

Deed of Variation

Pursuant to Sections 106 and 106A of the Town and Country Planning Act 1990 (as amended) relating to Land at south of Weeley Road, Great Bentley, Essex – Planning references 17/01881/OUT (Appeal reference: APP/P1560/W/19/3231554)

- (1) Tendring District Council
- (2) Essex County Council
- (3) Taylor Wimpey UK Limited

Dated 4 August [•] 2022

THIS DEED is dated the [•] day of [•] 2022

Between

- (1) Tendring District Council of Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE (the "Council");
- (2) Essex County Council of County Hall Market Road Chelmsford Essex CM1 1QH (the "County Council"); and
- (3) Taylor Wimpey UK Limited incorporated and registered in England and Wales with company number 01392762 whose registered office is Gate House, Turnpike Road, High Wycombe, Buckinghamshire HP12 3NR (the "Owner").

WHEREAS:

- (A) The Owner holds the freehold interest in the Site registered at the Land Registry under Title Number AA21145 free from any encumbrances that would prevent the Owner from entering into and performing the covenants in this Deed.
- (B) For the purposes of the 1990 Act the Council ^{and the County Council are} the local planning authority for the area in which the Site is situated and is the party by whom the obligations under the Original Agreement to be varied pursuant to this Deed are enforceable. OCUP
- (C) The County Council is ^{also education statutory age education and pre-school age education and children} the local authority for ~~primary and secondary school education~~ and the local highway authority for the area in which the Site is located. OCUP
- (D) The parties entered into the Original Agreement in connection with the Planning Permission.
- (E) The Planning Permission was granted on appeal by the Secretary State on 15 May 2020 under planning appeal reference APP/PI560/W/19/3231554 (reference 17/01881/OUT).
- (F) An application was made under s73 of the 1990 Act to amend the Planning Permission which was granted by the Council on 30 November 2020 under reference 20/01176/OUT (the Section 73 Permission) and the planning obligations in the Original Agreement apply to the Section 73 Permission.
- (G) The Owner has submitted the Reserved Matters Application to the Council and the parties have agreed to enter into this Deed to amend the Original Agreement to secure the planning obligations set out herein.

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS

- 1.1 All words and phrases defined in the Original Agreement shall have the same meaning in this Deed save where the context otherwise dictates and save for the following words and phrases which shall have the following meanings:

Non-adoptable Highways Plan	means the plan appended to this Deed with drawing number 48737/C/003 Rev E dated April 2021
Original Agreement	means the Agreement made pursuant to s106 of the 1990 Act dated 3 October 2019 made between (1) Tendring District Council (2) Essex County Council (3) Roger Gordon Lord (4) Heyford Developments Limited and (5) National Westminster Bank PLC relating

	to planning application reference 17/01881/OUT
Reserved Matters Application	means the reserved application submitted pursuant to the Planning Permission and the Section 73 Permission validated by the Council on 12 July 2021 and allocated reference 21/00977/DETAIL
Reserved Matters Approval	means the reserved matters approval to be granted by the Council pursuant to the Reserved Matters Application
Revised Land Plan	Means the plan appended to this Deed with drawing number 20.1464.311 Rev J dated March 2021
Section 73 Permission	means the Planning Permission granted by the Council on 30 November 2020 for the removal of condition 4d for planning application 17/01881/OUT (allowed at appeal APP/P1560/W/19/3231554) as off-site works no longer required, and given the reference 20/01176/OUT

1.2 Unless the context otherwise requires:

- (a) words in the singular shall include the plural and in the plural shall include the singular;
- (b) a reference to one gender shall include a reference to the other gender;
- (c) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; and
- (d) references to clauses and Schedules are to the clauses and Schedules of this Deed.

1.3 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

1.4 References to the Council ^{and the County Council} and the Owner shall include the successors in title and assigns of each party with respect to their interests bound pursuant to this Deed and in the case of the Council any local authority successor or successor to its statutory functions. OC LLP
and or the County Council

1.5 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. INTERPRETATION AND LEGAL EFFECT

2.1 This Deed is made pursuant to sections 106 and 106A of the 1990 Act.

2.2 The obligations contained in this Deed and which vary the Original Agreement are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner with the intention that they bind the Site and the interests held by it within the Site and its respective successors in title and assigns.

2.3 The obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the 1990 Act.

2.4 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers.

