

DATED

30th August

2022

- TO:
- (1) BELLWAY HOMES LIMITED
 - (2) BABERGH DISTRICT COUNCIL
 - (3) SUFFOLK COUNTY COUNCIL

UNILATERAL UNDERTAKING

Under Section 106 of the Town and Country Planning Act
1990 and other powers in relation to land at Klondyke
Field, West of Bourne Hill, Wherestead, Suffolk

THIS DEED BY WAY OF UNDERTAKING is made on the 30 day of August 2022

BY

- (1) **BELLWAY HOMES LIMITED** (Co. Reg. No. 670176) whose registered office is situated at Woolsington House, Woolsington, Newcastle Upon Tyne, England, NE13 8BF (the "Owner")

TO

- (2) **BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich IP1 2BX (the "District Council");
- (3) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich IP1 2BX (the "County Council")

RECITALS

- (A) The District Council is the local planning authority for the area in which the Site is situated and by whom the covenants and obligations contained in this Deed are enforceable in relation to it.
- (B) The County Council is the local planning authority and local highway authority for the purposes of the Act for the area in which the Site is situated and by whom the covenants and obligations contained in this Deed are enforceable in relation to it.
- (C) The Owner is the registered proprietor of the freehold interest in the Site.
- (D) On 7 August 2019, the Planning Permission was granted pursuant to the Application.
- (E) On 20 December 2019 Pigeon (Wherstead) Limited transferred the Site to the Owner.
- (F) This Deed is made pursuant to S106 of the Act and is supplemental to the Principal Deed.
- (G) On 21 June 2022 the District Council validated a S96A application to vary the Planning Permission registered under planning reference DC/22/03129 (the Variation Application) submitted by the Owner.
- (H) The District Council has agreed to grant the Variation Permission on completion of this Deed.

NOW THIS DEED WITNESSES as follows:-

1 INTERPRETATION

1.1 In this Deed the following apply:

1.1.1 words importing the masculine include the feminine and vice versa;

1.1.2 words importing the singular include the plural and vice versa;

- 1.1.3 words importing persons include companies and corporations and vice versa;
- 1.1.4 wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually;
- 1.1.5 unless the context requires otherwise, any reference to a clause, schedule or paragraph or to a plan is to a clause, schedule or paragraph of a schedule of this Deed or a plan attached to this Deed;
- 1.1.6 any reference to a colour or letter is to a colour or letter on the specified plan attached to this Deed;
- 1.1.7 in the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it;
- 1.1.8 references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party subject to the terms of this Deed and in the case of the District Council and County Council its successors to its functions as local planning authority and highways authority respectively; and
- 1.1.9 the headings contained in this Deed are for reference only and shall not affect its construction.

2 **DEFINITIONS**

In this Deed the following expressions shall apply:

"Act"	the Town and Country Planning Act 1990 (as amended);
"Application"	the hybrid application for outline planning permission and the change of use from private woodland to suitable alternative natural greenspace / community woodland and woodland education to develop the Site in accordance with the application plans and other materials deposited with the District Council on 16 February 2018 and bearing the District Council's reference number DC/18/00706;
"Deed"	this unilateral undertaking;
"Dwelling"	a dwelling (including a house, apartment or bungalow be they open market or affordable housing units) to be

	constructed pursuant to the Planning Permission or Variation Permission;
"Highways Agreement"	means an agreement under section 278 of the Highways Act 1980;
"Highways Authority"	means the County Council;
"Permanent Toucan Crossing"	means a toucan crossing on Wherstead Road near to the entrance road to Bourne Park or other appropriate alternative crossing layout as agreed with the County Council;
"Planning Permission"	mean the planning permission granted pursuant to the Application on 7 August 2019;
"Principal Deed"	means the section 106 agreement dated 19 July 2019 and made between (1) the District Council, (2) the County Council (3) Pigeon (Wherstead) Limited (4) C. Hoare & Co;
"Registered Provider"	means a registered provider of social housing as defined in Part 1 of the Housing Act 1996 or successor provision or other such body which is either registered as a "Registered Provider" of social housing pursuant to section 112 of the Housing and Regeneration Act 2008 or successor provision or is eligible to receive a Social Housing Grant (as defined in section 18 of the Housing Act 1996 or successor provision) or other body approved by the Council to manage affordable housing units constructed pursuant to the Planning Permission or Variation Permission;
"Site"	means the land outlined red on the plan appended at Schedule 1 registered under title SK399303;
"Temporary Crossing Solution"	means temporary traffic lights to facilitate pedestrians crossing Wherstead Road near to the entrance road to Bourne Park;
"Variation Permission"	means the permission to be granted by the District Council pursuant to the Variation Application.

3 MISCELLANEOUS

- 3.1 This Deed is a planning obligation made pursuant to Section 106 of the Act to the intent that it shall bind the Owner and their successors in title to the Site and any persons

claiming under or through them and shall be enforceable by the District Council and County Council.

