

# Crown Quay Lane, Sittingbourne: Waste Recovery Plan



August 2022  
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## Crown Quay Lane, Sittingbourne: Waste Recovery Plan

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# 1 Introduction

## 1.1 Background

Stantec UK Ltd (Stantec) has been instructed by Keltbray Built Environment Ltd (Keltbray) to prepare a Waste Recovery Plan (WRP) for the construction of a development platform, to facilitate the building of 107 new residential dwellings at Land East Of Crown Quay Lane Sittingbourne, Kent, ME10 3ST (the Site).

It is understood that Keltbray will be the 'Operator' under any future Environmental Permit (EP) and in its role as Contractor to the Developer of the Site, Bellway Homes Ltd (Bellway).

A planning application (Ref. 20/503325/FULL) for the development was submitted by Bellway to Swale Borough Council (SBC). On 22 June 2022 planning permission was granted for the:

*“Erection of 107 residential dwellings together with associated access, infrastructure, drainage, open space and landscaping.”*

A copy of the planning permission is included as **Appendix A** of this WRP, accompanied by a legal deed of agreement (S106) between SBC and Bellway (also dated 22 June 2022).

A deposit of waste was left at the Site by the previous occupier, prior to Bellway occupying the Site. It is understood that the Environment Agency (EA) is aware of this deposit and this WRP seeks to both regularise the storage of this waste and facilitate its recovery. It is estimated that approximately 14,000 m<sup>3</sup> of waste, left by the previous owner, is currently being stored on the Site and is to undergo stabilisation. The waste is understood to comprise crushed concrete, brick, soils and stones.

Keltbray anticipates that an additional 12,000 m<sup>3</sup> of inert engineering material will need to be imported to the Site to complete the proposed development works. The total amount of material required to complete the proposed development is expected to be 26,000 m<sup>3</sup>.

For clarity, the development proposed to be undertaken under this WRP are the works associated with the construction of the development platform to facilitate the construction of residential dwellings, as shown on 'Indicative Development Platform Section' Drawing No. 9200-EWK-002 (**Appendix B**).

## 1.2 Objectives

The objective of this WRP is to provide the EA with appropriate evidence to allow it to confirm that the proposed activity may be considered as waste recovery with reference to Article 3(15) of the Waste Framework Directive (2008/98/EC) and in accordance with prevailing EA guidance (Environment Agency, 2021).

## 1.3 Previous EA Correspondence

A WRP was originally submitted to the EA for assessment on 23 December 2020, with an RvD Advice Letter and Form subsequently being issued on 01 April 2021. At that time, the EA could not agree that the proposed operations would constitute a recovery activity due to a lack of planning permission.

Since planning permission for the scheme was granted on 22 June 2022, it is considered that this WRP can be reassessed to determine whether the EA deem the works to now be a recovery activity.



## 2 Site Description

The Site is located within a 'mixed use' area, with large industrial units immediately bounding the Site. Further south of the Site is Sittingbourne Railway Station, with Sittingbourne High Street and Town Centre being located approximately 650 m south west of the Site. Milton Creek, part of the Swale Estuary, is located adjacent to the Site and to the north and north east of the Site. The general Site location is indicated in Figure 2.1.

The planning application identifies a development area of 2.08 hectares, with the Site boundary being shown on the 'Supporting Planning Layout' Drawing No. 051904-BEL-K-02 (**Appendix B**). The Site boundary is also shown in Figure 2.1. The Site is centred on approximate National Grid Reference TQ 90821 64060. Further detail regarding the Site setting and local land use is provided in Table 2.1.

**Table 2.1 Site Setting**

| Site address                | Land East Of Crown Quay Lane Sittingbourne Kent ME10 3ST   |   |
|-----------------------------|--|---|
| <b>NGR</b>                  | TQ 90821 64060   |   |
| <b>Site location</b>        | The Site is located within the residential town of Sittingbourne, Kent and is located approximately 650 m north east of the town centre and high street. Existing access to the Site is via Crown Quay Lane, which runs along the eastern boundary of the Site.  |   |
| <b>Topography</b>           | The majority of the land is relatively flat, with ground elevations in the order of between 4.4 mAOD (metres Above Ordnance Datum) to 4.8 mAOD. There are slopes located along the northern and eastern boundaries, where the ground levels decrease to a low of approximately 1.3 mAOD. Three stockpiles of inert waste are located on the Site, which are proposed to be used in the recovery activity. The topography of the Site is shown on the Topographical Survey Sheet 1, Drawing No. CM/181000 (Appendix B). |   |
| <b>Previous land use</b>    | The Site has been used for a range of land uses, including printing works, concrete production / cement works, bulk liquid storage, backfilling marshland, and docks. The most recent use of the Site was as a waste transfer site for construction and demolition waste.  |   |
| <b>Surrounding land use</b> | North  | The site abuts mudflats to the north, which form part of Milton Creek. Milton Creek is designated as part of the Swale Estuary Marine Conservation Zone (MCZ) and Milton Creek Local Wildlife Site (LWS). To the north of the Site lies Eastwoods Wharf. Milton Creek Country Park is located further north, approximately 670 m from the Site. To the north west of the Site lies Bayford Meadows Kart Circuit, approximately 170 m from the Site. Biffa Sittingbourne (household waste transfer facility) is located approximately 770 m north of the Site. |
|                             | East   | A concrete producer (Supreme Concrete) is located off Crown Quay Lane to the immediate east of the Site. Industrial units making up Eurolink Industrial Estate are located further to the east. A small tributary of the Swale is located immediately east of the Site.   |
|                             | South  | A timber supplier (Odds Timber) is located immediately south of the Site, with other industrial units located further south. The B2006 is located   |

| Site address | Land East Of Crown Quay Lane Sittingbourne Kent ME10 3ST |   |
|--------------|--|---|
|              |  | approximately 230 m south of the Site, with Sittingbourne Train Station being located approximately 470 m south west of the Site.   |
|              | West   | A builders' merchant (Jewson Sittingbourne) is located to the west of the Site, adjacent to Crown Quay Lane. An area of disused land (allocated for residential development) is also located to the west of the Site. |

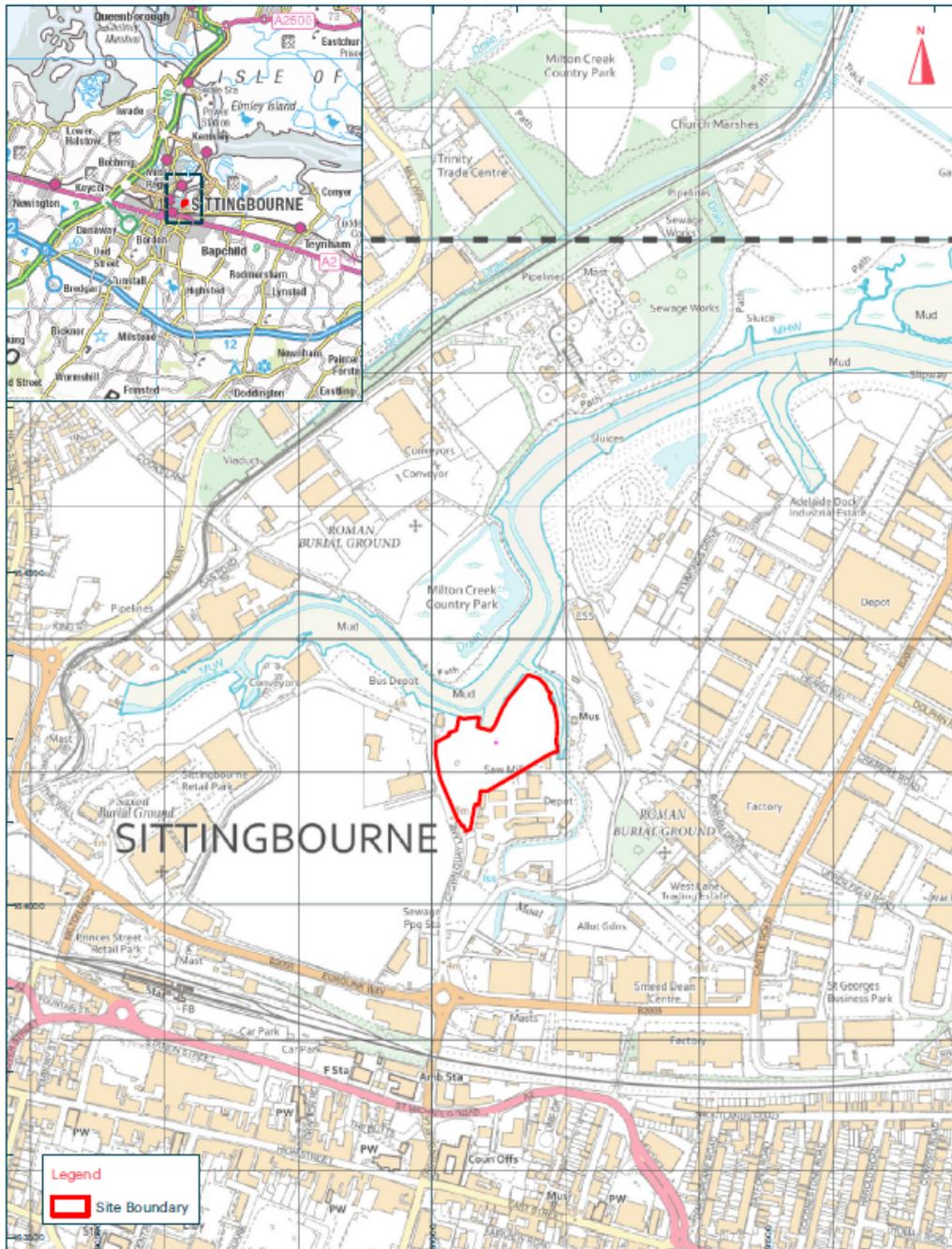


Figure 2.1 Site Location

## 3 Proposed Development

### 3.1 Overview

The Planning Application Design and Access Statement (**Appendix C**) includes information relating to the proposed development to be undertaken by Bellway. A platform is required to facilitate the development works i.e. to provide a flat platform suitable for housing.

The planning application and approval dated 22 June 2022 (Ref. 20/503325/FULL) can be viewed online from the planning website of SBC: <https://pa.midkent.gov.uk/online-applications/>

The Flood Risk Assessment (WSP, 2019) includes information on the ground elevations for the proposed platform, which will depend on the type of housing that is required.

*“The final ground levels have been designed in accordance with the agreed minimum elevations for*

- *The dwellings;*
- *Finished Floor Levels for houses to be at least 6.05mAOD (i.e. 300mm above the EA’s 200-year flood level from the sea);*
- *Finished Floor Levels for flats to be at least 6.35mAOD (i.e. 600mm above the EA’s 200-year flood level from the sea); and*
- *Finished levels for external areas where access is required to be at least 5.75mAOD”*

The proposed ground levels above represent an increase of between 1.35 – 1.95 m (considering current ground levels are 4.4 mAOD – 4.8 mAOD) (WSP, 2019). A visual representation of the ‘cut and fill’ is shown on the Indicative Development Platform Section, Drawing No. 9200-EWK-002 (**Appendix B**).

### 3.2 Material Requirements for Recovery

As detailed in Section 1.1, materials required for the recovery operation will include the use of the material currently stored on the Site (14,000 m<sup>3</sup>) and imported engineering materials (12,000 m<sup>3</sup>), totalling 26,000 m<sup>3</sup>.

