

Dated

9 August

2023

(1) GEOFFREY WILLIAM HOOPER AND JAMES FRANCIS HOOPER

and

(2) MANOR OAK HOMES LIMITED

and

(3) SUFFOLK COUNTY COUNCIL

DEED

**Made pursuant to s.106 of the Town and
Country Planning Act 1990 (as amended)**

Relating to

Land South of Bury Road
Beyton,
Suffolk
IP30 9AB

Mid Suffolk District Council Planning Application ref: DC/21/04987

KJW/JJM/946535.46

THIS DEED is made the 9 day of August 2023

BETWEEN

- (1) **GEOFFREY WILLIAM HOOPER** of Oak View, Oxford Road, Chieveley, Berkshire, RG20 8RU and **JAMES FRANCIS HOOPER** of 25 Clare Lawn Avenue, London, SW14 8BE ("the Owner")
- (2) **MANOR OAK HOMES LIMITED** (Company Registration Number 07055194) whose registered office is situated at White Lodge Farm, Walgrave, Northampton, NN6 9PY ("the Promoter")
- (3) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the County Council")

"the Parties"

INTRODUCTION

1. The County Council is the local education authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
2. The Owner is the freehold owner of the Site registered at the Land Registry as part of Title Number SK214014.
3. The Promoter has an interest in the Site pursuant to a promotion agreement dated 26 April 2019 entered into by the Owner and the Promoter and which is registered as a restriction against Title Number SK214014.
4. The Promoter and the Owner submitted the Application to Mid Suffolk District Council on 8th September 2019 for the Development.
5. The Promoter is a party to this Deed to acknowledge the provisions contained herein but shall not be liable for any obligations unless and until it acquires an interest in the Site being more than an option to purchase or conditional contract.
6. Mid Suffolk District Council has resolved to grant the Planning Permission subject to the prior completion of a Deed or Deeds to regulate the Development and to secure the planning obligations.
7. On 22 December 2022, the Owner and the Promoter entered into the Original Agreement pursuant to Section 106 of the Act with Mid Suffolk District Council in respect of the Site in order to facilitate the grant of the Planning Permission.
8. On 8 February 2023 the Promoter was notified that a decision notice was not issued on the basis that the Original Agreement should have included an education contribution.

9. The County Council considers and the Promoter acknowledges that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to Section 106 of the Act the County Council, the Owner and the Promoter have agreed to enter into this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	means housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the definitions set out in Annex 2 to the NPPF
"Affordable Housing Units"	means five (5) of the Dwellings to be provided constructed on the Site pursuant to the Planning Permission (representing not less than 35% of the Dwellings to be constructed on the Site) and in accordance with the provisions of the Original Agreement
"Application"	means the application for outline planning permission (some matters reserved, access to be considered) to develop the Site submitted to Mid Suffolk District Council on 8 th September 2019 for the Development and bearing Mid Suffolk District Council's planning application reference number DC/21/04987
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than

	(for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, ecological assessment and mitigation works, 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 and "Commence Development" shall be construed accordingly
"Completion of Development"	the date that the last Dwelling is first Occupied
"Development"	means the erection of fourteen (14) Dwellings (including five (5) affordable homes), with associated access, parking and landscaping
"Dwelling"	means a dwelling (including a house, flat or maisonette and including both Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission or any reserved matters approval consequent thereto and "Dwellings" shall be construed accordingly
"Early Years Contribution"	<p>means the sum not exceeding £37,786.00 (Thirty-seven thousand, seven hundred and eighty-six pounds) Index Linked on the basis of 14 (fourteen) Dwellings being erected on Site pursuant to the Application and if the number of Dwellings erected on Site pursuant to the Application is less than 14 (fourteen) this financial contribution shall be calculated as follows:</p> <p>No. of Dwellings permitted to be erected on Site at Commencement of Development multiplied by £2699.</p>