3.2 A party shall cease to have any obligation or liability under the terms of this Deed in relation to the Site or any part thereof once it shall have parted with all its interest in the Site or that part to which the obligation or liability relates but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

3.3 This Deed shall not be enforceable against:

3.3.1 owners occupiers or tenants of individual Dwellings nor against those deriving title from them;

3.3.2 any Registered Provider;

3.3.3 any party solely as a result of such party possessing an interest in the Site relating to subsoil of land which has been adopted by any relevant authority as maintainable at public expense;

3.3.4 statutory undertakers acquiring an interest in the Site for the benefit of their undertaking; and

3.3.5 mortgagees or chargees with a charge over the Site from time to time unless and until such mortgagee or chargee becomes a mortgagee in possession pursuant to the terms of the mortgage or charge.

4 PLANNING OBLIGATIONS

4.1 This Deed is conditional upon the grant of the Variation Permission save for the provisions in this clause and clause 6 (Legal Fees) of this Deed which shall come into effect immediately upon completion of this Deed.

4.2 The Owner shall:

4.2.1 subject to obtaining all necessary consents from the Highways Authority, install a Temporary Crossing Solution as soon as possible;

4.2.2 not occupy more than 20 Dwellings on the Site until the Temporary Crossing Solution has been installed and is available for use;

4.2.3 maintain the Temporary Crossing Solution until such time as the Permanent Toucan Crossing has been constructed pursuant to a Highways Agreement;

4.2.4 in the event the Temporary Crossing Solution should be removed or fail prior to the construction of the Permanent Toucan Crossing, not permit further Dwellings to be occupied until either the Temporary Crossing Solution or Permanent Toucan Crossing is available for use;

4.2.5 not occupy more than 60 Dwellings on the Site until the Permanent Toucan Crossing has been installed and is available for use.

5 LOCAL LAND CHARGES

This Deed is a Local Land Charge and it is intended that this Deed shall be registered as such by the District Council in the Local Land Charges Register.

6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The provisions of this Deed shall not be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to this Deed.

7 LEGAL FEES

The Owner shall pay on the date hereof the District Council and County Council's reasonable legal costs properly incurred in the negotiation of this Deed.

8 DISPUTE PROVISIONS

8.1 In the event of any dispute or difference arising between any of the parties in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed by agreement between the parties or in the absence of agreement as to the identity of the person by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute.

8.2 In the absence of agreement as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Royal Institution of Chartered Surveyors for him to determine the appropriate professional body.

8.3 Any person appointed pursuant to this clause 8 shall act as an expert and his decision shall be final and binding on the parties in the absence of manifest error and fraud.

8.4 The expert's costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

8.5 Any expert shall be appointed subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 40 (forty) working days after appointment.

8.6 The expert shall be required to give notice to each of the parties requiring them to submit to him within 10 (ten) working days written submissions and supporting material and each party will be entitled to make a counter written submission on the other party's original submission within a further 10 (ten) Working Days.

9 DETERMINATION OF DEED

9.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Variation Permission shall be quashed, revoked or otherwise withdrawn or

(without the consent of the Owner) is modified by any statutory procedure or expires prior to the implementation of development pursuant to the Variation Permission.

10 SEVERANCE

10.1 If any court or other competent authority finds any provisions of this Deed (or part of any provision) to be invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of this Deed shall not be affected.

11 GOVERNING LAW

11.1 This Deed is governed by and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England.

IN WITNESS whereof the parties hereunto have executed this Deed the day and year first before written