The following points demonstrate that the minimum amount of material is being used to achieve the proposed development of 107 residential dwellings:

- The height of the development platform is the minimum required to reduce the risk of flooding at the development, see Section 4.2.2; and
- The proposed scheme submitted to planning is for the construction of 107 residential dwellings. The full extent of the proposed development platform will be required to accommodate the development of these 107 dwellings, see planning drawings in **Appendix B** (notably ‘Supporting Planning Layout’ showing the proposed scheme and ‘Indicative Development Platform Section’) showing the same site boundary and cross sections for the platform.

Materials to be used in the recovery operation will principally include soils, aggregates and cohesive materials as general engineering fill. Full details of the List of Waste Codes (LoW) for wastes that are stored on the Site and accepted on to the Site, together with the management procedures to ensure that only suitable materials are accepted are confirmed in the EP application. Suitable imported materials are proposed to be inert in nature.

Inert material is defined by the Landfill Directive as material that does not undergo any significant physical, chemical or biological transformations. Inert material will not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm human health. The total leachability and pollutant content of the inert material and the ecotoxicity of the water passing through it must be insignificant, and in particular not endanger the quality of surface water and/or groundwater.

Earthworks will require the alteration of existing ground levels to construct the platform, with an average height change of approximately 1.35 – 1.95 m (4.4 mAOD – 4.8 mAOD current levels, increased to the proposed safe design level for the platform of 5.75 mAOD – 6.35 mAOD) (WSP, 2019).

As an indicative list, it is proposed that the wastes listed in Table 3.1 will be accepted without testing, provided there is no reason to suspect they are contaminated.

**Table 3.1 Proposed Waste Types**

| <b>LoW Code</b> | <b>Description</b>   |
|-----------------|--|
| <b>17</b>       | <b>CONSTRUCTION AND DEMOLITION WASTES (INCLUDING EXCAVATED SOILS FROM CONTAMINATED SITES)</b>  |
| <b>17 05</b>    | <b>Soil (including excavated from contaminated sites) soil and dredging spoil</b>  |
| 17 05 04        | Soil and stones other than those mentioned in 17 05 03   |
| <b>19</b>       | <b>WASTES FROM WASTE MANAGEMENT FACILITIES, OFF-SITE WASTE WATER TREATMENT PLANTS AND THE PREPARATION OF WATER INTENDED FOR HUMAN CONSUMPTION AND WATER FOR INDUSTRIAL USE</b> |
| <b>19 12</b>    | <b>Wastes from the mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) not otherwise specified</b>  |
| 19 12 12        | Other wastes (including mixtures of materials) from mechanical treatment of wastes other than those mentioned in 19 12 11  |
| <b>19 13</b>    | <b>Soil and groundwater remediation</b>  |
| 19 13 02        | Solid wastes from soil remediation other than those mentioned in 19 13 01  |

## 4 Justification for Waste Recovery

### 4.1 Introduction

The EA's regulatory guidance on waste recovery (Environment Agency, 2021) sets out its approach to determining whether the permanent deposit of waste on land is recovery or disposal. The EA's definition of recovery is based on Article 3(15) of the Waste framework Directive:

*“Waste recovery on land, or deposit for recovery, is when you use waste material instead of non-waste material to perform a function.*

*“Depositing waste is only a recovery activity if you have shown that you could and would have carried out the works using non-waste material. Your waste recovery plan must include evidence to support this. The Environment Agency refer to this as ‘substitution’.”*

The EA's recovery guidance specifies that there are three main ways that can be used to demonstrate waste recovery. One of the three ways identified in the recovery guidance is to:

*“You may provide evidence that you are obliged to carry out the scheme.”*

In respect of an obligation, the EA also states that:

*“This could be because a regulator has imposed a requirement on you so you would have to do the work whether you use waste or non-waste. For example, if you operate a quarry and are required by planning conditions of an already implemented planning permission to restore it according to an approved plan.”*

Another of the three ways identified in the recovery guidance is to provide evidence to show that:

*“You may provide evidence to show that if you used non-waste, you would benefit from a net financial gain or other worthwhile benefit.”*

To meet this 'financial test' you must:

*“...show that it would be commercially worthwhile to use non waste. For example, it would show that using non waste produces a meaningful financial gain or is affordable and otherwise worthwhile.*

*“Meaningful financial gain’ means the profit and payback period would make it worth your while to incur the full cost of using non-waste, taking into account normal commercial considerations such as the degree of risk. If the method of funding for the scheme is a favourable rate loan, you may need to provide an assessment of the financial viability of the scheme with a market rate loan. Your assessment must confirm that the scheme could go ahead with non-waste.”*

*“Otherwise worthwhile’ means there are indirect financial gains. For example, if you wanted to improve a flood defence system with non-waste, the investment may only pay for itself over a long period but you would avoid the potential disruption of a flood.”*

The proposed development is considered to have merits based on the ‘obligation test’ and the ‘financial test’. Section 4.2 includes information on how this development will meet the ‘obligation test’ (once planning permission is granted) and Section 4.3 includes information on how this development meets the ‘financial test’.

## 4.2 Planning Obligations

Evidence has been provided in the subsequent sections of this WRP to show that the planning permission would likely meet the ‘obligation test’ evidential route. Bellway would likely be obliged to carry out the development works to satisfy the SBC Local Plan (SBC, 2017) and specifically to ensure the risk of flooding is sufficiently mitigated, given the close proximity to Milton Creek and associated mud flats.

### 4.2.1 SBC Local Plan

This planning application is part of a wider strategic residential development at Crown Quay Lane, which is included within ‘Policy A9’ of the Swale Borough Local Plan (SBC, 2017). Bellway is obligated to complete the development to meet the requirements of the Local Plan, and has had to adapt plans to meet the requirements of Policy A9 (shown below).

The residential parcels of the Wider Development cover a total area of approximately 15.8 ha and are split into five development parcels:

- Parcel 1: 10.6 ha (Redrow Homes site);
- Parcel 2: 1.2 ha (Jewsons site);
- Parcel 3: (Bellway Homes site – “the Site”);
- Parcel 4: 1.3 ha (Odds Timber site); and
- Parcel 5: 0.7 ha (Persimmon Homes site).

Evidence that the development for the Site meets the requirements of Policy A9 is provided in Section 4.2.2 below regarding flooding and is evidenced visually in the Landscape Strategy Plan, Drawing No. 7037.LS.1.0 (**Appendix B**) with regard to restoring and enhancing the land on Milton Creek, creating habitats and increasing biodiversity.

#### Policy A9: Land at Crown Quay Lane, Sittingbourne

*Subject to securing high quality design and an appropriate mix, planning permission will be granted for a minimum of 650 dwellings, open space and habitat creation at Crown Quay Lane, Sittingbourne, as shown on the Proposals Map. Development proposals will:*

- 1. Accord with a Masterplan Development Brief (developed through stakeholder consultation, including the Borough Council and Swale Design Panel), which shall demonstrate a comprehensive approach to the bringing forward of the whole allocation;*
- 2. Achieve high quality design befitting the prominent position of the site on Milton Creek and in important views;*
- 3. Restore and enhance land on the creek frontage to provide open space and a creekside path to meet the needs of residents, mitigate flood risk (if required) and create creekside biodiversity habitats;*

4. *Incorporate an integrated landscape strategy that will create a strong landscaped framework of open spaces, habitat retention and creation and planting, including the use of tree lined streets within the development and at Crown Quay Lane and Eurolink Way;*
5. *Achieve pedestrian/cycle links to the town centre and pedestrian links to the Sittingbourne Retail Park, Milton Creek and its Country Park (via a landmark bridge);*
6. *Ensure that, through both on and off site measures, any significant adverse impacts on local wildlife sites are mitigated in accordance with Policy DM28. In the case of such impacts upon European designated sites, these will be mitigated in accordance with Policies CP7 and DM28, including a financial contribution towards the Strategic Access Management and Monitoring Strategy;*
7. *Undertake flood risk assessment in accordance with Policy DM21 to ensure that flood risk is not increased at adjacent sites and to bring forward proposal that create and utilise water features (inc. use of sustainable urban drainage) within the development;*
8. *Achieve a mix of housing in accordance with Policy CP3, including provision for affordable housing in accordance with Policy DM8;*
9. *Be accompanied by a Health Impact Assessment in accordance with Policy CP5. which shall also include an assessment of the impacts on residential areas from adjacent commercial uses;*
10. *Assess and respond to and mitigate impacts on any heritage assets;*
11. *Undertake a transport assessment and implement any highway and other transportation improvements arising from the proposed development;*
12. *Assess impacts upon and ensure that air quality objectives are not compromised;  
and*
13. *Provide infrastructure needs arising from the development, including those identified by the Local Plan Implementation and Delivery Schedule, in particular, health facilities.*

#### 4.2.2 Flood Risk

The development works required to construct the platform for residential dwellings is required to determined ground levels based on the risk of flooding at the Site. The raising of ground levels also allows Bellway to meet the requirement of Point 7 of Policy A9 (SBC, 2017):

*“Undertake flood risk assessment in accordance with Policy DM21 to ensure that flood risk is not increased at adjacent sites and to bring forward proposal that create and utilise water features (inc. use of sustainable urban drainage) within the development”*

The Flood Risk Assessment (WSP, 2019) submitted as part of the planning application provides the following information regarding the construction of the development platform, as it relates to flood risk:

*“The flood risk associated with tidal, pluvial, groundwater and sewer and drainage infrastructure will be mitigated by incorporating the surface water drainage strategy and by raising the ground to a suitable elevation”*

The Site is located within Flood Zone 3 (high), with the main risk noted to be from tidal flooding. The Flood Risk Assessment (WSP, 2019) states that the proposed increase in ground levels for the development platform will manage risks associated with tidal flooding, groundwater flooding and coastal flooding.

The Flood Risk Assessment (WSP, 2019) outlines the requirements to raise the ground levels of the platform to reduce flood risk. The EA consultee response (dated 02 September 2020) cites the following condition to be included in the pending planning decision in relation to flooding:

*“The development shall be carried out in accordance with the submitted flood risk assessment (ref 70049200, dated December 2019) and the following mitigation measures it details:*

- *Minimum finished floor levels of living units: 6.05m AOD*
- *Minimum finished floor levels of sleeping units: 6.35m AOD.*

*Reason To reduce the risk of flooding to the proposed development and future occupants.”*

Development plans showing the proposed ground level increases for the platform are included on ‘Indicative Development Platform Section, Drawing No. 9200-EWK-002 (**Appendix B**).

Bellway is therefore obliged to increase ground levels for the platform to meet the recommendations of the Flood Risk Assessment and, in turn, meet the requirements of the SBC Local Plan. Any other proposal below these ground levels would have risks of flooding and would contravene the SBC Local Plan.

#### 4.2.3 Section 106 Agreement

A Section 106 Agreement is in place between SBC and Bellway, which included the obligations necessary to make the proposed development acceptable in planning terms. A copy of the Section 106 Agreement is provided in **Appendix A**. The agreement places obligations on Bellway in terms of financial contributions, provision of affordable housing, protection of the Special Protection Area, open space and highways works.

#### 4.2.4 The Obligation Test

The SBC Local Plan (SBC, 2017) outlined SBC’s objective to redevelop the Crown Quay Lane area by the target date of 2031 (full title of the SBC Local Plan being ‘Bearing Fruits 2031, The Swale Borough Local Plan).

The development of the platform to an appropriate specification is an integral part of meeting the requirements of the SCB Local Plan, as identified in the recommendations from the Flood Risk Assessment (WSP, 2019).