"Index"	the All In Tender Price Index published by the Building Cost Information Service or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto
"Index Linked"	the increase in any sum referred to in the Third Schedule by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable to be calculated in accordance with Clause 13 of this Deed
"Interest"	means interest at 4% per cent above the base lending rate of the Bank of England
"Market Housing Units"	means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing
"Monitoring Fee"	means the sum of £476.00 (four hundred and seventy-six pounds) payable by the Promoter to the County Council in accordance with the provisions of clause 7.2 towards the costs of monitoring compliance with this Deed
"NPPF"	means the National Planning Policy Framework published in July 2021 by the then Ministry of Housing, Communities and Local Government (now the Department for Levelling Up, Housing and Communities including any updates or revisions thereto
"Occupation" and "Occupied"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or

	decoration or occupation for marketing or display or occupation in relation to security operations
"Original Agreement"	means the Agreement dated 22 December 2022 relating to the Development at the Site and made between the Owner (1) the Promoter (2) and Mid Suffolk District Council (3)
"Plan"	means the plan attached to this Deed at the First Schedule
"Planning Permission"	means the planning permission subject to conditions to be granted by Mid Suffolk District Council pursuant to the Application
"Primary School Contribution"	<p>means the sum not exceeding £72,492.00 (seventy-two thousand, four hundred and ninety-two pounds) on the basis of 14 (fourteen) Dwellings being erected on Site pursuant to the Application and if the number of Dwellings erected on Site pursuant to the Application is less than 14 (fourteen) this financial contribution shall be calculated as follows:</p> <p>No. of Dwellings permitted to be erected on Site at Commencement of Development multiplied by £5178</p>
"Site"	means the land against which this Deed may be enforced known as land to the south of Bury Road, Beyton as detailed in the First Schedule and as shown edged red on the Plan
"Working Day(s)"	means Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 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 unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act 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 that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the County Council the successors to their respective statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and in so far as any provision of this Deed is not within the powers of S106, Section 111, 120 and 139 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner by the County Council under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the County Council as local planning authority against the Owner.

4 CONDITIONALITY

4.1 This Deed is conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development

SAVE FOR the provisions of this clause and clauses 7.1, 7.2, 16 and 17 and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the County Council as set out in the Second Schedule so as to bind the Site and each and every part thereof.

6 THE COUNTY COUNCIL'S COVENANTS

6.1 The County Council hereby covenants with the Owner and the Promoter (as appropriate) as set out in the Third Schedule.

7 MISCELLANEOUS

7.1 The Promoter shall pay to the County Council on completion of this Deed the reasonable legal costs of the County Council incurred in the negotiation, preparation and execution of this Deed.

7.2 The Promoter further covenants to pay to the County Council on completion of this Deed the Monitoring Fee.

7.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

7.4 This Deed shall be registered as a local land charge by the County Council.

- 7.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the County Council by the Executive Director for Growth Highways and Infrastructure (or officer acting under his hand) and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate).
- 7.6 Following the performance and satisfaction of all the obligations contained in this Deed the County Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.7 Insofar as any clauses or paragraphs 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.
- 7.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.11 For the avoidance of doubt a failure to pay a sum when required to be paid by this Deed shall, until it is remedied, be deemed to be a continuing breach enforceable (at the election of the enforcing authority) against any successor in title to, and any person deriving title from, the person in default at the time payment was first due to be paid against the first defaulter.
- 7.12 This Deed shall not be enforceable against owners or occupiers of Dwellings nor those deriving title from them.

7.13 The obligations in this Deed shall not be enforceable against any statutory undertaker whose apparatus may be situated within the Site or any other person who acquires any part of the Site or interest therein for the purpose of the supply of electricity, gas, water, drainage, telecommunications services or public transport services.

7.14 Where in this Deed there is an obligation to pay a contribution or part thereof or to obtain approval or take specified action before the occurrence of a stated event or state of affairs, the Owner shall not cause or permit the stated event or state of affairs (including, where it relates to Occupation of the Development or any part thereof) until the obligation to pay such contribution or part thereof has been satisfied or such approval or action has been undertaken.

7.15 If any Court or the Secretary of State determines that any obligation contained within this Deed is not:

- a) necessary to make the Development acceptable in planning terms
- b) directly related to the Development
- c) fairly and reasonably related in scale and kind to the Development and
- d) compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010

and accordingly attaches no weight to such obligation in determining the Application then the relevant obligation shall immediately (without further act by the Parties) cease to have any effect and the Owner shall be under no obligation to comply with that obligation.

7.16 This Deed may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Deed.

7.17 If Mid Suffolk District Council pursuant to an application under Section 73 of the Act to vary or release any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under Section 78 of the Act (without as part of the decision a requirement to vary or impose additional planning obligations under Section 106

of the Act) the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission.

8 PROMOTER'S CONSENT

8.1 The Promoter acknowledges and declares that:-

8.1.1 this Deed has been entered into by the Owner with its consent, and

8.1.2 the Site shall be bound by the obligations contained in this Deed.

