 rights 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 any part of the Land 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 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 approval of the Reserved Matters Application) ("**the Reserved Matters Approval**") granted (whether or not on appeal) after the date of this Deed.
- 3.5 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 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 Owner subject to and conditional upon the grant of the Reserved Matters Approval and the implementation of the Phase 1 Development (and for the avoidance of doubt with the effect that the covenants undertakings obligations and restrictions set out in the Original S106 Agreement as amended by this Deed shall become binding on the Owner in their relevant proportion as related to the Phase 1 Development).
- 4.2 The covenants undertakings obligations and restrictions set out in this Deed shall become binding on the County Council subject to and conditional upon the grant of the Reserved Matters Approval and the implementation of the Phase 1 Development (and for the avoidance of doubt with the effect that the covenants undertakings obligations and restrictions set out in the Original S106 Agreement as amended by this Deed shall become binding on the County Council in their relevant proportion as related to the Phase 2 Development with such proportions conditional on approval of a reserved matters application relating to the Park Lane Site and implementation of the Phase 2 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 The following Definitions contained within clause 5 of the Original S106 Agreement shall be amended as follows:-

- 5.2.1.1 the definition of "Affordable Housing Units" shall be **DELETED** and **REPLACED** with the words:

"a minimum of 30% of the total Residential Units in each of the Phase 1 Development and the Phase 2 Development, the precise number, layout, form and tenure of dwellings to be identified as part of a reserved matters application pursuant to the Outline Planning Permission, subject to a minimum of 50% of the affordable housing units being let at an Affordable Rent and subject to the provisions of clause 20.6";

5.2.1.2 A new definition of "Barncroft Way Site" shall be **INSERTED** and the meaning given to such definition shall be *"means that part of the Land registered with the Land Registry under title number SH38754 known as land on the south west side of Barncroft Way, Leigh Park, Havant PO9 3AG and shown on the Plan as "Barncroft Way Site 0.995ha"*;

5.2.1.3 A new definition of "Affordable Housing Contribution" shall be **INSERTED** and the meaning given to such definition shall be *"means the sum of £14,882.26 which represents the value of 0.2 of an Affordable Housing Unit payable in lieu of onsite provision"*;

5.2.1.4 The definition of "Development" shall be **DELETED** and **REPLACED** with the words

"means development authorised by the Outline Planning Permission consisting of residential development for 34 No. dwellings with access from Barncroft Way known as the Phase 1 Development and 4 No. dwellings with access from Park Lane known as the Phase 2 Development, and with all other matters reserved";

5.2.1.5 The meaning of the definition of "Framework Travel Plan" shall be **AMENDED** and the words *"for the relevant phase of the Development"* **INSERTED** between the words "Owner" and *"in accordance with"* in the second line of the definition

5.2.1.6 The meaning of the definition of "Full Travel Plan" shall be **AMENDED** and the words *"for the relevant phase of the Development"* **INSERTED** between the words "Owner" and *"in accordance with"* in the second line of the definition

5.2.1.7 The meaning of the definition of "Open Space Works Specification" shall be **AMENDED** and the words *"of the relevant phase of the Development"* **INSERTED** at the end of the last line of the definition

5.2.1.8 The meaning of the definition of "Highway Contribution" shall be **DELETED** and **REPLACED** with the words:

"means the sum of money payable separately in two tranches relating separately to the Phase 1 Development and Phase 2 Development in accordance with the following formula:- (£1980 x number of 1 bedroom

Residential Units) + (£3745 x number of 2 and 3 bedroom Residential Units) + (£5457 x number of 4 bedroom Residential Units) provided within the relevant phase of the Development (the number and size of Residential Units to be identified as part of a reserved matters approval pursuant to the Outline Planning Permission), (being applied at such time and in such manner as the Council as agent for the County Council shall in its absolute discretion determine) to the costs to be incurred by the Council or the County Council in the provision, improvement and maintenance of Havant Borough Council's sustainable transport list";

- 5.2.1.9 The meaning of the definition of "Land" shall be **DELETED** and **REPLACED** with the words:

"means the Land being together two separate parcels known as the Barncroft Way Site and the Park Lane Site and shown for identification purposes only edged red on the Plan"

- 5.2.1.10 The meaning of the definition of "Owner" shall be **DELETED** and **REPLACED** with the words:

"means the owner of the Land and in the case of two or more owners each or all of them as owners of any or all parts of the Land as parties to this Deed acting and being obliged by this Deed to discharge the obligations in relation to and in proportion to their respective interest in the relevant part of the Land"