It is considered that the preceding sections outline a compelling argument as to why Bellway would be legally compelled to complete the overall development and further, to development the platform to the specifications and standards outlined in this WRP. Nevertheless, evidence has been provided below to show how the proposed works will meet the “financial test” described in EA guidance



### 4.3 Financial Feasibility

In respect of providing financial evidence to support the 'financial test' (as outlined in Section 4.1), the EA states that a Waste Recovery Plan will need to include:

- *“your expected income and any capital gain*
- *all the costs of generating this income and any capital gain*
- *all the costs of carrying out the work with non waste and any ongoing operating costs”*

The EA highlights that:

*“If you would have used non waste for your work, without any net financial benefit, you could provide:*

- *evidence that you have secured the funding you need to cover the cost of the work using non waste*
- *details of your expected costs in your waste recovery plan”*

It is noteworthy that the EA states that in this case, where Keltbray is submitting the WRP, it is important that evidence shows that the recovery operation would be commercially worthwhile for the person completing the development; Bellway. To clarify, the EA will consider the income and capital gain received by the person who would cover the cost of using non waste to complete the development, i.e. Bellway.

#### 4.3.1 Available Funds

Bellway is part of Bellway plc, a publicly traded company, and has access to loan facilities and cash. The development of the residential dwellings is a typical activity for Bellway. Bellway's access to cash and cash equivalents are considered more than sufficient to complete the development with virgin materials if required.

#### 4.3.2 Financial Assessment

The financial assessment for the Site considers the cost of the required 26,000 m<sup>3</sup> of virgin material. The assessment contrasts the cost of this material, against the expected revenue to be generated by Bellway from the development. It is worth noting that the 26,000 m<sup>3</sup> of virgin materials considered in this calculation is for the hypothetical scenario of importing the total amount of material on to the Site to complete the proposed works and does not include the use of the 14,000 m<sup>3</sup> of waste which is currently stored on the Site.

The financial assessment does not include the cost of importing the material or the work required to place the material as these costs will be the same for the development, whether using waste or non waste. Furthermore, and as demonstrated below, the costs of virgin material are considered to be insignificant when compared to the expected revenue from the development.

#### **Cost of Virgin Material**

The cost of virgin material for the Site is taken from industry suppliers' current price lists. The cost provided below is for 'screened topsoil', which is considered to be conservative as aggregates or

aggregate mixes are generally cheaper. In reality, the development will use a mix of soils and aggregates and the total cost presented below would therefore represent a maximum figure.

Cost of 'unscreened topsoil' is £67/tonne or £1,340/truck (20 tonnes).

The total amount of imported waste that is required to complete the development is 26,000 m<sup>3</sup>. Using a conversion factor of 1 m<sup>3</sup> = 1.5 tonnes, the total tonnage of imported waste that will be required is around 39,000 tonnes.

39,000 tonnes / 20 tonne loads = 1,950 truckloads

1,950 truckloads x £1,340 per truck = £2,613,000

### Cost of Removing Stockpiled Material

In the event non-waste was used exclusively to complete the proposed development platform, the existing stockpiled material would need to be removed. For this reason, the estimated cost of removing the 14,000 m<sup>3</sup> of stockpiled material is included below. To ensure a worst-case scenario approach, it is assumed that the waste will be sent to a non-hazardous landfill facility for disposal. The calculation is based on disposal costs for sending waste to Bat and Ball Landfill (Enovert), and are broken down below:

- £14.50 per tonne gate fee
- £3 per tonne landfill tax
- £250 per load haulage

Therefore, per load (20 tonnes)

(£14.5 + £3) \* 20 = £350 per load, plus £150 per load haulage = £500 per load

The calculations for the removal of 14,000m<sup>3</sup> of waste are outlined below:

14,000m<sup>3</sup> multiplied by a conversion factor of 1.5 tonnes (1m<sup>3</sup> = 1.5 tonnes) equals 21,000 tonnes

21,000 tonnes / 20 tonne loads = 1,050 truckloads

1,050 truckloads x £500 per load = £525,000

### Expected Revenue

Bellway expects that the revenue generated from the development will be circa £22,100,000 (email from Bellway to Keltbray dated 13 November 2020).

The revenue figure of £22,100,000 is derived from the adjacent site recently developed by Redrow Plc. Revenue achieved by Redrow Plc was £305 per square foot, with sales date for the development evidenced in **Appendix F**.

This figure is approximate and may change marginally, however Bellway is confident that revenue will be in this order of magnitude. It is therefore considered that this figure provides an appropriate level of accuracy to determine the financial viability of the development using non waste.

### **Cost of Land**

It is necessary to include the cost of the land, which was purchased for £1,100,000. Associated costs included £40,000 for legal fees, £44,500 for Standard Duty Land Tax (SDLT) and £8,900 for VAT SDLT.

The cost for the purchase of the land therefore totals £1,193,400.

## Summary

As can be seen from the above, the estimated maximum cost for importing virgin materials is £2,613,000. The revenue minus the purchase of the land and removal of stockpiled material equals £20,381,600.

The cost of importing virgin materials would therefore represent just 7.8% of this figure. This figure is based on the highly conservative and likely overly high estimates for imported non-waste material and disposing of existing stockpiled material.

It is considered that the development would be economically viable given this minimal cost, should only virgin materials be available for the development of the Site. Furthermore, the expected sales period for Bellway selling all the homes is 27 months.

### 4.3.3 The Financial Test

From the above, it is clear that the 'financial test' outlined in EA guidance (Environment Agency, 2021) can be met.

## 4.4 Suitability of Materials

The EA's regulatory guidance on waste recovery (Environment Agency, 2021) sets out guidance on what is required in a WRP in order to conclude that the waste used in a recovery operation is appropriate. The WRP must show that the waste:

- *"is suitable for the intended purpose"*
- *"will not cause pollution"*

The EA guidance goes on to state that:

*"You must show that the specification of the waste you intend to use is comparable to the non-waste material you are replacing. In some cases, it may be appropriate not to use a like-for-like replacement."*

The material proposed to be used in the recovery operation is from two sources; existing stockpiled waste and the importation of inert materials.

### Stockpiled Materials

As detailed in Section 1.1, a deposit of waste was left by the previous occupier of the land, prior to Bellway occupying the Site. It is estimated that approximately 14,000 m<sup>3</sup> of this waste is currently stockpiled on the Site. This waste is understood to be crushed concrete, soils and screened fines.

The material is defined as 'waste' purely due to its circumstance. In terms of physical characteristics, it is therefore considered that this waste would be identical to comparable non waste equivalents.

An investigation was carried out on the waste in 2013 by Leap Environmental Limited (Leap) (Leap Environmental Ltd, 2013). Leap found that the waste contained contravening materials e.g. metal, plastic, glass and visually identifiable asbestos. Keltbray produced a Completion Report (**Appendix E**) documenting the removal of asbestos and contravening materials from the stockpiled material (Keltbray Remediation Limited, 2017). The resulting stockpiled waste currently stored on the Site is therefore free from asbestos and contravening materials.

Keltbray proposes to complete 'verification testing' of the stockpiled waste prior to use in the development operations, to ensure the waste will not cause pollution. This 'verification testing' will consist of Waste Acceptance Criteria (WAC) testing and appropriate risk assessment to confirm the in-situ stockpiled material is inert and suitable for use.

### **Imported Material**

Approximately 12,000 m<sup>3</sup> of inert material will be imported on to the Site to complete the development. The material will be inert in nature and will be restricted to suitable LoW codes, as outlined in Section 3.1. Keltbray will ensure that strict management procedures are followed in relation to waste acceptance and that 'verification testing' is completed as part of these procedures to ensure the suitability of incoming waste under any future EP.

### **4.5 Environmental Permit**

This WRP seeks to allow the EA to provide a decision as to whether the proposed activity may be considered as waste recovery based upon the obligations and financial assessment presented above.

This WRP is being submitted to the EA alongside a deposit for recovery bespoke EP application. Within the EP application, extensive information, including environmental risk assessment, is presented to allow the EA to determine the future EP for the development of the Site.

## 5 Conclusions

This WRP outlines how the proposed development works may be considered as a 'recovery' activity, as defined by prevailing EA guidance (Environment Agency, 2021), EU and national legislation and prevailing Case Law.

It is considered that the proposed development meets the 'financial test' evidential route and demonstrates that Bellway could use non waste to complete the development. The use of non-waste would be affordable and worthwhile to deliver the proposed housing development. Evidence has been provided to justify that Bellway has the necessary funding and that the costs incurred using non waste would amount to a small percentage (based on high conservative estimates) of the overall revenue expected to be generated from the development.

Stantec considers that this development should be defined as 'recovery' in accordance with EA guidance, based on the financial test alone. However, additional information has been provided in this WRP relating to the obligation test.

Evidence has been provided in this WRP to show that the planning permission would likely meet the 'obligation test' evidential route. Bellway would likely be obliged to carry out the development works to satisfy the SBC Local Plan (SBC, 2017) and specifically to ensure the risk of flooding is sufficiently mitigated, given the close proximity to Milton Creek and associated mud flats.

The proposed development works will provide substantial benefits to the area, both in terms of quality housing (including a proportion of affordable housing), habitat creation and ecological benefit.

The use of waste as a replacement for non-waste materials will conserve natural resources as well as reusing material which may otherwise be disposed of, to landfill. This accords with prevailing Government legislation and guidance to recover wastes in preference to disposal.

Bellway has a proven positive track record of undertaking work to high quality and of this nature, as demonstrated through recently completed projects and continued collaboration with both local authorities and other stakeholders.

# References

Environment Agency. (2021). *Waste recovery plans and deposit for recovery permits*.

Keltbray Remediation Limited. (2017). *Completion Report, 6009 Crown Quay Lane Sittingbourne, ME10 3JJ*.

Leap Environmental Ltd. (2013). *Preliminary Contamination Risk Assessment, Crown Quay Lane, Sittingbourne, Report Ref. LP00584*.

SBC. (2017, July). *The Swale Borough Local Plan, Bearing Fruits 2031*. Retrieved from Gov.uk, Swale Borough Council: <https://swale.gov.uk/planning-and-regeneration/local-plans/adopted-local-plan-for-swale>

WSP. (2019). *Flood Risk Assessment, land off Crown Quay Lane, Sitingbourne*.

Yahoo Finance. (2020). *Bellway Balance Sheet*. Retrieved from <https://uk.finance.yahoo.com/quote/BWY.L/balance-sheet?p=BWY.L>

# APPENDICES



# Appendix A

Planning Decision Notice 20/503325/FULL and Section 106 Agreement



Bellway Homes  
C/O DHA Planning  
Mr Matthew Woodhead  
Eclipse House  
Sittingbourne Road  
Maidstone  
Kent  
ME14 3EN

22 June 2022

## PLANNING DECISION NOTICE

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|                               |   |
|-------------------------------|---|
| <b>APPLICANT:</b>             | <b>Bellway Homes</b>  |
| <b>DEVELOPMENT TYPE:</b>      | <b>Large Maj Dwellings</b>  |
| <b>APPLICATION REFERENCE:</b> | <b>20/503325/FULL</b>   |
| <b>PROPOSAL:</b>              | <b>Erection of 107 residential dwellings together with associated access, infrastructure, drainage, open space and landscaping.</b> |
| <b>ADDRESS:</b>               | <b>Land East Of, Crown Quay Lane, Sittingbourne, Kent, ME10 3ST</b>   |

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The Council hereby **GRANTS** permission/consent for the proposal referred to above subject to the following Condition(s):

- 1) The development to which this permission relates must be begun not later than the expiration of five years beginning with the date on which the permission is granted.  
  
Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.
  - 2) No development beyond the construction of foundations shall take place until details in the form of samples of external finishing materials to be used in the construction of the
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**MKPS – Working in Partnership with:** Swale Borough Council

**Please Note:** All planning related correspondence for SBC should be sent to:

Mid Kent Planning Support, Maidstone House, King Street, Maidstone ME15 6JQ

Email: [planningsupport@midkent.gov.uk](mailto:planningsupport@midkent.gov.uk)

Access planning services online at: [www.swale.gov.uk](http://www.swale.gov.uk) or submit an application via [www.planningportal.co.uk](http://www.planningportal.co.uk)

development hereby approved have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- 3) The development shall be carried out strictly in accordance with the following approved plans - 051904-BEL-K-01D, 02D, 03C, 04C, 05C, 06, 07B, SS01A, SS02B, SS03B, T01, T02, T03, T04, T05, T06A, T07A, T08, T09, T10, T11; 051904-SEC01A, 02A; PO-2B-2S-TC-E1, E2, E3; PO-2B-2S-P1, P2; PO-2B-2S-TC-M-E2, PO-2B-2S-M-P1; SA-2B-2SC-TC-M-E1, SA-2B-2SC-M-P3, SAI-2B-2SC-TC-E1, SAI-2B-2SC-P3, SAI-2B-2SC-TC-M-E1, SAI-2B-2SC-M-P3; SAIV-2B-2SC-TC-M-E1, SAIV-2B-2SC-M-P3, BM-3B-2S-TC-E1, BM-3B-2S-P2, BM-3B-2S-TC-M-E1, BM-3B-2S-M-P2; TU-3B-2S-TC-E1, TU-3B-2S-TC-E2, TU-3B-2S-P1B, TU-3B-2S-TC-M-E1, TU-3B-2S-TC-M-E2, TU-3B-2S-M-P1B, TU-3B-2S-TC-M-E3, TU-3B-2S-M-P2; QU-3B-2S-TC-E1, QU-3B-2S-TC-E2, QU-3B-2S-P1; GI-4B-3S-TC-E1, GI-4B-3S-P2, GI-4B-3S-TC-E2, GI-4B-3S-P3; NOA-4S-TC01-E1, NOA-TC-1-P1, NOA-TC01-P2, NOA-TC01-P3; BSA-3S-TC01-E1, BSA-TC01-P1, BSA-TC01-P2, BSA-TC01-P3; ARA-3S-TC01-E1A, ARA-TC01-P1A, ARA-TC01-P2A, ARA-TC01-P3A; HAA-3S-TC01-E1A, HAA-TC01-P1A, HAA-TC01-P2A, HAA-TC01-P3A; WRA-3S-TC01-E1A, WRA-TC01-P1A, WRA-TC01-P2A, WRA-TC01-P3A, 051904-SH01, SH02, SH03

Reason: To accord with the terms of the application and in the interests of proper planning.

- 4) Notwithstanding the submitted details, no development shall take place beyond the construction of foundations until a scheme to mitigate the dwellings from noise impacts has been submitted to and approved in writing by the Local planning Authority. The scheme shall include a modelled sound plan based on the noise monitored data contained in the Environmental Noise Survey and Acoustic Design Statement Report by Hann Tucker Associates dated March 2021, as well as a detailed scheme of measures and evidence to their effectiveness to mitigate noises both internally and within external amenity areas, including full details of the location, height and specification of acoustic fencing to be installed. The works specified in the approved scheme shall then be carried out in accordance with the approved details prior to occupation of the dwellings and retained thereafter.

Reason: In the interests of residential amenity and to protect the reasonable operation of neighbouring commercial uses.

- 5) Before development commences, details shall be submitted to and approved in writing by the local planning authority for the installation of fixed telecommunication infrastructure and High-Speed Fibre Optic (minimal internal speed of 1000mb) connections to multi point destinations and all buildings including residential, commercial and community. The infrastructure shall be installed in accordance with the approved details during the construction of the development, capable of connection to commercial broadband providers and maintained in accordance with approved details.

Reason: To ensure suitable infrastructure and utility connections.

- 6) No development shall take place beyond the construction of foundations until a detailed scheme of hard landscaping works has been submitted to and approved in writing by the Local Planning Authority. Such scheme shall include -
- o Details of the materials to be used for the hard surfaces within the development.
  - o Details of all fencing, walls and enclosures, which shall include secure gates and fencing to be installed to restrict access to parking spaces at the rear of units 75 and 76, provision of railings to enclose the car park area between units 1-11 and plot 29, and measures to restrict access to the area of land rear of plots 77-107.
  - o Details of the measures to restrict access to the cycle / footpath by unauthorised vehicles, and which should include measures to restrict access at each end of the path.
  - o Details of benches and bins to be provided within the open space.
  - o Provision of a heritage interpretation board within the open space to provide historical information on the former use of the site and surrounding area.

Reason: In the interests of visual amenity and crime prevention.

- 7) Notwithstanding the provisions of Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) no gates, fences, walls or other means of enclosure shall be erected or provided in advance of any wall or any dwelling fronting on a highway, other than as approved under this planning permission.

Reason: In the interests of visual amenity.

- 8) No development shall be commenced until details of existing and proposed site levels and finished floor levels have been submitted to and approved in writing by the Local Planning Authority. The details shall include cross-sectional drawings through the site and shall demonstrate how the site levels will be designed and managed at the site boundaries. The development shall be carried out in accordance with the approved details.

Reason: In order to secure a satisfactory form of development having regard to the sloping nature of the site.

Construction

- 9) No development shall take place, including any works of demolition, until a Construction Method Statement and Traffic Management Plan has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i the parking of vehicles of site operatives and visitors
  - ii loading and unloading of plant and materials.
  - iii Recording the condition of the immediate local highway prior to commencement, and measures to make good any damage attributed to construction traffic
  - iv storage of plant and materials used in constructing the development.
  - v the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - vi wheel washing facilities
  - vii measures to control the emission of dust and dirt during construction.
  - viii a scheme for recycling/disposing of waste resulting from demolition and construction works.

iv Routing and timing of construction traffic

Reason: In the interests of the amenities of the area and highway safety

- 10) Construction of the development shall take place in strict accordance with the measures identified in Sections 5.5, 5.6 and 5.7 of the Report to Inform a Habitats Regulations Assessment and Appropriate Assessment by Aspect Ecology dated December 2020.

Reason: To ensure that wildlife and ecologically important species are protected during construction.

Highways

- 11) No dwellings on the development hereby permitted shall be occupied until a contract has been let to undertake highway improvement works to Key Street roundabout in accordance with the HIF-funded scheme (or as otherwise amended) to be delivered by Kent County Council.

Reason: To improve the capacity and operation of the Key Street roundabout in order to accommodate development growth, in the interests of highways safety.

- 12) No dwellings on the development hereby permitted shall be occupied until the opening to the public of a Roads Investment Strategy scheme at M2 Junction 5 (or scheme to the same effect that may be agreed in writing by the local planning authority who shall consult Highways England).

Reason: To ensure that the A249 Trunk Road and M2 Junction 5 continue to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety.

- 13) No development beyond the construction of foundations shall take place until a detailed scheme of improvements to Crown Quay Lane has been submitted to and approved in writing by the Local Planning Authority. The scheme shall incorporate a footway, landscaping and tree planting and provision of parking bays, as generally shown on the off-site works drawing 14121-H-04 Rev P1. The approved scheme shall be completed prior to first occupation of the dwellings hereby permitted.

Reason: In the interests of highways safety and to improve the road environment in accordance with the Local Plan.

- 14) Prior to first occupation of the dwellings hereby permitted the developer shall submit a Traffic Regulation Order application to secure a package of suitable traffic restrictions for the roads within the development hereby approved and on Crown Quay Lane.

Reason: To minimise anti-social parking in the interest of local residential amenity.

- 15) Prior to the occupation of the dwellings hereby approved, the proposed estate road, footways, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, access, carriage gradients as appropriate, shall be constructed and laid out in accordance with details to

be submitted and approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections indicating as appropriate the design, layout, levels, gradients, materials, and method of construction shall be submitted to the Local Planning Authority.

Reason: To ensure that the roads are constructed and laid out in a satisfactory manner, in the interest of Highway Safety

- 16) Before the first occupation of a dwelling / premises the following works between that dwelling / premises and the adopted highway shall be completed as follows:
- (A) Footways and/or footpaths shall be completed, with the exception of the wearing course;
  - (B) Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:
    - (1) highway drainage, including off-site works,
    - (2) junction visibility splays,
    - (3) street lighting, street nameplates and highway structures if any.

Reason: In the interests of highway safety.

- 17) The areas shown on the approved plan for car parking (including visitor spaces) shall be provided, surfaced and drained prior to first occupation of the dwellings and kept available for such use at all times. No external alterations to the car ports or any other permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

- 18) No dwelling shall be occupied until a detailed scheme for electric vehicle charging has been submitted to and approved in writing by the Local Planning Authority, and such scheme shall include -
- a) Active electric vehicle charging points to be provided for individual dwellings as identified on the supporting planning layout drawing.
  - b) A minimum of two active electric vehicle charging points to be provided within the visitor parking spaces.
  - c) A minimum of four active electric vehicle charging points to be provided within the unallocated resident parking spaces, and details of passive charging provision for remaining unallocated resident parking spaces.
  - d) A strategy for the operation, management and maintenance of any charge points that are not within a private dwelling plot.

The scheme shall include details of the charge point specification, which shall be designed to utilise best available technology. No dwelling shall be occupied until the electric vehicle charging point for that dwelling or building has been installed in accordance with the approved details.

- 19) No dwelling/building shall be occupied or the approved use commenced until space has been laid out within the site in accordance with the approved plans for cycles to be securely parked.

Reason: To ensure the provision and retention of adequate off-street parking facilities for cycles in the interests of sustainable development and promoting cycle visits.

- 20) Pedestrian visibility splays 2 m x 2 m with no obstruction over 0.6 m above the access footway level shall be provided at each private vehicular access prior to it being brought into use and shall be subsequently maintained.

Reason: In the interests of highway safety.

#### Sustainability and Air Quality

- 21) The dwellings hereby approved in shall be constructed and tested to achieve the following measure:

At least a 20% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended).

No development shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of promoting energy efficiency and sustainable development.

- 22) No gas boilers shall be fitted in the dwellings hereby permitted other than a low emission boiler of a minimum standard of <40mgNOx/kWh. No dwellings shall be occupied until details of the boilers to be installed have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with such details.

Reason: In the interests of minimizing air quality impacts.

- 23) The proposed residential development hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no residential unit(s) shall be occupied until details of the measures used to achieve the rate for that unit(s) have been submitted to and approved in writing by the Local Planning Authority.

Reason: To reduce demands on water consumption within a water stressed area.

#### Flooding, Drainage and Contamination

- 24) The development shall be carried out in accordance with the submitted flood risk assessment (ref 70049200, dated December 2019) and the following mitigation measures it details:

- Minimum finished floor levels of living units: 6.05m AOD
- Minimum finished floor levels of sleeping units: 6.35m AOD.

Reason To reduce the risk of flooding to the proposed development and future occupants.

- 25) No development approved by this permission shall be commenced prior to a contaminated land assessment and remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:
- 1) A further phase II investigation in areas that were not accessible during the initial phase II investigation, including further gas monitoring and gas risk assessment which is also prescribed in the initial Phase II Contaminated Land report.
  - 2) An updated Phase II Contaminated Land report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.
  - 3) The results of the site investigation and the detailed risk assessment referred to in (1) and (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved. Part 1 and Part 2 for this condition were met by the abovementioned Phase 1 and Phase 2 reports.

Reason: To ensure that any contaminated land is adequately dealt with and that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution in line with paragraph 170 of the National Planning Policy Framework.

- 26) Prior to any part of the permitted development being occupied, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

Reason: To ensure that the site does not pose any further risk to the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete. This is in line with paragraph 170 of the National Planning Policy Framework.

- 27) The development hereby permitted shall not commence until a monitoring and maintenance plan in respect of contamination, including a timetable of monitoring and submission of reports to the local planning authority, has been submitted to, and approved in writing by, the local planning authority. Reports as specified in the approved plan, including details of any necessary contingency action arising from the monitoring, shall be submitted to, and approved in writing by, the local planning authority.