9 DETERMINATION OF DISPUTES

9.1 Any dispute or difference relating to any matter or thing arising out of or in connection with this Deed shall be determined by an independent Expert (who will act as an Expert not an Arbitrator) in accordance with the following paragraph 9.2 to 9.11.

9.2 If the Parties do not make the appointment of the Expert by agreement within fourteen (14) days of service of the notice requiring reference of the dispute, the Expert shall be nominated upon the application of any party by the President or other officer to whom the making of such appointments is for the time being delegated by the Law Society and the Expert shall be an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than ten (10) years.

9.3 Unless the Expert shall direct to the contrary, not more than twenty eight (28) days after his appointment the Parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon.

9.4 The Expert shall be at liberty to visit the land relevant to the dispute unaccompanied and to call for such written evidence from the Parties as he may require.

9.5 The Expert shall not, unless he directs to the contrary, hear oral representations from any party to the dispute.

9.6 The Expert shall fully consider all submissions and evidence when making his decision.

- 9.7 The Expert shall give his decision in writing and shall give reasons.
- 9.8 The Expert shall use all reasonable endeavours to give his decision and the reason for it as speedily as possible and in any event within forty two (42) days of his appointment.
- 9.9 The Expert's decision including his decision as to costs shall be final and binding.
- 9.10 The Expert's fees shall be payable by the Parties in such proportions as he shall determine and in default of such determination equally between them.
- 9.11 If it shall be impossible to procure the appointment of such an Expert or if the Expert so appointed shall fail or be unable to reach a determination of the matter referred to him then any party to the dispute shall be entitled to have the dispute referred to a single arbitrator who failing agreement shall be appointed by the President or a Vice-President of the Chartered Institute of Arbitrators and the arbitration shall be conducted in accordance with the Rules of the Chartered Institute of Arbitrators.

10 Notice

- 10.1 The Owner covenants to inform the County Council by way of written notice within seven (7) days following:
- a) Commencement of Development;
 - b) Occupation of the 1st (first) Dwelling;
 - c) Completion of Development.

11 WAIVER

- 11.1 No waiver (whether expressed or implied) by the County Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the County Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

12 CHANGE IN OWNERSHIP

- 12.1 The Owner agrees with the County Council to give the County Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan provided that this obligation shall not apply to the sale of individual Dwellings.

13 INDEXATION

- 13.1 Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times C/D$ where:

13.1.1 A is the sum payable under this Deed;

13.1.2 B is the original sum calculated as the sum payable;

13.1.3 C is the Index for the month two (2) months before the date on which the sum is payable;

13.1.4 D is the Index for the month two (2) months before the date of this Deed; and

13.1.5 C/D is Not less than 1

14 INTEREST

- 14.1 If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of payment.

15 VAT

- 15.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

16 JURISDICTION

- 16.1 This Deed is governed by and interpreted in accordance with English law and shall be determined in the courts of England.

17 DELIVERY

- 17.1 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.

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

FIRST SCHEDULE

DETAILS OF TITLE, DESCRIPTION OF THE SITE AND PLAN

The Freehold land shown edged red on the Plan being land to the south of Bury Road, Beyton and registered at the Land Registry as part of title number SK214014

SECOND SCHEDULE

OWNER'S COVENANTS WITH THE COUNTY COUNCIL

1. EARLY YEARS CONTRIBUTION

- 1.1 The Owner covenants to pay to the County Council the Early Years Contribution prior to Occupation of 75% (seventy-five percent) of the Dwellings (rounded down to the nearest whole Dwelling).
- 1.2 The Owner hereby covenants not to Occupy or permit Occupation of 75% (seventy-five percent) (rounded to the nearest whole Dwelling) or more Dwellings until the Early Years Contribution has been paid to the County Council.

2. PRIMARY SCHOOL CONTRIBUTION

- 2.1 The Owner covenants to pay to the County Council the Primary School Contribution prior to Occupation of 75% (seventy-five percent) of the Dwellings (rounded down to the nearest whole Dwelling).
- 2.2 The Owner hereby covenants not to Occupy or permit Occupation of 75% (seventy-five percent) (rounded to the nearest whole Dwelling) or more Dwellings until the Primary School Contribution has been paid to the County Council.

