

## **Planning Obligation by way of Agreement**

Pursuant to Sections 106 of the Town and Country Planning Act 1990 (as amended) relating to Land at south of Weeley Road, Great Bentley, Essex

- (1) Tendring District Council
- (2) Taylor Wimpey UK Limited
- (3) Roger Gordon Lord and Ella Forsyth Allen

Dated 6<sup>th</sup> September [•] 2022

07 September

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) **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 "Developer"); and
- (3) **ROGER GORDON LORD** and **ELLA FORSYTH ALLEN** of The Glebe, Comey, Millom LA19 5TX (the "Owner")

**WHEREAS:**

- (A) The Developer holds the freehold interest in the Residential Site registered at the Land Registry under Title Number AA21145
- (B) The Owner holds the freehold interest in the Drainage Site registered at the Land Registry under Title Number EX660753 free from any encumbrances that would prevent the Owner from entering into and performing the covenants in this Deed.
- (C) For the purposes of the 1990 Act the Council is the local planning authority for the area in which the Drainage Site and the Residential Site are situated and is the party by whom the obligations under this Deed are enforceable.
- (D) The Developer has submitted the Drainage Application to the Council and the parties have agreed to enter into this Deed to secure the planning obligations set out herein linking the Drainage Development to the Residential Development.
- (D) The Council has resolved to issue the Drainage Permission (as defined herein) subject to the Developer and the Owner first entering into this Deed and providing the covenants herein;
- (E) The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating and facilitating the Residential Development and the Drainage Development in the manner set out in this Deed.
- (F) The Council is satisfied that the planning obligations contained in this Deed comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 in that they are:
  - (i) necessary to make the Residential Development and the Drainage Development acceptable in planning terms;
  - (ii) directly related to the Residential Development and the Drainage Development; and
  - (iii) fairly and reasonably related in scale and kind to the Residential Development and the Drainage Development.
- (G) The Council, the Developer and the Owner have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council against the Developer and the Owner and any successors in title.



NOW THIS DEED WITNESSETH as follows:

1. **DEFINITIONS**

1.1 The following words and phrases shall unless the context otherwise requires bear the following meanings:

<b>1990 Act</b>	means the Town and Country Planning Act 1990.
<b>Commencement of Development</b>	means implementation of the Drainage Permission or the Residential Permission (as the case may be) by the carrying out of any material operation within the meaning of section 56(2) and (4) of the 1990 Act and "Commence" and cognate expressions will be interpreted in accordance with this definition always provided that for the purposes of this Deed the carrying out of the following operations shall not constitute the Commencement of Development:  (a) site investigations or survey,  (b) archaeological works;  (c) site decontamination,  (d) the construction of access and service roads;  (e) excavation works;  (f) clearance or re-grading;  (g) the erection of hoardings and fences;  (h) works connected with infilling; or  (i) works for the provision or diversion of mains services in preparation for development.
<b>Connecting Footpath</b>	means the permissive footpath to be laid out within the Drainage Site pursuant to Condition 16 of the Drainage Permission and as shown indicatively shaded orange on the Connecting Footpath Plan.
<b>Connecting Footpath Plan</b>	means the plan appended to this Deed at Appendix 3 with drawing number 20.1464.40 Rev B
<b>Drainage Application</b>	means the application for planning permission validated by the Council on 12 July 2021 and given reference 21/00978/FUL.

<b>Drainage Development</b>	means the development of the Drainage Site pursuant to the Drainage Permission being "proposed engineering operations required in support of application for Reserved Matters submitted on adjacent land (136 dwellings) including attenuation basin, public footpath, access visibility and construction access".
<b>Drainage Feature</b>	means the drainage feature to be constructed as part of the Drainage Development as approved by the Drainage Permission and as shown indicatively on the Drainage Feature Plan.
<b>Drainage Feature Plan</b>	means the plan appended to this Deed at Appendix 2 with drawing number 48737/C/004 Rev C.
<b>Drainage Permission</b>	means the full planning permission subject to conditions to be granted by the Council pursuant to the Drainage Application.
<b>Drainage Site</b>	means land known as Land to the south of Weeley Road, Great Bentley as shown indicatively edged red on the Drainage Site Plan.
<b>Drainage Site Plan</b>	means the plan appended to this Deed at Appendix 1 with drawing number 20.1462.31.
<b>Dwellings</b>	means the dwellings to be constructed pursuant to the Residential Development and the term "Dwelling" shall be construed accordingly.
<b>Management Company</b>	means a management entity established inter alia for the purpose of managing and maintaining the Drainage Feature and/or the Connecting Footpath in accordance with the Management Plan and to be funded for that purpose by the Developer and its successors in title and the Occupiers of the Market Dwellings and which for the avoidance of doubt may, at the Developer and/or Owner's discretion, be the same entity as any management company established pursuant to the terms of the Residential Site S106 Agreement.
<b>Management Plan</b>	means a management plan prepared by the Developer or Owner to be approved in writing by the Council for the ongoing management and maintenance of the Drainage Feature and Connecting Footpath including for the avoidance of doubt provisions for the rectification of any defects in any area of the same and details of the long term funding arrangements for the continued management and maintenance by the Management