Reason: To ensure that the site does not pose any further risk to the water environment by managing any ongoing contamination issues and completing all necessary long-term remediation measures. This is in line with paragraph 170 of the National Planning Policy Framework.

- 28) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.

Reason: To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site. This is in line with paragraph 170 of the National Planning Policy Framework.

- 29) No drainage systems for the infiltration of surface water to the ground are permitted other than with the written consent of the local planning authority. Any proposals for such systems must be supported by an assessment of the risks to controlled waters. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants. This is in line with paragraph 170 of the National Planning Policy Framework.

- 30) The development hereby permitted shall not commence until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall be based upon the Flood Risk Assessment by WSP submitted with the application, and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100-year storm) can be accommodated and disposed of [within the curtilage of the site] without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding.

- 31) No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has

been submitted to and approved by the Local Planning Authority. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of paragraph 165 of the National Planning Policy Framework.

- 32) No development shall be commenced until details of the proposed means of foul water sewerage disposal have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure suitable provision of foul drainage infrastructure

#### Landscaping and Ecology

- 33) No development shall take place (including any ground works, site or vegetation clearance) until a method statement for biodiversity has been submitted to and approved in writing by the local planning authority. The content of the method statement shall include the:
- a) Purpose and objectives for the proposed works:
  - b) Detailed design(s) and/or working method(s) necessary to achieve stated objectives including any required updated surveys.
  - c) Measures for the protection of retained habitats as shown on the Habitats and Ecological Features Plan by Aspect Ecology dated April 2021.
  - d) Extent and location of proposed works, including the identification of a suitable receptor site, shown on appropriate scale maps and plans.
  - e) Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction.
  - f) Persons responsible for implementing the works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works.
  - g) Use of protective fences, exclusion barriers and warning signs.
  - h) Initial aftercare and long-term maintenance (where relevant); and,
  - i) Disposal of any wastes for implementing work.

The works shall be carried out in accordance with the approved details and shall be retained in that manner thereafter.

Reason: In the interests of biodiversity

- 34) A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to occupation of the development. The content of the LEMP shall demonstrate that its implementing appropriate management to achieve a Biodiversity Net Gain as set out in the Technical Briefing Note by Aspect Ecology dated 30/04/21 and must include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions, together with a plan of management compartments.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Reason: In the interests of biodiversity

- 35) No development beyond the construction of foundations shall take place until full details of soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, and an implementation programme. The details shall include a scheme of landscaping on the land to the rear of units 77-107 which shall be designed to provide a landscaped buffer to the adjacent commercial use, and details of the use of species to deter access between private and public spaces.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- 36) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- 37) Upon completion of the approved landscaping scheme (other than for the areas of public space and communal landscaping), any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- 38) No development beyond the construction of foundations shall take place until details of external lighting for the development, have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be designed in accordance with recommendations from the Bat Conservation trust and the Institute of Lighting Professionals, titled Guidance Note 8 Bats and Artificial Lighting. The development shall be carried out in accordance with the approved details.

Reason: In the interests of biodiversity and crime prevention

- 39) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

Informative(s):

- 1) The Environmental Permitting (England and Wales) Regulations 2016 require a permit to be obtained for any activities which will take place:
- on or within 8 metres of a main river (16 metres if tidal)
  - on or within 8 metres of a flood defence structure or culvert (16 metres if tidal)
  - on or within 16 metres of a sea defence
  - involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
  - in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it is a tidal main river) and you do not already have planning permission.

For further guidance please visit

<https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact the EA National Customer Contact Centre on 03702 422 549.

- 2) All Electric Vehicle chargers provided for homeowners in residential developments must be provided to Mode 3 standard (providing up to 7kw) and SMART (enabling Wifi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list:  
<https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approvedchargepoint-model-list>
- 3) It is the responsibility of the applicant to ensure , before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority.
- 4) Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be

found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>

- 5) The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

The Council's approach to this application:

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

If your decision includes conditions that need to be discharged, please be advised that there is a separate application process to discharge them which includes a fee. For more information on this please visit [https://www.planningportal.co.uk/info/200126/applications/60/consent\\_types/12](https://www.planningportal.co.uk/info/200126/applications/60/consent_types/12) and to submit an application for approval of details (discharge conditions) please use this link <https://www.planningportal.co.uk/applications>



**Emma Wiggins**  
**Director Regeneration**  
**Swale Borough Council**

**Please be advised that irrespective of whether your proposal requires planning permission or not, it may still require Building Regulation Approval. For more information on this please visit our website <https://www.swale.gov.uk/building-control>**

**IMPORTANT - YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES**

## NOTIFICATION TO APPLICANT FOLLOWING REFUSAL OF PERMISSION OR GRANT OF PERMISSION SUBJECT TO CONDITIONS

This decision does not give approval or consent that may be required under any act, bylaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

### Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority (LPA) to refuse permission for the proposed development, or to grant it subject to Conditions, then you can appeal to the Secretary of State (SoS) under Section 78 of the Town and Country Planning Act 1990. **Please see “Development Type” on page 1 of the decision notice to identify which type of appeal is relevant.**

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice and if you want to appeal against the LPA's decision on your application, then you must do so within **28 days** of the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against the LPA's decision on your application, then you must do so within **28 days** of the date of service of the enforcement notice, or within **6 months [12 weeks** in the case of a **householder** or **minor commercial** application decision] of the date of this notice, whichever period expires earlier.
- If this is a decision to refuse planning permission for a **Householder** application or a **Minor Commercial** application and you want to appeal the LPA's decision, or any of the conditions imposed, then you must do so within **12 weeks** of the date of this notice.
- In all other cases, you will need to submit your appeal against the LPA's decision, or any of the conditions imposed, within **6 months** of the date of this notice.

Appeals can be made online at: <https://www.gov.uk/planning-inspectorate>.

If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority ( [planningappeals@midkent.gov.uk](mailto:planningappeals@midkent.gov.uk) ) and Planning Inspectorate ([inquiryappeals@planninginspectorate.gov.uk](mailto:inquiryappeals@planninginspectorate.gov.uk)) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

The SoS can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The SoS need not consider an appeal if it seems to the SoS that the LPA could not have granted planning permission for the proposed development or could not have granted it without

the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

DATED

22nd June 2022

SWALE BOROUGH COUNCIL

-and -

BELLWAY HOMES LIMITED

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DEED OF AGREEMENT PURSUANT TO  
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990  
RELATING TO THE DEVELOPMENT OF  
LAND East of Crown Quay Lane Sittingbourne Kent ME10 3ST  
Planning Application Ref No 20/503325/FULL

---

Mid Kent Legal Services  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
Kent ME10 3HT  
Ref.: 20/503325/FULL





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APPENDIX 2: OPEN SPACE PLAN

THIS DEED OF AGREEMENT is dated the 22<sup>nd</sup> day of June 2022

**BETWEEN**

- 1) **SWALE BOROUGH COUNCIL** of Swale House East Street Sittingbourne Kent ME10 3HT (the "**Borough Council**") and
- 2) **BELLWAY HOMES LIMITED** (Company Registration No 670176) whose registered office is at Woolsington House Woolsington Newcastle upon Tyne NE13 8BF (the "**Owner**")

Collectively "**the Parties**"

**RECITALS**

- A. The Borough Council is the local planning authority and local housing authority for the area within which the Land is situated
- B. The Application was made to the Borough Council
- C. The Borough Council by its Planning Committee at its meeting held on 24 June 2021 resolved that planning permission be granted for the Development subject to conditions and the prior completion of this Deed (without which planning permission would have been refused)
- D. The Owner is a person interested in the Land by virtue of being the registered proprietor with freehold title absolute of the Land as set out in Schedule 1
- E. The Parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms directly relate to the development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010
- F. Pursuant to The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) the Borough Council must be satisfied that the Development will not adversely affect the integrity of the Special Protection Area The Council is satisfied that the likely significant effect of the Development on the protected habitat sites identified in the SAMMS can be mitigated through a financial contribution towards the provision of SPA

Mitigation Measures across the Special Protection Area pursuant to the SAMMS

- G. The Owner has agreed to enter into this Deed to regulate the Development and to give effect to the terms of the resolution of the Borough Council's Planning Committee hereinbefore recited which Deed may also secure other planning benefits
- H. The Borough Council is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate be conducive to and be incidental to the Borough Council's functions
- I. This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Borough Council pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and all other powers so enabling

## **OPERATIVE PROVISIONS**

**IT IS AGREED** as follows

### **1 Definitions**

- 1.1 Unless the context otherwise requires where in this Deed the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by the definitions contained in Paragraph 1.1 of Schedules 3,4 5,6 and 7

|                                    |  |
|------------------------------------|--|
| <b>"1990 Act"</b>                  | means the Town and Country Planning Act 1990 (as amended)  |
| <b>"All in Tender Price Index"</b> | means the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors or any official publication substituted for it |
| <b>"Application"</b>               | means the application for full planning permission submitted by Owner to the Borough Council to carry out the Development at the Land and given the registered                                   |

reference number 20/503325/FULL

**“Borough Council Contributions”**

means the financial contributions payable to the Borough Council pursuant to Schedule 3

- a) the Air Quality Mitigation Contribution
- b) the NHS Healthcare Contribution
- c) the Open Space Contribution
- d) the Recreation Contribution
- e) the SPA Mitigation Contribution
- f) the Refuse Bin Contribution

~~g) all~~

**“Commencement of Development”**

means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the words **“Commence”** and **“Commence Development”** shall be construed accordingly

**“Contributions”**

means the Borough Council Contributions and the County Council Contributions and **“Contribution”** shall mean any one of them

**“County Council”**

means The Kent County Council of Sessions House County Hall Maidstone Kent ME14 1XQ who are the education authority the local highway authority the transport authority the social care authority the waste authority and the libraries authority for the area within which the Land is situated

**“County Council Contributions”**

means the financial contributions payable to the Borough Council as agent to the County Council

pursuant to Schedule 3 comprising

- a) the Community Learning Contribution
- b) the Highways Contribution
- c) the Libraries Contribution
- d) the Primary Education Contribution
- e) the Secondary Education Contribution
- f) Social Care Contribution
- g) the Youth Services Contribution
- h) the Waste Contribution

**“Deed”** means this deed of agreement together with all Schedules and Appendices

**“Development”** means the erection of 107 residential dwellings together with associated access infrastructure drainage open space and landscaping on the Land as set out in the Application pursuant to the Planning Permission

**“Dwelling”** means any residential unit to be erected on the Land pursuant to the Planning Permission including for the avoidance of doubt the Open Market Dwellings and Affordable Dwellings

**“Expert”** means the person appointed in accordance with clause ~~8~~<sup>11</sup> to determine any dispute between the parties arising under this Deed other than any dispute relating to the amount of any contribution payable pursuant to this Deed or the due date of payment