- 2.5 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.
- 2.6 This Deed is conditional upon the grant of the Reserved Matters Approval.
- 2.7 If the Planning Permission or Section 73 Permission shall expire before the Commencement of Development or shall at any time be revoked or shall be modified without the consent of the Owner this Deed shall forthwith determine and cease to have effect in respect of that Permission but without prejudice to any covenants that arise to be performed before any revocation.
- 2.8 Nothing in this Deed shall prohibit the rights to develop all or any part of the Site in accordance with a grant of a planning permission (whether or not granted on appeal) other than the Planning Permission or the Section 73 Permission.
- 2.9 No person shall be liable for any breach of this Deed nor the Original Agreement as varied by this Deed unless they hold an interest in that part of the Site in respect of which such breach occurs or held such an interest at the date of the breach.
- 2.10 Neither the reservation of rights nor the inclusion of any covenants or restrictions over the Site will constitute an interest in the Site for the purposes of this Deed.
- 2.11 Insofar as any provisions of this Deed are held (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.

3. VARIATION OF THE ORIGINAL AGREEMENT

- 3.1 The parties hereby agree that subject to clause 2.6 the Original Agreement shall be varied by this Deed and to be read and construed as varied by the following provisions as set out in this clause 3.1 and the Schedule and Appendices to this Deed as follows:
- a. The following definition shall be inserted at clause 1.1 of the Original Agreement:
"Reserved Matters Approval Implementation" means the carrying out on the Site of a material operation as specified in section 56 of the 1990 Act pursuant to the first reserved matters application granted with respect to the Planning Permission or the Section 73 Permission other than (for the purpose of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological 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, all temporary works of support for existing structures.
 - b. The "Land Plan" appended to the Original Agreement marked with drawing number 30607-9600 Rev A shall be deleted and replaced with the ~~revised "Land Plan"~~ *"Revised Land Plan"* attached to this Deed at Appendix 1 marked with drawing number 20.1464.311/Rev J dated March 2021. acup
 - c. The "Non-adoptable Highways Plan" attached to this Deed at Appendix 2 marked drawing number 48737/C/003 Rev E dated April 2021 shall be inserted into the Original Agreement.
 - d. Schedule 1 of the Original Agreement shall be deleted in its entirety and replaced with the Schedule to this Deed.
- 3.2 The parties confirm that the Original Agreement as varied by this Deed is otherwise to continue in full force and effect and be binding on the respective parties thereto.

4. **RELEASE**

No person shall be liable for any breach of this Deed or the Original Agreement as varied by this Deed after parting with all of its interest in the Site or the part of the Site to which the breach relates.

5. **LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registered as such by the Council.

6. **NO FETTER OF DISCRETION**

Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

7. **THIRD PARTY RIGHTS**

It is agreed that nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contract (Rights of Third Parties) Act 1999 and nothing in this Deed is intended to confer on any third party (whether referred to herein by name class description or otherwise) any benefit or any right to enforce any provision of this Deed.

8. **COSTS**

- 8.1 The Owner will pay the Council's legal costs incurred in the negotiations and completion of this Deed in the sum of £xxxx (xxxxx) (exclusive of Value Added Tax) prior to the completion of this Deed.

9. **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.

10. **GOVERNING LAW**

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

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

8.2 The Owner will pay the County Council's legal costs incurred in the negotiations and completion of this Deed in the sum of £500 (five hundred pounds sterling (no Value Added Tax)) prior to the completion of this Deed

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SCHEDULE

SCHEDULE 1

LANDSCAPING, OPEN SPACE AND AMENITY AREAS

1. In this Schedule the following words and expressions shall have the following meaning:

"Birch Avenue Link" means the link path connecting the Site to Birch Avenue as shown indicatively within the north-western corner of the Site on the Land Plan.

"Landscaped Areas" means the areas of land shown indicatively coloured teal and identified by "Landscaping" on the Land Plan.

"Landscaping and Open Space Completion Certificate" means a certificate or certificates in writing relating to the Landscaped Areas and the Open Space issued by the Council that confirms that the Landscaped Areas and Open Space has been laid out in accordance with the approved Landscaping and Open Space Specification.

"Landscaping and Open Space Plan" means a plan or plans showing the exact location of the Landscaped Areas and/or Open Space.

"Landscaping and Open Space Specification" means a specification or specifications to be approved in writing by the Council for the laying out of the Landscaped Areas and the Open Space.

"Land Plan" means the plan attached to this Agreement marked with drawing number 20.1464.311 Rev J dated March 2021.

"Managed Areas" means the Birch Avenue Link, Landscaped Areas, Non-adoptable Highways and the Open Space.

"Management Plan" means a management plan prepared by the Owner to be approved in writing by the Council for the ongoing management and maintenance of the Managed Areas including for the avoidance of doubt provisions for the rectification of any defects in any area of the same until the completion of the relevant transfer of the relevant part of the Managed Areas to the Management Company.

"Management Company" means a management entity established for inter alia the purpose of managing and maintaining the Managed Areas and funded for that purpose by the Owner and its successors in title and the Occupiers of the Market Dwellings.