	Company of (i) the Drainage Feature to ensure it remains fully operational and (ii) the Connecting Footpath.
<b>Market Dwellings</b>	has the meaning given to it in the Residential Site S106 Agreement.
<b>Occupation</b>	means occupation of a Dwelling for the purpose permitted by the Residential Permission, but not including occupation by personnel engaged in the construction, fitting out or occupation for marketing or display, and the words "Occupy" and "Occupiers" will be construed accordingly.
<b>Residential Development</b>	means the development of the Residential Site pursuant to Residential Permission.
<b>Residential Permission</b>	means the planning permission granted by the Planning Inspectorate on appeal under reference APP/P1560/W/19/3231554 on 15 May 2020 and relating to the application for planning permission refused by the Council under reference 17/01881/OUT and the section 73 variation to the same granted by the Council on 30 November 2020 under reference 20/01176/OUT.
<b>Residential Site</b>	means land known as Land to The South of Weeley Road and to The East of Birch Avenue and Pine Close Great Bentley as shown indicatively edged red on the Residential Plan.
<b>Residential Site Plan</b>	means the plan appended to this Deed at Appendix 4 with drawing number 17018_01 Rev C.
<b>Residential Site S106 Agreement</b>	means the section 106 agreement dated 3 October 2019 and made between (1) the Council (2) Essex County Council (3) Roger Gordon Lord (4) Heyford Developments Limited and (5) National Westminster Bank PLC as varied by the deed of variation dated 4 August 2022 and made between (1) the Council (2) Essex County Council and (3) the Developer and any subsequent variation thereto.

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, the Developer 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.
- 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 section 106 of the 1990 Act.
- 2.2 The obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are entered into by the Developer and the Owner with the intention that they bind the respective interests held by them within the Residential Site and the Drainage Site and their respective successors in title and assigns.
- 2.3 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, Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.4 The obligations contained in this Deed are enforceable by the Council as the Local Planning Authority in accordance with section 106 of the 1990 Act.
- 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 Drainage Permission and the Commencement of Development of the Residential Permission.
- 2.7 If either the Residential Permission or the Drainage Permission shall expire before the Commencement of Development or either the Residential Permission or Drainage Permission shall at any time be revoked or shall be modified without the consent of the Developer or the Owner this Deed shall forthwith determine and cease to have effect 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 Drainage Site or the Residential Site in accordance with the grant of a planning permission (whether or not granted on appeal) other than the Drainage Permission or Residential Permission.
- 2.9 No person shall be liable for any breach of this Deed unless they hold an interest in the Residential Site or the Drainage 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 Residential Site or the Drainage Site will constitute an interest in the Residential Site or the Drainage 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.
- 2.12 Any person or body that acquires the benefit of a legal charge over the Residential Site or the Drainage Site shall have no liability under this Deed unless it takes possession of the Residential Site or the Drainage Site (as the case may be) or part thereof in which case it too will be bound by the obligations as if it were a person deriving title from the Developer or the Owner (as the case may be).
- 2.13 Nothing in this Deed shall be construed as imposing any obligation on and the obligations contained within this Deed shall not be enforceable against:



- (a) persons occupying completed Dwellings or the persons who purchase Dwellings (including purchasers of long leases) or any mortgagee or successor in title or assigns of any such persons; or
- (b) any statutory undertaker or public authority which acquires an interest in any part of the Residential Site or the Drainage Site for the purposes of its statutory undertaking or functions.

2.14 Where in this Deed there is reference to the need to obtain the Council's consent or approval such consent or approval shall not be unreasonably withheld or delayed.

2.15 Nothing in this Deed 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 Residential Site or the Drainage Site or otherwise.