EXECUTED as a **DEED** by

BELLWAY HOMES LIMITED
acting by its Attorney

NIGEL CLASBY / ~~DUNCAN FISHER~~

BELLWAY HOMES LIMITED by its
attorney named above

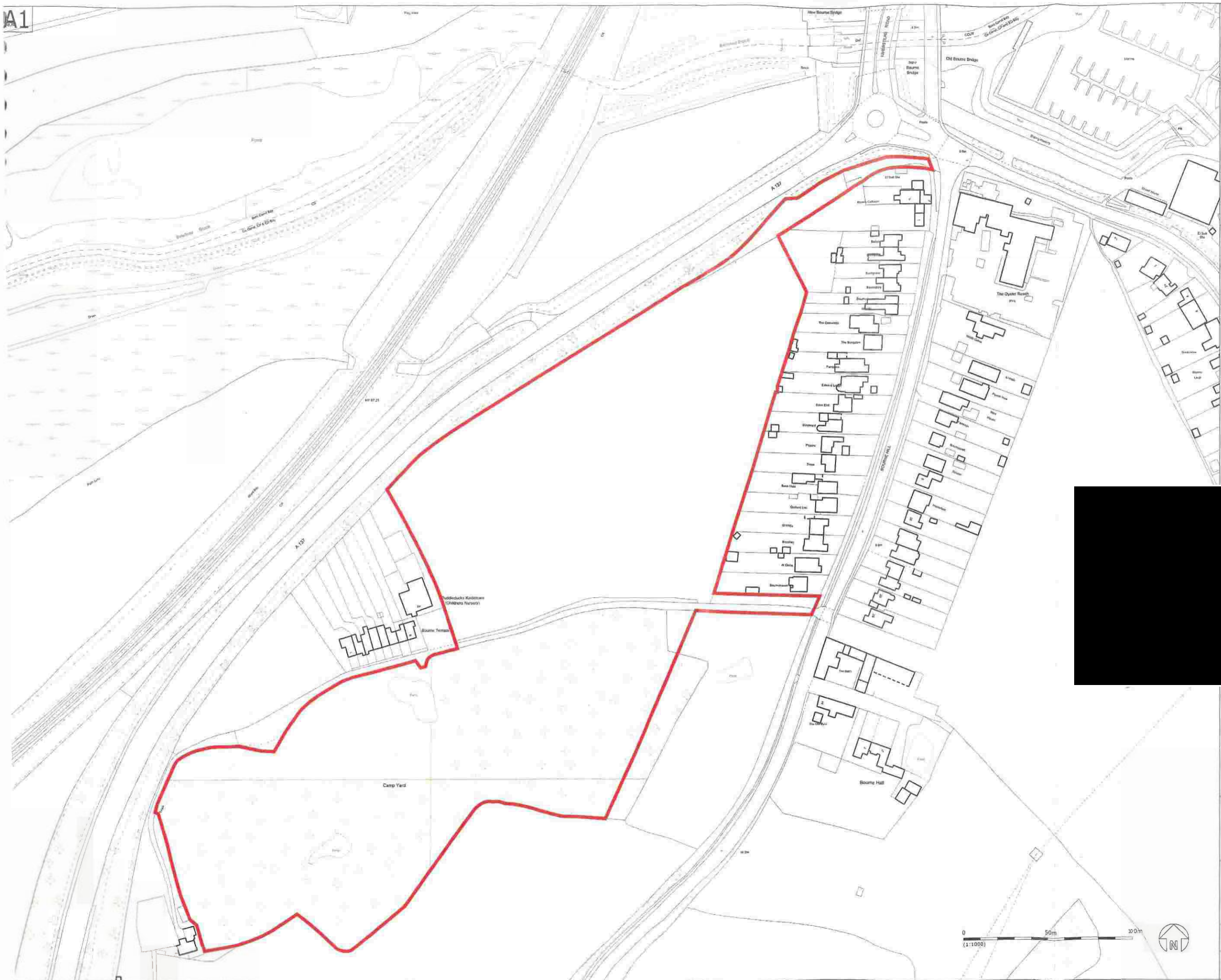
In the presence of:

[SIGNATURE OF WITNESS]

[NAME OF WITNESS]

.....
Duncan Fisher
..... Group Legal Manager
Bellway Homes Limited
..... Woosington House
Woosington
..... Newcastle upon Tyne
NE13 8RF

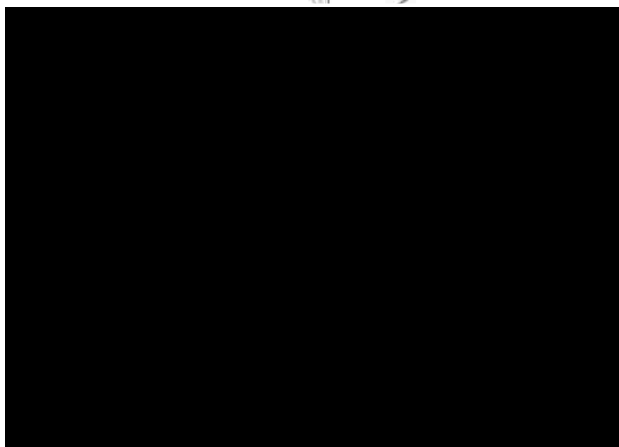
[ADDRESS OF WITNESS]



NOTES
This drawing is the copyright of Thrive Architects Ltd ©. All rights reserved.
Ordnance Survey Data © Crown Copyright. All rights reserved.
Licence No. 100007359. DO NOT scale from this drawing.
Contractors, Sub-contractors and suppliers are to check all relevant dimensions and levels of the site and building before commencing any shop drawings or building work. Any discrepancies should be recorded to the Architect.
Where applicable this drawing is to be read in conjunction with the Consultants' drawings.

REV	DESCRIPTION	DATE	AUTHOR	CHKD
A	Redline amendments	21/09/17	HB	
B	Amendments to client name	29/09/17	HB	
C	Redline amendments	25/01/18	HB	

KEY
Site Boundary



Romsey Office
Buildings 300, The Grange, Romsey Road, Michelmersh, SO51 0NE
01794367703 01794367276 www.thrivearchitects.co.uk

PROJECT
Klondyke Field
Land West of Bourne Hill, Wherstead
For: Pigeon Investment Management Ltd

DRAWING
Site Location Plan - 01

SCALE	DATE	AUTHOR	CHKD
1:1000 @ A1	10/01/17	PM/hm	PM
JOB NO.	DRAWING NO.	REV	
PIGE170713	SLP-01	C	