- 5.2.1.11 A new definition of "Park Lane Site" shall be **INSERTED** and the meaning given to such definition shall be *"means that part of the Land unregistered known as land situated to the east of Park Lane and shown on the Plan "Park Lane Site 0.132ha in size"*

- 5.2.1.12 A new definition of "Phase 1 Development" shall be **INSERTED** and the meaning given to such definition shall be *"that part of the Development comprising residential development for 34 No. dwellings on the Barncroft Way Site with access from Barncroft Way";*

- 5.2.1.13 A new definition of "Phase 2 Development" shall be **INSERTED** and the meaning given to such definition shall be *"that part of the Development comprising residential development for 4 No. dwellings on the Park Lane Site with access from Park Lane";*

5.2.1.14 The meaning of the definition of "Playing Space Contribution" shall be **DELETED** and **REPLACED** with the words:

"means the sum of money payable separately in two tranches relating separately to the Phase 1 Development and Phase 2 Development in accordance with the following formula:- £543.50 x number of Residential Bedrooms provided within the relevant phase of the Development (the number of Residential Bedrooms to be identified as part of a reserved matters approval pursuant to the Outline Planning Permission), the sum being a contribution (being applied at such time and in such manner as the Council shall in its absolute discretion determine) to the costs to be incurred by the Council in the provision, improvement and maintenance of playing space to meet the needs of residents of new housing developments"

5.2.2 Recital 2 shall be **AMENDED** and the word "part of" shall be **INSERTED** into the first line after the words "The Owner is the freehold owner of"

5.2.3 The following words to be **INSERTED** at the end of clause 6:
"IN RELATION TO AND IN PROPORTION TO THEIR INTEREST IN THE RELEVANT PART OF THE LAND"

5.2.4 Clause 8 shall be **AMENDED** and the words "its relevant part of" shall be **INSERTED** after the words "and occupation of a freehold estate in"

5.2.5 Clause 17.2 shall be **AMENDED** and the words "part of the Land" shall be **INSERTED** into the second line after the words "Registration of the unregistered"

5.2.6 A new clause 20.20 shall be **INSERTED** which shall read as follows:

"20.20 The Affordable Housing Contribution

20.20.1 The Owner covenants with the Council not to Commence or introduce or cause permit or suffer to be Commenced the Phase 1 Development permitted by the Planning Permission at any time before the Owner shall have paid to the Council or caused to be paid to the Council the Affordable Housing Contribution";

5.2.7 Clause 18.1 shall be **AMENDED** and the words "relevant phase of the" **INSERTED** between the words "Commenced the" and "Development permitted" in the second line of the clause

5.2.8 Clause 19.1 shall be **AMENDED** and the words "relevant phase of the" **INSERTED**

between the words "*Commencement of the*" and "*Development permitted*" in the second line of the clause

5.2.9 Clause 19.2 shall be **AMENDED** and the words "*relevant phase of the*" **INSERTED** between the words "*part of the*" and "*Development permitted*" in the second line of the clause

5.2.10 Clause 20.2 shall be **AMENDED** and the words "*in any phase of the Development*" **INSERTED** between the words "*Residential Units*" and "*to be*" in the first line of the clause **AND** the words "*the Land*" in the second sentence shall be **REPLACED** with "*that relevant phase of the Development*"

5.2.11 Clause 20.3 shall be **AMENDED** and the word "*Land*" in the first line of the clause shall be **REPLACED** with "*relevant phase of Development*"

5.2.12 Clause 20.4 shall be **AMENDED** and the word "*Land*" in the fifth line of the clause shall be **REPLACED** with "*relevant phase of Development*"

5.2.13 Clause 20.7 shall be **AMENDED** and the words "*relevant phase of the*" **INSERTED** between the words "*within the*" and "*Development shall*" in the first line of the clause

5.2.14 Clause 21.1.1 shall be **AMENDED** and the word "*Development*" in the second line of the clause shall be **REPLACED** with "*the relevant phase of the Development*"

5.2.15 Clause 21.1.2 shall be **AMENDED** and the words "*for that particular phase of the Development*" shall be **INSERTED** at the end of the clause

5.2.16 Clause 21.1.3 shall be **AMENDED** and the words "*for that particular phase of the Development*" shall be **INSERTED** between the words "*Open Space*" and "*for the written*" in the first line of the clause