**“General Building Cost** means the General Building Cost Index as published by the Building Costs Information Service on behalf of the

|                                |   |
|--------------------------------|---|
| <b>Index</b>                   | Royal Institution of Chartered Surveyors or any official publication substituted for it   |
| <b>"Index Linked"</b>          | means adjusted by reference to the relevant index pursuant to the provisions of Clause <del>17</del> 17 <i>W</i>  |
| <b>"Interest Rate"</b>         | means 6% per annum above the base lending rate of Lloyds Bank PLC from time to time applicable at the actual date of payment  |
| <b>"Land"</b>                  | means the land against which this Deed may be enforced as detailed in Schedule 1 and indicated shown edged red on the Plan  |
| <b>"Occupy"</b>                | means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations or marketing and for the avoidance of doubt the sale of any Dwelling shall constitute permitting its occupation and <b>"Occupation"</b> <b>"Occupier"</b> or <b>"Occupied"</b> shall be construed accordingly |
| <b>"Open Market Dwellings"</b> | means those Dwellings for sale on the open market and which are not Affordable Dwellings  |
| <b>"Parties"</b>               | means the Owner and the Borough Council as the context so requires and <b>"Party"</b> means any one of them   |
| <b>"Plan"</b>                  | means the plan entitled "Location Plan" (Drawing No 051904-BEL-K-06) prepared by DHA Architecture Limited and dated 10.07.2020 annexed as Appendix 1  |
| <b>"Planning Permission"</b>   | means planning permission for the Development to be granted pursuant to the Application subject to conditions including any modification amendment or variation thereto made pursuant to s73 or s96A of the 1990 Act or   |

as otherwise agreed by the Borough Council

**“Practical Completion”** means the proper issue of one or more certificate(s) of practical completion of any works carried out pursuant to the Planning Permission or as the context may allow any part section or phase thereof by an independent architect civil engineer chartered surveyor or other certifying professional (as the case may be) and the term **“Practically Complete”** shall be construed accordingly

**“Preparatory Operation”** means an operation or item of work of or connected with or ancillary to

- a) archaeological investigation
- b) site investigation or survey works including exploratory boreholes and trial pits
- c) site remediation works
- d) site clearance including earth works re-grading and levelling but excluding demolition of a building or structure
- e) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities
- f) the erection of fences and hoardings around the Land and
- g) construction of temporary access and service and/or haul roads
- h) the construction of a temporary site compound and welfare facilities including temporary facilities for



security personnel

WLL

~~“Retail Price Index”~~ means the ~~Retail Price Index published by the Office for National Statistics or any official publication substituted for it~~

“Statutory Undertakers” means any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator

“VAT” means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)

“Working Day” means a day which is not a Saturday Sunday bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday

## 2 Interpretation

- 2.1 A reference to any Clause Plan Paragraph Schedule Appendix or Recital such reference is a reference to a Clause Plan Paragraph Appendix or Recital in or Schedule to (or in the case of plans attached to) this Deed
- 2.2 The headings in this Deed are for convenience only and shall not be deemed to be part of or taken into consideration in the interpretation of this Deed
- 2.3 Words importing the singular include the plural and vice versa
- 2.4 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 2.5 Words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.6 Reference 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 and in the case of the Borough Council shall include any successor to its statutory functions

- 2.7 Reference to any officer of the Borough Council means such officer or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging such duties and functions
- 2.8 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 individual severally
- 2.9 Words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 2.10 References in this Deed to statutes bye-laws regulations orders and delegated legislation shall include any statute bye-law regulation order delegated legislation plans regulations permissions and directions amending re-enacting consolidating replacing or made pursuant to the same as current and in force from time to time
- 2.11 Any words following the terms "including" "include" "in particular" "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words description definition phrase or term preceding those terms

### 3 Legal Basis

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers
- 3.2 The covenants obligations restrictions and requirements imposed upon the Parties by this Deed
- 3.2.1 are entered into pursuant to the provisions of section 106 of the 1990 Act
- 3.2.2 are planning obligations for the purposes of section 106 of the 1990 Act
- 3.2.3 relate to the Land
- 3.2.4 are entered into with intent to bind the Owners interest in the Land as set out in Schedule 1 and each and every part thereof into whosoever hands the same may come
- 3.2.5 are enforceable by the Borough Council as local planning authority 

2.12 Any financial contributions collected pursuant to the terms of this Deed may be pooled with other funds for use by the receiving party for the purposes for which those contributions were paid AND FOR THE AVOIDANCE OF DOUBT any financial contribution may be used towards professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the person receiving the financial contribution in order to achieve the purposes for which the requisite contribution was paid.

3.2.6 are executed by the respective Parties as a deed

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

#### 4 Conditionality

With the exception of this Clause 4 and Clauses 1 2 3 5.2 5.3 and <sup>6 22</sup> ~~7~~ to ~~24~~ inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the grant and issue of the Planning Permission

#### 5 Covenants and Obligations of the Owner

5.1 The Owner covenants with the Borough Council to perform and observe the covenants obligations restrictions and requirements contained within this Deed

5.2 The Owner shall permit the Borough Council and its authorised employees and agents upon reasonable notice to enter the Land at all reasonable times for the purposes of verifying whether or not any planning obligations arising under this Deed have been performed or observed **SUBJECT TO** compliance by the Borough Council and its authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice

<sup>all</sup> 5.3 The Owner covenants to pay before completion of this Deed

5.3.1 the Borough Council's reasonable legal and administrative costs and disbursements in connection with the negotiation preparation and execution of this Deed

5.3.2 the sum of £20,000 to the Borough Council in connection with the monitoring and administration of this Deed

<sup>all</sup> 5.4 ~~Covenants and Obligations of the Borough Council~~ The Borough Council covenants with the Owner that subject to the Owner carrying out and observing the Owner's covenants obligations restrictions and requirements herein it will perform the Borough Council's covenants as set out herein

## **6 Release and Exclusions**

- 6.1 Save for Clause 5.2 and those obligations contained in this Deed specifically regulating the use of land or buildings after construction no planning obligations contained in this Deed shall be binding on any freehold or leasehold owners or occupiers of individual Dwellings (or their respective mortgagees or successors in title)
- 6.2 Save for Clause 5.2 no planning obligations contained in this Deed shall be binding on any Statutory Undertaker with any existing interest in any part of the Land or acquires an interest in any part of the Land for the purpose of the supply of electricity gas water or sewerage drainage or public telecommunication services
- 6.3 No person shall be liable for breach of any of the planning obligations or other provisions of this Deed after they shall have irrevocably parted with their entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to the rights of the Borough Council in relation to any subsisting or any antecedent breach non-performance or non-observance arising prior to parting with such interest

## **7 Determination of the Planning Permission**

- 7.1 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 expires prior to Commencement of Development without the consent of the Owner
- 7.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted after the date of this Deed
- 7.3 If the Borough Council agrees following an application under section 73 of the 1990 Act to vary or release any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and apply in equal terms to the new planning permission **UNLESS** the Borough Council in determining the application for the new planning permission (or the Secretary of State determining the section 78 appeal in relation to that application) indicates that consequential amendments are required to this Deed to reflect the impact of the section 73 application in which circumstances the Borough Council shall require the Owner to enter into a separate deed under section 106 and/or s.106A of the 1990 Act (as the case

may be) to secure relevant planning obligations or other planning benefits relating to the new planning permission **BUT** nothing in this Deed shall in any way fetter the Borough Council's discretion in relation to the section 73 application or the determination thereof

## **8 Disputes and Expert Determination**

- 8.1 In the event of any dispute or difference between the Parties touching or concerning any matter arising out of this Deed (SAVE FOR the amount of any contribution payable pursuant to this Deed or the due date of payment) such dispute or difference shall be referred to the Expert to be appointed on the application of the Parties by the President (or equivalent person) for the time being of the professional body in England chiefly relevant to such dispute or difference
- 8.2 In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in Clause ~~8.1~~<sup>8.1</sup> within ten (10) Working Days after a written request by one Party to the others to agree to the appointment of an Expert then the question of the appropriate Expert or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of a Party and such a solicitor shall act as an expert and his decision as to the Expert or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne in equal shares
- 8.3 The Expert shall act as an expert and save in case of manifest error his decision shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares
- 8.4 The Expert shall be required to give notice to each of the Parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other Party will be entitled to make a counter written submission within a further ten (10) Working Days in respect of any such submission and supporting material
- 8.5 The Expert shall be subject to the express requirement that a decision shall be in writing (and shall include reasons for that decision) and shall be 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 twenty-eight (28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received the last submission or written representation

- 8.6 Nothing in this Clause ~~8~~<sup>8 (1)</sup> shall be taken to fetter or limit the ability of the Borough Council to carry out its functions and duties nor to limit the ability of any of the Parties to refer a dispute to the Courts of England and Wales

## 9 Notices

- 9.1 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication to be given under this Deed must be in writing and shall be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service marked for the attention of the person and copied to the person(s) (as the case may be) identified below **SAVE THAT** any of the Parties may by written notice notify the other Parties of an alternative address (which address must be based in England and Wales) for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below

**The Borough Council** Swale Borough Council

**Address** **The Head of Planning Services**  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
Kent ME10 3HT

Reference **20/503325/FULL**

**With a copy to** **The Section 106 Monitoring Officer**

**Where required** **The Affordable Housing Manager**

**Where required** **The Economy and Community Services Manager**

**Where required** **The Greenspaces Manager**



shall as soon as is reasonably practicable issue a written confirmation to such effect to the Owner

- 10.3 The Borough Council shall upon the written request of the Owner (and subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Borough Council being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable cancel all entries made in the local land charges register in respect of this Deed

## **11 Successors in Title**

The Owner enters into the obligations set out in this Deed for itself and its successors in title for the benefit of the Borough Council to the intent that the obligations in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof

## **12 Powers of the Borough Council**

Nothing contained or implied in this Deed shall fetter prejudice restrict or affect the rights discretions powers duties responsibilities and obligations of the Borough Council under all and any legislative instrument including statutes by-laws statutory instruments orders and regulations for the time being in force in the exercise of its function as a local authority

## **13 Severability**

If any provision (or part thereof) of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed thereby to be affected impaired or called into question

## **14 Rights of Third Parties**

- 14.1 The Parties intend that no terms of this Deed may be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Deed save for the successors in title to the Parties and in the case of the Borough Council the successor to its statutory functions



14.2 The rights of the Parties to rescind or vary this agreement are not subject to the consent of any other person

## **15 Change of Ownership and New Interest**

15.1 The Owner warrants that

15.1.1 they have full authority to enter into this Deed

15.1.2 no person other than the persons identified in Schedule 1 has any legal or equitable interest in the Land and that it has not leased mortgaged charged or otherwise created any interest in the Land at the date of this Deed

15.1.3 they know of no impediment to the validity of this Deed

15.1.4 there is no subsisting breach of the terms of any mortgage or legal charges secured on the Land and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this Deed

15.1.5 they shall make good any loss to the Borough Council as a result of a breach of this warranty within ten (10) Working Days of a request to do so

15.2 The Owner shall give the Borough Council immediate written notice of any conveyance transfer lease assignment mortgage or other disposition entered into in respect of all or any part of the Land or change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give

15.2.1 the name and address of the person to whom the disposition was made (and in the case of a company the full name and registered office address) and

15.2.2 the nature and extent of the interest disposed of by reference to a plan

15.3 In the event that the Owner's existing interest in the Land is determined (whether by surrender merger forfeiture or otherwise) and the Owner acquires another interest in the Land (written notice of which shall be given to the Borough Council) and the Planning Permission shall have either been Implemented or shall remain capable of Implementation then the Owner as the case may be will within twenty-eight (28) days from a written request from the Borough Council execute or procure the execution of another Deed on the same terms mutatis mutandis as this Deed

15.4 In the event that the Borough Council considers it appropriate to note the provisions of this Deed against the title to the Land at H M Land Registry the Owner hereby consents

## 16 Waiver

No waiver (whether expressed or implied) by the Borough Council of any breach or default or delay 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 Borough Council from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default and no single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

## 17 Indexation

17.1 All the financial contributions payable pursuant to this Deed shall be Index Linked and the Maintenance Contributions (if payable) pursuant to Paragraph 4.2 of Schedule 6 *ll*

17.2 The Borough Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the All in Tender Price Index between the quarterly index figure immediately preceding the Committee Resolution of 24 June 2021 and the quarterly index figure for the quarter immediately preceding the date of the payment becoming due