THIRD SCHEDULE

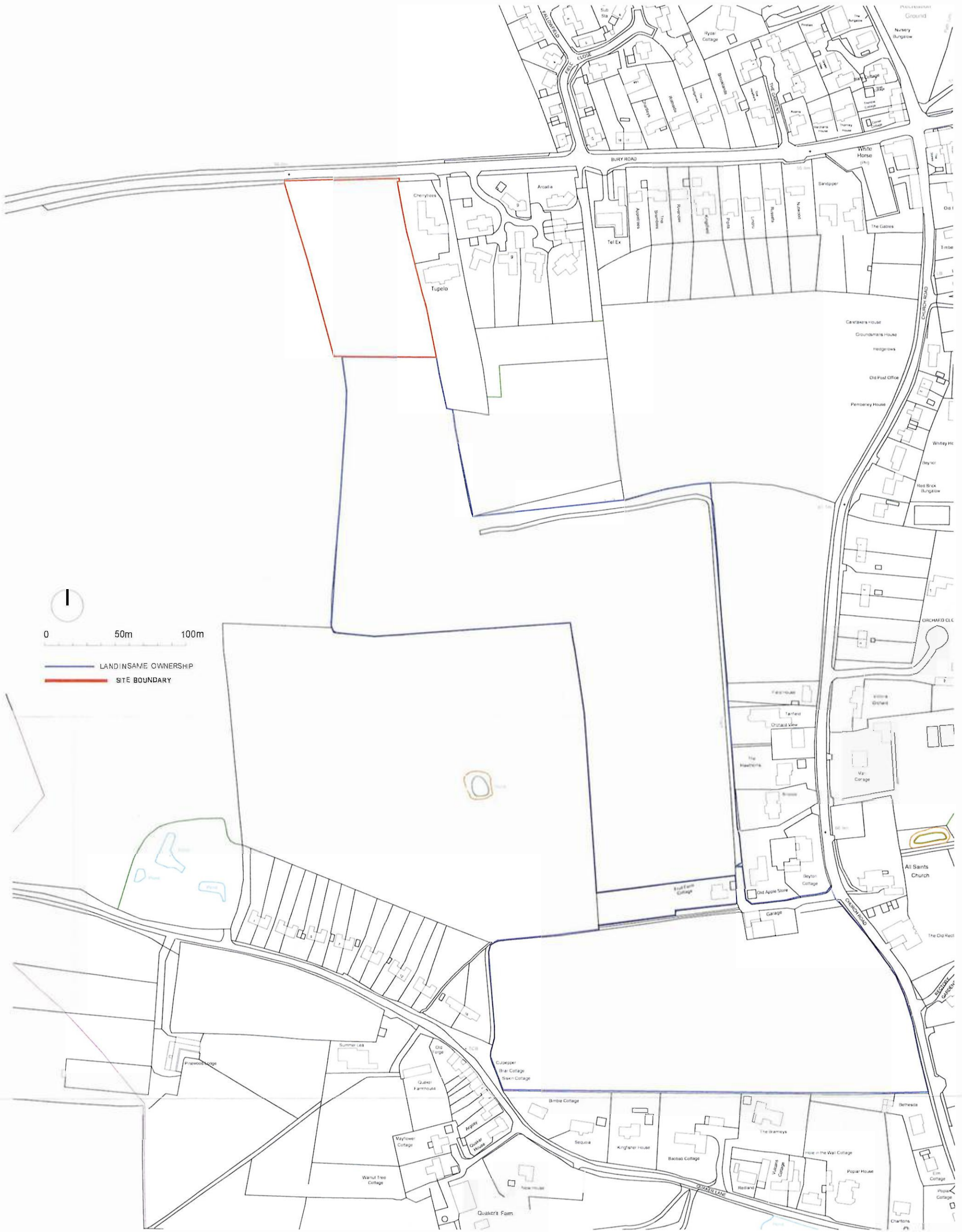
THE COUNTY COUNCIL'S COVENANTS

Early Years Contribution

1. The County Council will use the Early Years Contribution for the provision of early years places serving the Development (whether previously forward funded or not) and, in particular, for the provision at the early years setting at Norton Road, Thurston. .
2. The County Council shall if requested to do so in writing after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year pay to any person such amount of the Early Years Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable.
3. At the written request of the Owner the County Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

Primary School Contribution

4. The County Council will use the Primary School Contribution for the provision of primary school places including land acquisition costs serving the Development (whether previously forward funded or not) and, in particular the new primary school north of Norton Road, Thurston.
5. The County Council shall if requested to do so in writing after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year pay to any person such amount of the Primary School Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable.