5.2.17 Clause 21.1.4 shall be **AMENDED** and the words "*for that particular phase of the Development*" shall be **INSERTED** between the words "*Open Space*" and "*(including any*" in the second line of the clause

5.2.18 Clause 21.2 shall be **AMENDED** and the words "*for that particular phase of the Development*" shall be **INSERTED** between the words "*Works*" and "*to the*" in the fourth line of the clause **AND** between the words "*Open Space*" and "*free of charge*" in the seventh line of the clause **AND** between the words "*Open Space*" and "*to the*" in the eighth line of the clause

- 5.2.19 Clause 22.1(a) shall be **AMENDED** and the word "Land" in the first line shall be **REPLACED** with "Barncroft Way Site or Park Land Site (as is relevant)" **AND** the words "for that particular phase of the Development" shall be **INSERTED** between the words "Travel Plan Guidance" and "and has" in the third line
- 5.2.20 Clause 22.1(b) shall be **AMENDED** and the word "Land" in the second line shall be **REPLACED** with "Barncroft Way Site or Park Land Site (as is relevant)" **AND** the words "the Land" shall be **REPLACED** with the words "that particular phase of the Development" in the third line **AND** the words "for that particular phase of the Development" shall be **INSERTED** at the end of the third line
- 5.2.21 Clause 22.1(c) shall be **AMENDED** and the words "Land" in the first, second and third lines shall be **REPLACED** with "Barncroft Way Site or Park Land Site (as is relevant)"
- 5.2.22 Clause 22.1(d) shall be **AMENDED** and the words "Land" in the first and second lines shall be **REPLACED** with "Barncroft Way Site or Park Land Site (as is relevant)" **AND** the words "relevant for that particular phase of the Development" shall be **INSERTED** between the words "Full Travel Plan" and "in respect" in the third line **AND** the words "the Land" in the third and fourth lines shall be **REPLACED** with the words "that particular phase of the Development"
- 5.2.23 Clause 15 shall be **AMENDED** and the words "whole or any part of" shall be **INSERTED** before the last two words on the last line "the Land".
- 5.2.24 Clause 23.1 shall be **AMENDED** and the words "Phase 1" shall be **INSERTED** into the first line after the words "prior to Commencement of the".
- 5.2.25 Clause 23.2 shall be **AMENDED** and the words "Phase 1" shall be **INSERTED** into the second line after the words "prior to Occupation of the"
- 5.2.26 Clauses 24.1 shall be **AMENDED** and the words "relevant phase of the" shall be **INSERTED** before the last word "Development".
- 5.2.27 Clause 35(1) shall be **AMENDED** and the words "the part" in the second line shall be **REPLACED** with the words "any part of the Land".

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 Approval 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.

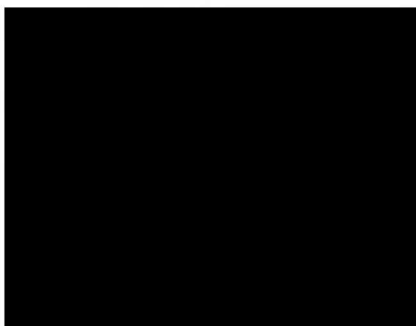
7.2 The Owner covenants to pay the County Council's reasonable legal costs in negotiating and attending to the completion of this Deed on or before the date of the completion of this Deed.

8. Jurisdiction

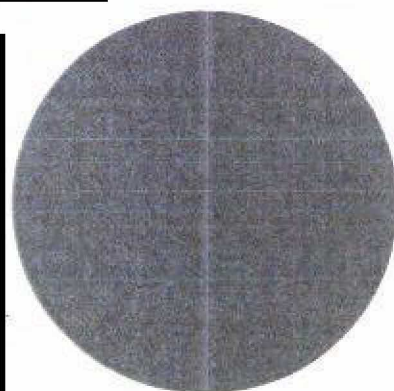
This Deed is governed by and interpreted in accordance with the law of England and Wales.

IN WITNESS whereof the parties hereto have executed and delivered this instrument or document as
a Deed the day and year first before written.

Executed as a DEED by)
BELLWAY HOMES LIMITED acting by two)
directors or a director/secretary)

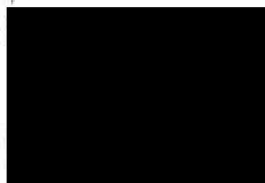


EXECUTED as a DEED by affixing
the COMMON SEAL of
THE COUNCIL OF THE COUNTY
OF HAMPSHIRE
in the presence of



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



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