### 3. **RELEASE**

No person shall be liable for any breach of any of this Deed after parting with all of its interest in the Residential Site or the Drainage Site or the part thereof to which the breach relates save for liability in respect of any antecedent breach prior to parting with their respective interests in the Residential Site or Drainage Site or part thereof.

### 4. **COVENANTS**

4.1 The Developer and Owner HEREBY COVENANTS with the Council:

- (a) To observe and perform the obligations contained in this Deed and Schedule 1 to this Deed;
- (b) To serve notice on the Council in writing of the Commencement of Development not less than four (4) weeks before the expected date of Commencement;
- (c) To serve notice on the Council in writing of the completion of the Drainage Feature within one (1) week of its completion;
- (d) To serve notice on the Council in writing not less than four (4) weeks before the expected date of first Occupation of a Dwelling.

4.2 The Council covenants with the Developer and Owner to comply with its obligations contained in this Deed and Schedule 1 of this Deed.

### 5. **LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registered as such by the Council in its Register of Local Land Charges in accordance with the provisions of the Local Land Charges Act 1975.

### 6. **NOTICES**

6.1 All notices given or served or required to be given or served under this Deed shall be given or served as follows:

- (a) by personal delivery by hand (in which case service is immediately effected).
- (b) by first class post (in which case service is effected on the second day after posting).
- (c) by email if an email address has been provided (in which case service is immediately effected).

6.2 The address for service of notices:

- (a) for the Council if by post or hand delivery addressed to the Assistant Director of Planning at the Council's address at the head of this Deed or by email to [obligations@tendringdc.gov.uk](mailto:obligations@tendringdc.gov.uk) and

marked for the attention of the s106 Officer in all cases marked with the Planning references 21/00978/FUL and 17/01881/OUT (APP/P1560/W/19/3231554);

- (b) for the Developer or Owner to the address at the head of this Deed.

7. **NO FETTER OF DISCRETION**

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

8. **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.

9. **COSTS**

- 9.1 The Developer hereby agrees to pay prior to the date of this Deed the Council's reasonable legal costs and disbursements incidental to the preparation negotiation and entering into of this Deed up to a maximum of £1500.00 (One thousand and five hundred pounds)(no VAT).

10. **SECTION 73 PERMISSIONS**

- 10.1 In the event that the Council shall at any time after the date of this Deed grant a planning permission pursuant to an application under Section 73 of the 1990 Act (or any re-enactment or replacement therefore) in respect of the conditions in the Residential Permission or the Drainage Permission then:

- (a) the obligations in this Deed shall relate to and bind any subsequent planning permission in respect of the Residential Site and the Drainage Site granted pursuant to Section 73 of the 1990 Act and the respective site itself; and
- (b) the definitions of Drainage Application, Drainage Development, Drainage Permission, Residential Development and Residential Permission in this Deed shall be construed to include reference to any application under Section 73 of the 1990 Act, the planning permission granted thereunder and the development permitted by such subsequent planning permission;
- (c) the Drainage Feature Plan and Connecting Footpath Plan shall be deemed to include reference to any alternative plan(s) approved pursuant to such subsequent applications and planning permissions granted under Section 73 of the 1990 Act; and
- (d) this Deed shall be endorsed with the following words in respect of any future Section 73 application:

"The obligations in this Deed relate to and bind the Residential Site and the Drainage Site in respect of which a new planning permission referenced ..... has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

and this Deed shall henceforth take effect and be read and construed accordingly PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are different to those contained in this Deed and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to Section 106 or Section 106A of the 1990 Act.

11. **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.



12. **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.

## SCHEDULE 1

### Part One

1. The Developer and the Owner hereby covenant with the Council:
  - 1.1 not to permit the Occupation of any Dwelling unless and until the Drainage Feature and Connecting Footpath have been constructed and are fully operational to the satisfaction of the Council (acting reasonably);
  - 1.2 to submit the Management Plan to the Council for approval prior to the first Occupation of any Dwelling and not to permit the Occupation of any Dwelling unless and until the Management Plan has been approved by the Council in writing;
  - 1.3 to procure the management and maintenance of the Drainage Feature and Connecting Footpath following their completion in accordance with the Management Plan as approved by the Council to ensure that:
    - (a) the Drainage Feature remains fully operational at all times; and
    - (b) the Connecting Footpath is retained and maintained in perpetuity.