"Non-adoptable Highways" means the areas of highway to be delivered as part of the Development shown indicatively coloured pink on the Non-adoptable Highways Plan.

"Non-adoptable Highways Plan" means the plan attached to this Agreement marked with drawing number 48737/C/003 Rev E dated April 2021.

"Open Space" means the areas of land shown indicatively coloured yellow and by "Public Open Space" on the Land Plan with the precise location and boundaries of the Open Space to be as shown on the approved Open Space Plan which shall include the Play Area and which shall be laid out in accordance with the approved Open Space Specification.

"Play Area" means a local area for play to be provided within the Open Space in the location shown indicatively coloured yellow and identified by "LAP" on the Land Plan.

"Relevant Documents" means the Landscaping and Open Space Plan, the Landscaping and Open Space Specification and the Management Plan.

2. *The Owner hereby covenants with the Council to submit the Relevant Documents and details of the Management Company to the Council for approval prior to implementation of the Reserved Matters Approval*
3. *The Council covenants with the Owner to use reasonable endeavours to provide approval in writing of the Relevant Documents within 60 Working Days of receipt in full by the Council.*
4. *The Owner covenants not to permit the Occupation of any of the Dwellings unless and until the Relevant Documents have been approved in writing by the Council.*
5. *The Owner hereby covenants with the Council not to permit the Occupation of more than 50 of the Dwellings (or such later trigger as may be agreed with the Council having regard to the construction programme for the Development) unless and until all of the Landscaped Areas and Open Space has been provided in accordance with the approved Landscaping and Open Space Plan and the Landscaping and Open Space Specification and the Council has issued the Landscaping and Open Space Completion Certificate.*
6. *The Owner hereby covenants with the Council to maintain the Managed Areas following their completion in accordance with the Management Plan until such time as the transfer(s) described in paragraph 8 has been completed.*
7. *The Owner covenants with the Council to transfer the Managed Areas to the Management Company for the consideration of One Pound (£1.00) who shall from that date manage and maintain the Managed Areas in perpetuity.*
8. *The Owner further covenants with the Council to include in the transfer of the Managed Areas to the Management Company:*
 - 8.1 *a covenant by the Management Company only to permit the Open Space to be utilised by the public as open areas for recreation and as a Play Area in accordance with this Agreement;*
 - 8.2 *a covenant by the Management Company to maintain the Managed Areas in perpetuity in accordance with the Management Plan;*
 - 8.3 *a covenant by the Management Company not to transfer the Managed Areas into the individual ownership of the owners of the Dwellings; and*
 - 8.4 *an obligation by the Management Company that should the Council so require the Management Company shall enter into a direct covenant with the Council to perform the obligations set out in paragraphs 8.1, 8.2 and 8.3 of this Schedule.*
9. *The Owner shall furnish a copy of the completed transfer (as referred to in paragraph 8) to the Council in relation to the Managed Areas and shall inform the Council in writing of the contact details of any Management Company.*
10. *The Owner shall include in each transfer or lease of a Market Dwelling an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees of the Market Dwellings shall be sufficient to enable the Management Company to discharge its obligations under this Agreement in relation to the Managed Areas.*

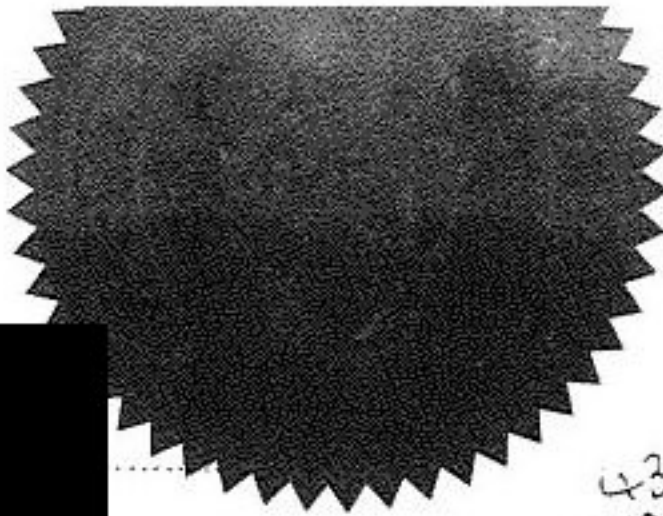
APPENDIX 1

Land Plan

APPENDIX 2

Non-adoptable Highways Plan

Executed as a Deed by
affixing the Common Seal of
TENDRING DISTRICT COUNCIL
in the presence of:-



SEAL REGISTER
NUMBER

43556

The Common Seal of
ESSEX COUNTY COUNCIL
was affixed in the presence of:-



EXECUTED AS A DEED by
TAYLOR WIMPEY UK LIMITED