17.3 The County Council Contributions payable pursuant to this Deed other than the Highways Contribution shall be increased in the same proportion as the percentage increase in the General Building Cost Index from April 2020 (Index 360.3 to the monthly index figure immediately preceding the date of payment

17.4 The Highways Contribution payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the All in Tender Price between the quarterly index figure immediately preceding the Committee Resolution of 24 June 2021 and the quarterly index figure for the quarter immediately preceding the date of payment Where reference is made to any index in this Deed and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) issued or caused to be issued from time to time by the Building Costs Information Service Royal Institution of Chartered Surveyors or other appropriate body and as may commonly be used in place of that index and as approved by the Borough Council (in consultation with the County Council where County Council Contributions are

affected) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Borough Council (in consultation with the County Council where County Council Contributions are affected) shall approve

## **18 Interest**

If any sum or amount due under this Deed has not been paid to the Borough Council by the date it is due the Owner shall pay the Borough Council interest on that amount at the Interest Rate with such interest accruing on a daily basis for the period from the date payment is due to and including the date of payment

## **19 VAT**

19.1 Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT

19.2 If any VAT is at any time chargeable on any supply made by any Party under or pursuant to this Deed the Party making the payment shall pay the other an amount equal to that VAT as additional consideration subject to receipt of a valid VAT invoice

## **20 Agreements and Declarations**

The Parties agree that

20.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission and

20.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Borough Council in the exercise of any other statutory function

## **21 Jurisdiction**

21.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England

21.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales

21.3 The Owner irrevocably authorises its Company Secretary at its registered address to accept service of all legal process arising out of or connected with this Deed and service on the Company Secretary at its registered address shall be deemed to be good service on the Owner

**22 Delivery**

This Deed is delivered on the date written at the start and the provisions of this Deed (other than this Clause and Clause 5.3 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

## **SCHEDULE 1 : THE LAND**

The land against which this Deed is enforceable comprises all that land and premises situate on the east side of Crown Quay Lane Sittingbourne registered under title number K283322 and shown edged red on the Plan of which the Owner is the registered freehold proprietor with title absolute subject to the matters in the Charges Registers but otherwise free from encumbrances

## **SCHEDULE 2 : NOTICES**

Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owner covenants that

### **Notification of Implementation of Planning Permission**

1. it shall provide the Borough Council with no less than twenty (20) Working Days prior notice of the intended date of implementation of the Planning Permission and for the avoidance of doubt implementation of the Planning Permission does not mean Commencement of Development
2. it shall not implement the Planning Permission unless and until this notice has been provided to the Borough Council and
3. it shall subsequently notify the Borough Council promptly and in any event within 5 Working Days of the actual date on which the Planning Permission is implemented

### **Notification of Commencement of Development**

4. it shall provide the Borough Council with no less than twenty (20) Working Days prior notice of the intended date of Commencement of Development and the Owner shall not Commence Development unless and until this notice has been provided to the Borough Council and
5. it shall notify the Borough Council promptly and in any event within five (5) Working Days of the actual date of Commencement of Development and

### **Notification of Occupation**

6. it shall provide the Borough Council with no less than twenty (20) Working Days prior notice of the intended date of first Occupation of the Development and the Owner shall not Occupy the Development unless and until this notice has been provided to the Borough Council
7. it shall notify the Borough Council promptly and in any event within five (5) Working Days of the actual date of first Occupation of the Development
8. it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Occupation of the last Dwelling and the Owner shall not Occupy such

Dwelling unless and until this notice has been provided to the Borough Council

**Notification of Completion**

9. it shall provide the Borough Council with the final Certificate of Practical Completion issued for the Development

### SCHEDULE 3 : FINANCIAL CONTRIBUTIONS

#### 1. Interpretation of this Schedule

1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of Schedules 4 5 6 and 7

|  |   |
|--|---|
| <b>“Air Quality Mitigation Contribution”</b> | means the sum of Forty Seven Thousand Nine Hundred and Twenty Six Pounds (£47,926.00) <sup>Index Linked</sup> towards measures to improve air quality within the designated Air Quality Management Areas within Sittingbourne <i>all</i>  |
| <b>“Applicable Flat”</b>                     | <del>means those Dwellings comprising flats but excluding Applicable Houses and those flats (if any) of less than 56sqm GIA and excluding sheltered accommodation.</del> <i>all</i>   |
| <b>“Applicable House”</b>                    | <del>means all Dwellings but excluding Applicable Flats and those Dwellings (if any) of less than 56sqm GIA and excluding sheltered accommodation</del> <i>all</i>  |
| <b>“Community Learning Contribution”</b>     | means a contribution in the sum of One Thousand Seven Hundred and Fifty Six Pounds and Ninety Four Pence (£1,756.94) <sup>Index Linked</sup> towards the Community Learning Facilities <i>all</i>   |
| <b>“Community Learning Facilities”</b>       | means provision of additional community learning facilities, resources and equipment at Sittingbourne Adult Education Centre  |
| <b>“GIA”</b>                                 | <del>means Gross Internal Area as measured in accordance with the ‘International Property Measurement Standards; Residential Buildings (IPMS 2 – Residential (Internal))’ (September 2016) or any amendment update or variation thereto or any subsequent replacement thereof or such other standard as may be approved by the Royal Institution of Chartered Surveyors (RICS)</del> <i>all</i> |



**“Highways Contribution”**

means the following contributions:

- Fifteen Thousand Two Hundred and Sixty Pounds (£15,260) <sup>Index Linked</sup> towards highway improvements to the A2, /Swanstree Avenue junction; and
- Twelve Thousand One Hundred and Ten Pounds (£12,110) <sup>Index Linked</sup> towards highway improvements to the A2 /Murston Road junction; and
- Sixty Four Thousand Eight Hundred Pounds (£64,800) <sup>Index Linked</sup> towards highway improvements to the Key Street roundabout

**“KCC Highways Works”**

means the provision of highway improvements by the County Council to the A2 Swanstree Avenue; A2 Murston Road junction and A2 Key Street (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the County Council)

**“Libraries Contribution”**

means a contribution in the sum of Five Thousand Nine Hundred and Thirty Three Pounds and Fifteen Pence (£5933.15) <sup>Index Linked</sup> towards the Library Facilities

**“Library Facilities”**

means provision of additional services resources and stock at Sittingbourne library

**“NHS Healthcare Contribution”**

means a contribution in the sum of Eighty One Thousand seven hundred and twenty pounds (£81,720) <sup>Index Linked</sup> towards the NHS Healthcare Facilities

**“NHS Kent and Medway CCG”** means the NHS Kent and Medway Clinical Commissioning Group of Primary Care Team 4<sup>th</sup> floor Maidstone House King Street Maidstone Kent ME15 6JQ which is a statutory body established under the Health and Social Care Act 2012 which have the function of commissioning services for the purposes of the health service in England and are treated as NHS bodies for the purposes of the National Health Service Act 2006 or its successor in title or successor to its statutory functions

**“NHS Healthcare Facilities”** means provision of additional capacity in local GP provision by refurbishment reconfiguration and/or extension of existing facilities (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by NHS Kent and Medway CCG) at Milton Regis Medical Partnership and/or Memorial Medical Centre and/or Teynham Surgery AND in the event that any of the above beneficiaries cease to exist or have merged practices into a primary healthcare facility then that primary healthcare facility shall take the benefit of the NHS Healthcare Contribution provided that the primary healthcare facility services some or all of the healthcare requirements of the occupiers of the Development

**“Open Space Contribution”** means a contribution in the sum of Five Hundred and Four Thousand Two Hundred and Sixty Eight Pounds (£504,268)<sup>Index Linked</sup> towards the provision of Open Space Facilities

**“Open Space Facilities”** means provision towards land assembly open space works and a footbridge to the Creekside on the west side

of Crown Quay Lane (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the Borough Council)

**“Primary Education Contribution”**

means contributions towards the provision of the Primary Education Facility in the sums of:

- £372,300<sup>Index Linked</sup> towards the build costs ; and *all*
- £110,935.70<sup>Index Linked</sup> towards the land acquisition costs *all*

**“Primary Education Facility”**

means provision towards build and land costs for a new two-form entry primary school to serve North Sittingbourne (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the County Council)

**“Recreation Contribution”**

means contributions in the sums of:

- Sixty Three Thousand Four Hundred and Fifty One Pounds (£63,451)<sup>Index Linked</sup> towards off site formal sports provision within the vicinity of the Development: and *all*
- Forty Seven Thousand Seven Hundred and Seventy Two Pounds (£47,772)<sup>Index Linked</sup> towards off site formal play provision within the vicinity of the Development *all*

**“Secondary Education Contribution”**

means contributions towards the provision of the Secondary Education Facility in the sum of Two Hundred and Eighty Three Thousand Three Hundred and Eighty

Six Pounds (£283,386.00) towards the build costs

**“Secondary Education Facility”** means towards provision for a new secondary school on land off Quinton Road Sittingbourne (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the County Council)

**“Social Care Contribution”** means the sum of Fifteen Thousand Seven Hundred and Sixteen Pounds and Sixteen Pence (£15,716.16) *Index Linked* towards Social Care Services 

**“Social Care Services”** means provision towards specialist care accommodation for older people and/or those with learning and/or physical disabilities within the administrative area of the Borough Council

**“Refuse Bin Contribution”** means the sum of £16,153.92 for the provision of refuse bins to serve the Dwellings

**“Waste Disposal Contribution”** means the sum of Twenty Three Thousand Seven Hundred and Forty Five Pounds and Forty Four Pence (£23,745.44) towards the provision of the Waste Disposal Facilities

**Waste Disposal Facilities** means improvements to improve capacity at the Household Waste Recycling Centres and Waste Transfer Stations within the Borough Council's administrative area

**“Youth Services Contribution”** means a contribution in the sum of Seven Thousand and Eight Pounds and Fifty Pence (£7,008.50) towards Youth Service Facilities

**“Youth Services Facilities”** means provision towards additional youth services in Sittingbourne including the Sittingbourne Youth Hub

## **2. Community Learning Contribution**

2.1. The Owner covenants that it shall pay to the Borough Council the Community Learning Contribution as follows:

2.1.1 50% before Commencement of Development

2.1.2 100% before first Occupation of the Development

2.2. The Owner covenants that it shall not :

2.2.1 Commence Development unless and until 50% of the Community Learning Contribution has been paid to the Borough Council

2.2.2 Occupy or permit Occupation of the Development until 100% of the Community Learning Contribution has been paid to the Borough Council

2.3. The Borough Council shall not transfer the Community Learning Contribution (or any part thereof) (together with any interest accrued thereon) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Community Learning Facilities

2.4. If the Borough Council are of the view that the Community Learning Contribution will not be spent in accordance with Paragraph 2.3 the Borough Council shall repay such of the Community Learning Contribution as the Borough Council is holding to the person who paid the Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

## **3. Highways Contribution**

3.1. The Owner covenants that it shall pay to the Borough Council the Highways Contribution as follows:

3.1.1 50% before Commencement of Development

3.1.2 100% before first Occupation of the Development

- 3.2. The Owner covenants that it shall not:
- 3.2.1 Commence Development unless and until 50% of the Highways Contribution has been paid to the Borough Council
  - 3.2.2 Occupy or permit Occupation of the Development until 100% of the Highways Contribution has been paid to the Borough Council
- 3.3. The Borough Council shall not transfer the Highways Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the KCC Highways Works
- 3.4. If the Borough Council are of the view that the Highways Contribution will not be spent in accordance with Paragraph 3.3 the Borough Council shall repay such of the Highways Contribution as the Borough Council is holding to the person who paid the Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