### Part Two

2. The Council covenants with the Developer and the Owner:
  - 2.1 to use reasonable endeavours to provide approval in writing of the Management Plan within 60 Working Days of receipt in full by the Council.



**APPENDIX 1**

**Drainage Site Plan**

**APPENDIX 2**  
**Drainage Feature Plan**



**APPENDIX 3**

**Connecting Footpath Plan**

**APPENDIX 4**

**Residential Site Plan**

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

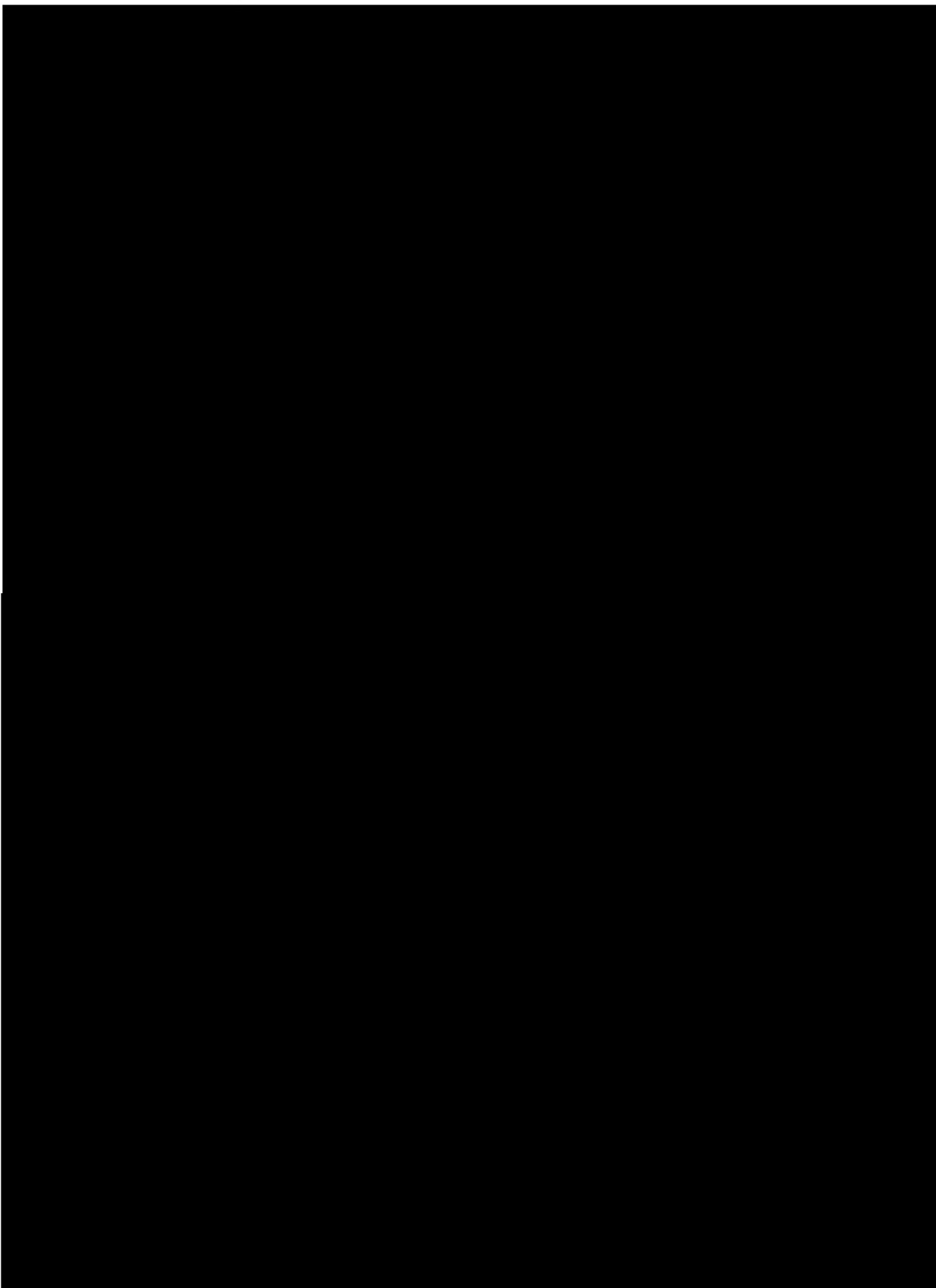
Authorised Officer