REV	BY	DATE	DETAILS
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PROJECT

**Bury Road,
BEYTON**

DRAWING TITLE

Location Plan

SCALE

1:2500 (A3) Planning August 2021

DRAWING NO.

A_1828 EX100

REVISION

NOTES:

AT ARCHITECTURE LIMITED
WWW.ATARCHITECTURELTD.COM
OXFORD HOUSE, CLIFTONVILLE, NORTHANTS, NN15BE
ASHLEY.THOMPSON@AT-ARCHITECTURE.UK

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ALL DIMENSIONS ARE APPROXIMATE AND TO BE
CHECKED ON SITE

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AND COMMENTS COPYRIGHT RESERVED



6. At the written request of the Owner the County Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

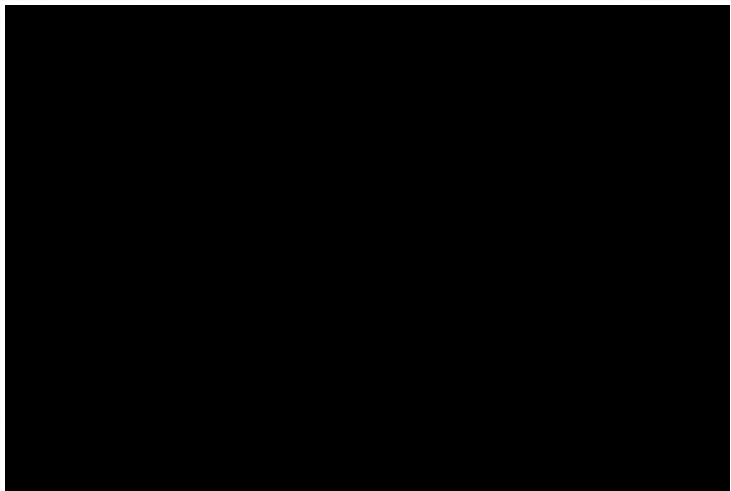
SIGNED as a DEED by
GEOFFREY WILLIAM HOOPER
In the presence of:-

Witness Signature:

Witness Full Name:

Witness Address:

Witness Occupation:



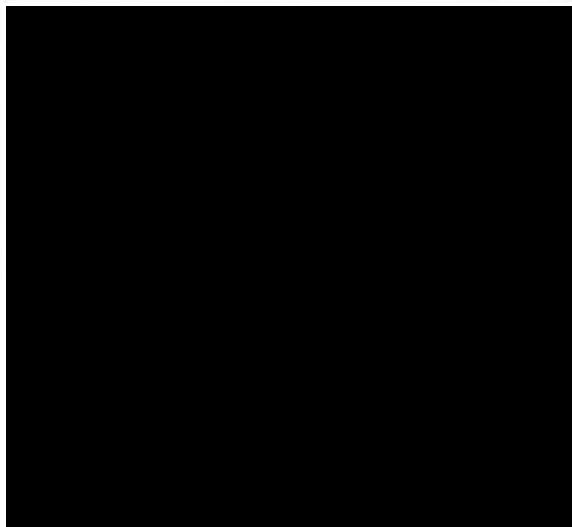
SIGNED as a DEED by
JAMES FRANCIS HOOPER
In the presence of:-

Witness Signature:

Witness Full Name:

Witness Address:

Witness Occupation:



EXECUTED as a DEED by
MANOR OAK HOMES LIMITED
acting by a director

)
)
)



Director

Director's Full Name:

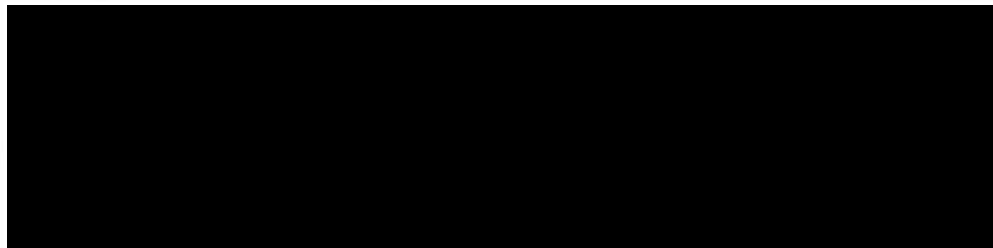
in the presence of:

Witness Signature:

Witness Full Name:

Witness Address:

Witness Occupation:



THE COMMON SEAL of SUFFOLK
COUNTY COUNCIL
was hereunto affixed in the presence of:

)
)
)



Designated Officer:

