

**AN UNDERTAKING DATED**

10<sup>th</sup> April

**2025**

**GIVEN BY:**

**(1) BDWTRADING LTD**

**TO:**

**(2) SUFFOLK COUNTY COUNCIL**

**UNILATERAL UNDERTAKING UNDER SECTION 106 OF THE  
TOWN AND COUNTRY PLANNING ACT 1990**

**relating to the development of the land on the east side of Ixworth Road, Thurston,  
Bury St Edmunds, Suffolk**



Flint Buildings  
1 Bedding Lane  
Norwich  
Norfolk  
NR31RG

Date

10<sup>th</sup> April

2025

**BY:**

- (1) **BDW TRADING LTD** (registered company number 03018173) of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, LE67 1UF (the "Owner")

**TO:**

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

### **BACKGROUND**

- (A) The County Council is the local highway 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.
- (B) The Owner is the freehold owner and developer of the Site which is the land registered at the Land Registry under title number SK390163.
- (C) The Application was submitted to the District Council who has resolved to grant Reserved Matters Approval subject to securing the obligations in this Deed in favour of the County Council.
- (D) The Owner and County Council both intend for the improved public right of way on the southern boundary of the Site to be dedicated and adopted as a bridleway once constructed to the reasonable satisfaction of the County Council and for the obstructed parts of the existing Thurston Footpath 001 to be extinguished.

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

**1 DEFINITIONS**

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

<b>“Act”</b>	the Town and Country Planning Act 1990
<b>“Application”</b>	the application for the approval of reserved matters submitted to the District Council and allocated reference DC/24/04451 pursuant to Permission
<b>“BCIS Index”</b>	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
<b>“BCIS Indexation”</b>	the increase in any sum referred to in Schedule 2 by an equivalent to the increase in the BCIS Index to be calculated in accordance with clause 10 of this Deed
<b>“Commencement of Development”</b>	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 on the Site pursuant to the Permission 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, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, construction of access to the Site and the temporary display of site notices or advertisements and “Commence” and “Commencement” and “Commence Development” shall be construed accordingly

<b>“Development”</b>	the erection of up to 210 dwellings and new vehicular access to include planting and landscaping, natural and semi natural greenspaces(s), children’s play area and sustainable drainage system (SuDS), to include 35% affordable dwellings
<b>“District Council”</b>	means Mid Suffolk District Council of Endeavour House, 8 Russell Road, Ipswich IP1 2BX
<b>“Dwelling”</b>	means any dwelling to be constructed pursuant to the Permission
<b>“Landscape Drawing”</b>	the appended plan CONCEPT LANDSCAPE PROPOSALS: WHOLE SITE with reference H9210-ELD-CLW-002-P13
<b>“Permission”</b>	means the outline planning permission made to the District Council under reference DC/19/02090 granted pursuant to the appeal APP/W3520/W/23/3317494
<b>“PROW Contribution”</b>	<p>the sum totalling £10,000 (ten thousand pounds) subject to BCIS Indexation to include:</p> <ul style="list-style-type: none"> <li>(a) the sum of £5,000 (five thousand pounds) towards the cost of the County Council making an order for extinguishment of the original definitive alignment of Thurston Footpath 001 (in whole or in part) required under section 118 of the Highways Act 1980 to include all officer time legal costs and all other ancillary expenses; and</li> <li>(b) the sum of £5,000 (five thousand pounds) towards the cost of upgrading the footpath Thurston Footpath 001 under the Highways Act 1980 to a bridleway on the southern boundary of the Site of minimum width 3 metres substantially in accordance with the Landscape Drawing unless otherwise agreed in writing between the parties (such upgrade to be by legal order or</li> </ul>



**KEY**

1. Proposed residential units (various types and sizes)  
 2. Proposed parking spaces  
 3. Proposed cycle paths  
 4. Proposed pedestrian paths  
 5. Proposed roads and accessways  
 6. Proposed landscaping and green spaces  
 7. Proposed water features and drainage  
 8. Proposed boundary lines and easements  
 9. Proposed existing structures and trees  
 10. Proposed utility lines and infrastructure  
 11. Proposed site boundaries and setbacks  
 12. Proposed site name and address ranges  
 13. Proposed site plan title and scale  
 14. Proposed site plan date and author  
 15. Proposed site plan revision history  
 16. Proposed site plan notes and conditions  
 17. Proposed site plan legend and symbols  
 18. Proposed site plan index and map location  
 19. Proposed site plan contact information  
 20. Proposed site plan disclaimer and legal notice

**Ecological Enhancements**

1. Proposed tree planting and landscaping  
 2. Proposed water features and drainage  
 3. Proposed green roofs and walls  
 4. Proposed permeable paving and drainage  
 5. Proposed native plant species and habitats  
 6. Proposed wildlife corridors and refuges  
 7. Proposed soil conservation and erosion control  
 8. Proposed water quality monitoring and management  
 9. Proposed biodiversity assessment and reporting  
 10. Proposed ecological impact mitigation and compensation

**Refer to EUD Ogn B0WH 6221 - 002 to 005 for Concept Masterplan, 007 for Change Order, 008 Part Schedule, 009/010 (Part 1 & 2) 011/012 for the Ogn & Part Schedule, 013/014/015/016/017/018/019 for the Ogn & Part Schedule, 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agreement or any combination of the two and to include any necessary widening and / or realignment of the definitive line) to include legal expenses, officer time, cost of any necessary works not delivered by the Owner, and all other ancillary expenses

**“Reserved Matters Approval”** the grant of reserved matters following approval of the Application

**“Site”** means that part of the land edged red on the plan appended at Schedule 1 which is part of the land registered at the Land Registry under title number SK390163

**“Working Days”** any day from Monday to Friday which is not Christmas Day, Good Friday or a public holiday including statutory bank holidays

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, 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 gender include any other genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Any reference to a statute shall include 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 that statute or deriving validity from it.
- 2.5 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 to the Site or any part thereof and in the case of the County Council the successors to its statutory functions.

- 2.6 The headings and contents list are for reference only and shall not affect construction.
- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document.
- 2.8 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

### **3 LEGAL BASIS**

- 3.1 This Deed and each of the covenants given by the Owner herein is made pursuant to section 106 of the Act and to the extent that any obligations in this Deed are not planning obligations, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and section 278 Highways Act 1980 and all enabling powers with the intent that the covenants and obligations shall hereafter run with the land and bind the Site pursuant to section 106 of the Act.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner 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 Owners.

### **4 CONDITIONALITY**

The obligations set out in Schedule 2 are conditional upon:

- (i) the grant of Reserved Matters Approval; and
- (ii) the Commencement of Development

and the rest of the provisions set out in this Deed shall take effect immediately upon completion of this Deed.

### **5 THE OWNER'S COVENANTS**

The Owner covenants as follows:

- 5.1.1 to observe and perform the covenants and obligations at Schedule 2;
- 5.1.2 within 21 Working Days of the date of any disposition of any legal interest in the Site or any part thereof to give the County Council written notice thereof including details of the name and address of the person or persons to whom such interest was transferred PROVIDED ALWAYS that this shall not apply to interest by way of mortgage or legal charge nor to any such disposals to purchasers of an individual Dwelling.

## **6 MISCELLANEOUS**

- 6.1 The Owner covenants and warrants to the County Council that they are the freehold owner of the Site and have full power and capacity to enter into this Deed and that there is no other person other than the Owner having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.3 This Deed may be registered as a local land charge by the District Council or County Council.
- 6.4 Any notice or written communication to be served or given under the terms of this Deed shall be deemed to have been properly served or given if delivered by hand or sent by first class post or registered or recorded delivery to the following addresses:
- 6.4.1 Owner: at the address at the beginning of this Deed;
- 6.4.2 County Council: at the address at the beginning of this Deed and addressed to the Executive Director of Growth Highways and Infrastructure; or
- 6.4.3 such other address as may be notified in writing from time to time.
- 6.5 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.
- 6.6 If the Permission or Reserved Matters Approval is quashed revoked or otherwise withdrawn without the consent of the Owner this Deed shall thereupon (insofar as it has not already been complied with) cease to have effect
- 6.7 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 their interest in the Site or the part of the Site in respect of which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT neither the reservation of rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or part of the Site) shall constitute an interest for the purposes of this Clause.
- 6.8 The obligations in this Deed shall not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker.

- 6.9 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 Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.10 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 6.11 The Owner covenants from the date that this Deed takes effect to allow the County Council, and its duly authorised officers or agents at all reasonable times on reasonable notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed and in doing so the County Council shall have regard to all health and safety requirements when visiting the Site.
- 6.12 The Owner will pay to the County Council a monitoring fee of £519 as a contribution towards the County Council's costs of monitoring and reporting on compliance with this Deed within 10 Working Days of completion of this Deed
- 6.13 The Owner hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.
- 6.14 Unless otherwise agreed in writing between the parties, the Owner hereby agrees not to unreasonably withhold approval or delay an agreement pursuant to Section 38 of the Highways Act 1980 (or such other agreement as may otherwise be agreed in writing between the parties) to secure the upgrading widening deviation dedication and adoption of Thurston Footpath 001 to a bridleway substantially in accordance with the details shown on the Landscape Drawing.
- 6.15 The Owner hereby agrees that any rights to claim compensation arising out of any exercise of powers under the Highways Act 1980 to widen realign or upgrade Thurston Footpath 001 to a bridleway substantially in accordance with the details shown on the Landscape Drawing are hereby waived.

## **7 WAIVER**

No waiver (whether expressed or implied) by the County Council 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.

## **8 JURISDICTION**

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

## **9 FUTURE PERMISSIONS**

In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that such new planning permission is granted pursuant to section 73 of the Act:

9.1.1 the obligations in this Deed shall in addition to binding the Site in respect of the Reserved Matters Approval relate to and bind the Site in respect of any planning permission granted pursuant to Section 73 of the Act; and

9.1.2 the definitions of Development Application Reserved Matters Approval and Permission shall be assumed to include references to any applications under section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of the District Council or the County Council in determining any applications under section 73 of the Act and the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification pursuant to section 106A of the Act.

## **10 INDEXATION**

Any sum referred to in Schedule 2 (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS Index (unless the context reads otherwise) 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:

10.1.1 A is the sum payable under this deed

10.1.2 B is the original sum calculated as the sum payable

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

10.1.4 D is the BCIS Index for the month two (2) before the date of this Deed and

10.1.5 C/D is greater than one (1)

**11 VAT**

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

**12 JURISDICTION**

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

**13 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.

**IN WITNESS** whereof the Owner has caused this Deed to be executed the day and year first before mentioned

**SCHEDULE 1**

**Site Plan**



**LEGEND:**

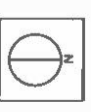
 Development Boundary

Romsey T:01794 367703  
 Portishead T:01275 407000  
 London T:01794 367703

[www.thrivearchitects.co.uk](http://www.thrivearchitects.co.uk)

Rev	Description
A	Planning Issue
B	Development boundary/line updated

Date	By	Chk
20.09.24	GJR	CAW
19.03.25	GJR	CAW



**Project** Ixworth Road, Thurston  
**Drawing** Location Plan

<b>Client</b>	Barratt David Wilson Anglia	<b>Date</b>	August 2024
<b>Job no.</b>	BAR240522	<b>Rev.</b>	B
<b>Dwg no.</b>	LP.01	<b>Scale</b>	1:2500 at A3
<b>Author</b>	MWP	<b>Checker</b>	Office Romsey
<b>Status</b>	PLANNING		
<b>Client ref.</b>			



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## **SCHEDULE 2**

### **Owner's obligations**

The Owner covenants with the County Council as follows (unless otherwise agreed in writing by the County Council):

1. To pay the PROW Contribution to the County Council prior to the Commencement of Development; and
2. Not Commence or allow the Commencement of Development unless and until the PROW Contribution has been paid.

SIGNED as a DEED by **BDW TRADING LIMITED** acting by a director and its secretary or two directors

[Redacted]

Signature of Director

[Redacted]

Signature of Witness: .....

Address: LAKESIDE 300  
BROADLAND BUSINESS PARK  
NORWICH  
NR7 0WG

[Redacted]

Gareth Mears

Signature of Director/S

[Redacted] JA [Redacted]

Address: LAKESIDE 300  
BROADLAND BUSINESS PARK  
NORWICH  
NR7 0WG