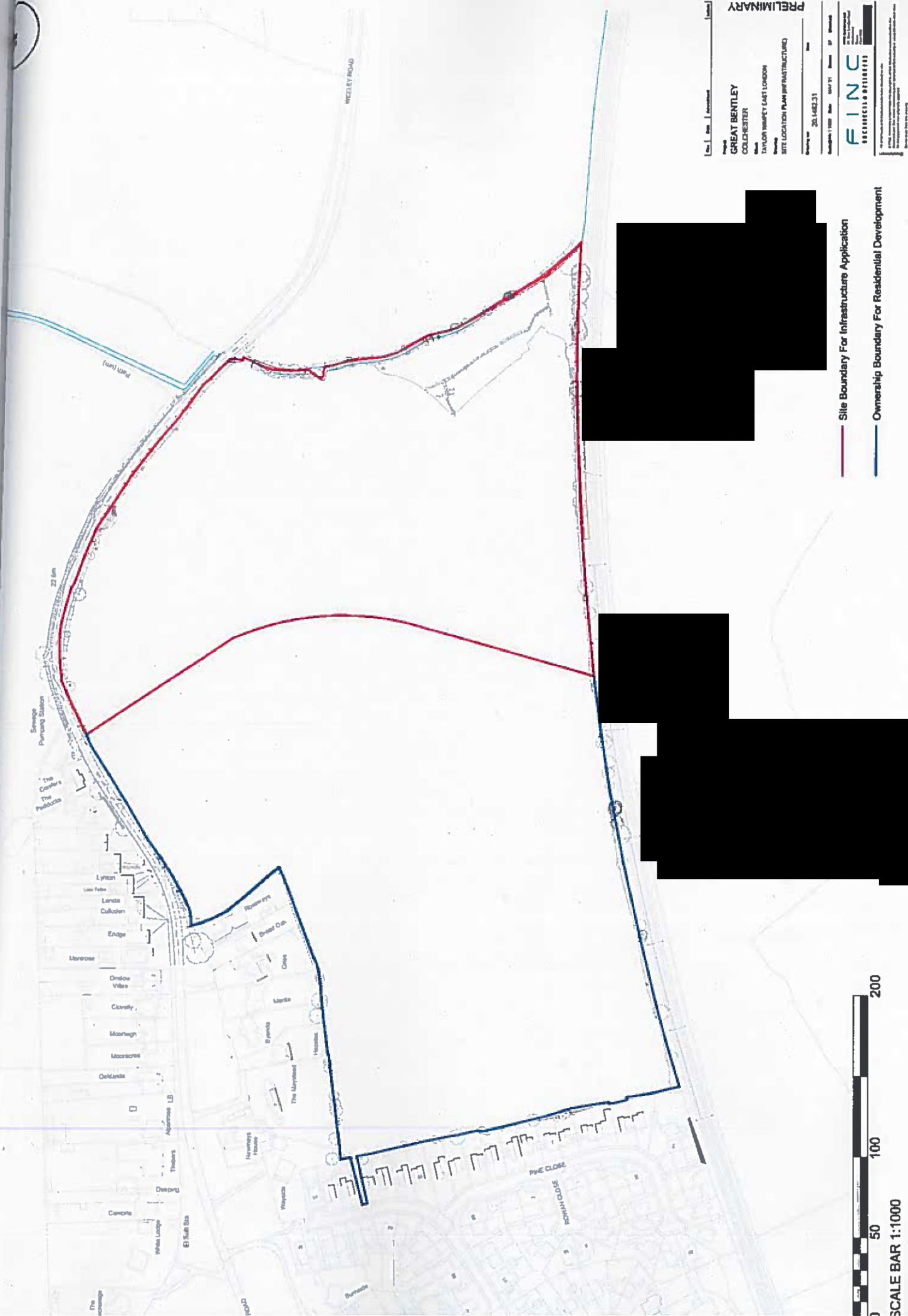


EXECUTED AS A DEED by  
**TAYLOR WIMPEY UK LIMITED**









Project: **GREAT BENTLEY COLCHESTER**  
 Client: **TAYLOR WIMPEY EAST LONDON**  
 Site: **SITE LOCATION PLAN INFRASTRUCTURE**  
 Drawing No: **20.1482.31**  
 Date: **11/01/2020**  
 Scale: **1:1000**  
 Drawing Title: **PRELIMINARY**

**FINC**  
 020300011000110111  
 020300011000110111  
 020300011000110111

— Site Boundary For Infrastructure Application  
 — Ownership Boundary For Residential Development



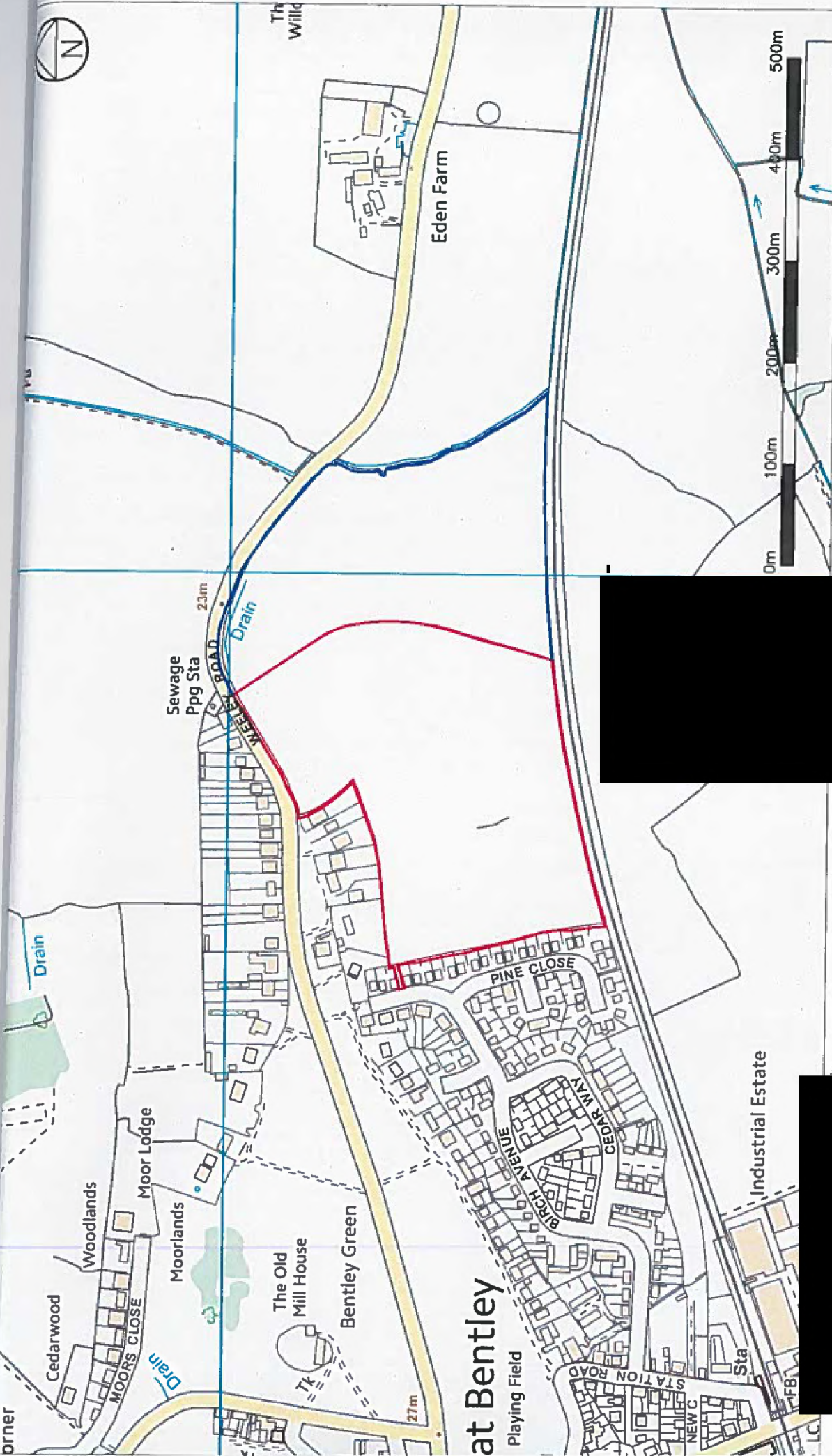












Andrew Martin  
Planning

Planning Design Development

Town Mill | Mill Lane | Stebbing | Dunmow | Essex | CM6 3SN

Telephone: 01371 855855 Fax: 01371 856201 Email: info@am-plan.com www.am-plan.com

Location Plan  
Land to the south of Weeley Road, on the eastern edge

Revision Number	Revision	Date	Scale
17018_01	c	09/17	1:5000@A4
Author	CH		