#### **4. Libraries Contribution**

- 4.1. The Owner covenants that it shall pay to the Borough Council: the Libraries Contribution as follows:
- 4.1.2 50% before Commencement of Development
  - 4.1.2 100% before first Occupation of the Development
- 4.2. The Owner covenants that it shall not:
- 4.2.1 Commence Development unless and until 50% of the Libraries Contribution has been paid to the Borough Council
  - 4.2.2 Occupy or permit Occupation of the Development until 100% of the Libraries Contribution has been paid to the Borough Council
- 4.3. The Borough Council shall not transfer the Libraries Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Library Facilities
- 4.4. If the Borough Council are of the view that the Libraries Contribution will not be spent in accordance with Paragraph 4.3 the Borough Council shall repay such of the Libraries

Contribution as the Borough Council is holding to the person who paid the Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

**5. NHS Healthcare Contribution**

5.1. The Owner covenants that it shall pay to the Borough Council the NHS Healthcare Contribution as follows:

5.1.1 50% before Commencement of Development

5.1.2 100% before Occupation of the Development

5.2. The Owner covenants that it shall not:

5.2.1 Commence Development unless and until 50% of the NHS Healthcare Contribution has been paid to the Borough Council

5.2.2 Occupy or permit Occupation of the Development until 100% of the NHS Healthcare Contribution has been paid to the Borough Council

5.3. The Borough Council shall not transfer the NHS Healthcare Contribution (or any part thereof) to NHS Kent and Medway CCG unless the Borough Council is satisfied that NHS Kent and Medway CCG will spend the contribution on the NHS Healthcare Facilities

5.4. If the Borough Council are of the view that the NHS Healthcare Contribution will not be spent in accordance with Paragraph 5.3 the Borough Council shall repay such of the NHS Healthcare Contribution as the Borough Council is holding to the person who paid the Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

**6. Open Space Contribution**

6.1. The Owner covenants that it shall pay to the Borough Council the Open Space Contribution as follows:

6.1.1 50% before Commencement of Development

6.1.2 100% before Occupation of the Development

6.2. The Owner covenants that it shall not:

6.2.1 Commence Development unless and until 50% of the Open Space Contribution has been paid to the Borough Council

6.2.2 Occupy or permit Occupation of the Development until 100% of the Open Space Contribution has been paid to the Borough Council

6.3. The Borough Council covenants with the Owner that it shall apply the Open Space Contribution as a contribution towards the Open Space Facilities or for such other purposes for the benefit of the Development as the Owner and the Borough Council may otherwise agree in writing and not to use the Open Space Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause ~~20~~<sup>18</sup> as if it were part of the principal sum paid by the Owner

6.4. In the event that all or any part of the Open Space Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of Practical Completion of the Development (as notified to the Borough Council by the Owner pursuant to Clause ~~11.4~~<sup>9.1</sup>) and unless the Borough Council and the Owner agree otherwise the Borough Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the Contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administration expenses

## 7. Primary Education Contribution

7.1. The Owner covenants that it shall pay to the Borough Council the Primary Education Contribution as follows:

7.1.2 50% before Commencement of Development

7.1.2 100% before first Occupation of the Development

7.2. The Owner covenants that it shall not:



7.2.1 Commence Development unless and until 50% of the Primary Education Contribution has been paid to the Borough Council

7.2.2 Occupy or permit Occupation of the Development until 100% of the Primary Education Contribution has been paid to the Borough Council

7.3. The Borough Council shall not transfer the Primary Education Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Primary Education Facility

7.4. If the Borough Council are of the view that the Primary Education Contribution will not be spent in accordance with Paragraph 7.3 the Borough Council shall repay such of the Primary Education Contribution as the Borough Council is holding to the person who paid the Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

## **8. Secondary Education Contribution**

8.1. The Owner covenants that it shall pay to the Borough Council the Secondary Education Contribution as follows:

8.1.1 50% before Commencement of Development

8.1.2 100% before first Occupation of the Development

8.2. The Owner covenants that it shall not:

8.2.1 Commence Development unless and until 50% of the Secondary Education Contribution has been paid to the Borough Council

8.2.2 Occupy or permit Occupation of the Development until 100% of the Secondary Education Contribution has been paid to the Borough Council

8.3. The Borough Council shall not transfer the Secondary Education Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Secondary Education Facility

8.4. If the Borough Council are of the view that the Secondary Education Contribution will not be spent in accordance with Paragraph 8.3 the Borough Council shall repay such of the Secondary Education Contribution as the Borough Council is holding to the

person who paid the Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

## **9. Refuse Bin Contribution**

9.1. The Owner covenants that it shall pay to the Borough Council the Refuse Bin Contribution as follows:

9.1.1 50% before Commencement of Development

9.1.2 100% before Occupation of the Development

9.2. The Owner covenants that it shall not:

9.2.1 Commence Development unless and until 50% of the Refuse Bin Contribution has been paid to the Borough Council

9.2.2 Occupy or permit Occupation of the Development until 100% of the Refuse Bin Contribution has been paid to the Borough Council

9.3. The Borough Council covenants with the Owner that it shall apply the Refuse Bin Contribution towards the provision of refuse bins for the Dwellings and for no other purpose **PROVIDED THAT** for the avoidance of doubt the Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause ~~20~~<sup>18</sup> as if it were part of the principal sum paid by the Owner

9.4. In the event that all or any part of the Refuse Bin Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of Practical Completion of the Development (as notified to the Borough Council by the Owner pursuant to Clause ~~11.4~~<sup>9.1</sup>) and unless the Borough Council and the Owner agree otherwise the Borough Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the Contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administration expenses

## **10. Youth Services Contribution**

10.1. The Owner covenants that it shall pay to the Borough Council the Youth Services Contribution as follows:

- 10.1.1 50% before Commencement of Development
- 10.1.2 100% before first Occupation of the Development
- 10.2. The Owner covenants that it shall not:
  - 10.2.1 Commence Development unless and until 50% of the Youth Services Contribution has been paid to the Borough Council
  - 10.2.2 Occupy or permit Occupation of the Development until 100% of the Youth Services Contribution has been paid to the Borough Council
- 10.3. The Borough Council shall not transfer the Youth Services Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Youth Services Facilities
- 10.4. If the Borough Council are of the view that the Youth Services Contribution will not be spent in accordance with Paragraph 10.3 the Borough Council shall repay such of the Youth Services Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

**11. Recreation Contribution**

- 11.1. The Owner covenants that it shall pay to the Borough Council the Recreation Contribution as follows:
  - 11.1.1 50% before Commencement of Development
  - 11.1.2 100% before Occupation of the Development
- 11.2. The Owner covenants that it shall not:
  - 11.2.1 Commence Development unless and until 50% of the Recreation Contribution has been paid to the Borough Council
  - 11.2.2 Occupy or permit Occupation of the Development until 100% of the Recreation Contribution has been paid to the Borough Council
- 11.3. The Borough Council covenants with the Owner that it shall apply the Recreation Contribution towards the provision of off-site play and off-site sports facilities within the

vicinity of the Development **PROVIDED THAT** for the avoidance of doubt the Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause ~~20~~<sup>18</sup> as if it were part of the principal sum paid by the Owner *ell*

11.4. In the event that all or any part of the Recreation Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of Practical Completion of the Development (as notified to the Borough Council by the Owner pursuant to Clause ~~44.1~~<sup>9.1</sup>) and unless the Borough Council and the Owner agree otherwise the Borough Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the Contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administration expenses *ell*

## **12. Social Care Contribution**

12.1. The Owner covenants that it shall pay to the Borough Council the Social Care Contribution as follows:

12.1.1 50% before Commencement of Development

12.1.2 100% before first Occupation of the Development

12.2. The Owner covenants that it shall not:

12.2.1 Commence Development unless and until 50% of the Social Care Contribution has been paid to the Borough Council

12.2.2 Occupy or permit Occupation of the Development until 100% of the Social Care Contribution has been paid to the Borough Council

12.3. The Borough Council shall not transfer the Social Care Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Social Care Services

12.4. If the Borough Council are of the view that the Social Care Contribution will not be spent in accordance with Paragraph 12.3 the Borough Council shall repay such of the Social Care Contribution as the Borough Council is holding to the person who paid the Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

**13. Air Quality Mitigation Contribution**

13.1. The Owner covenants that it shall pay to the Borough Council the Air Quality Mitigation Contribution as follows:

13.1.1 50% before Commencement of Development

13.1.2 100% before Occupation of the Development

13.2. The Owner covenants that it shall not:

13.2.1 Commence Development unless and until 50% of the Air Quality Mitigation Contribution has been paid to the Borough Council

13.2.2 Occupy or permit Occupation of the Development until 100% of the Air Quality Mitigation Contribution has been paid to the Borough Council

13.3. The Borough Council covenants with the Owner that it shall apply the Air Quality Mitigation Contribution towards measures to improve the air quality within the Air Quality Management Areas within Sittingbourne **PROVIDED THAT** for the avoidance of doubt the Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause <sup>18</sup>~~20~~ as if it were part of the principal sum paid by the Owner

13.4. In the event that all or any part of the Air Quality Mitigation Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of Practical Completion of the Development (as notified to the Borough Council by the Owner pursuant to Clause <sup>9.1</sup>~~4.4~~) and unless the Borough Council and the Owner agree otherwise the Borough Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the Contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administration expenses

**14. Waste Disposal Contribution**

14.1. The Owner covenants that it shall pay to the Borough Council the Waste Disposal Contribution as follows:

14.1.1 50% before Commencement of Development

14.1.2 100% before first Occupation of the Development

14.2. 14.2 The Owner covenants that it shall not:

14.2.1 Commence Development unless and until 50% of the Waste Disposal Contribution has been paid to the Borough Council

14.2.2 Occupy or permit Occupation of the Development until 100% of the Waste Disposal Contribution has been paid to the Borough Council

14.3. The Borough Council shall not transfer the Waste Disposal Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the Contribution on the Waste Disposal Facilities

14.4. If the Borough Council are of the view that the Waste Disposal Contribution will not be spent in accordance with Paragraph ~~14.3~~<sup>14.3</sup> the Borough Council shall repay such of the Waste Disposal Contribution as the Borough Council is holding to the person who paid the Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

*all*

## SCHEDULE 4 : AFFORDABLE HOUSING

### 1. Interpretation of this Schedule

1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of Schedules 3 5 6 and 7

**"Affordable Dwellings "** means 11 Dwellings together with associated vehicle and cycle parking to be provided by the Owner on the Land as

Affordable Rented Units (comprising

- 6x one bedroom flats
- 5x two bedroom flats

and which are to be transferred to a Registered Provider for housing persons in Housing Need in accordance with the provisions of this Schedule and **"Affordable Dwelling"** shall mean one of them

**"Affordable Housing"** means the Affordable Dwellings to be provided within the Development which are available to persons in Housing Need and which are to be made permanently available to such persons nominated by the Borough Council

**"Affordable Housing Land"** means those plots on the Land approved by the Borough Council pursuant to the Affordable Housing Scheme for the location of the Affordable Housing on which the Affordable Dwellings will be constructed and provided in accordance with the obligations set out in this Deed

**"Affordable Housing Manager"** means the Borough Council's Affordable Housing Manager or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging his duties and functions

**"Affordable Housing Scheme"** means the details for the provision of the Affordable Dwellings shown on drawing 051904-BEL-K-~~01-D~~

-04-C

all

|  |  |
|--|--|
| <b>“Affordable Rent”</b>                       | means chargeable rent that is subject to the HE’s Rent Standard (April 2015) as expanded on by the Rent Standard Guidance (April 2015) as such document and/or associated guidance may be amended updated or replaced from time to time and is required is required to be offered to eligible householders in Housing Need at an open market rental level which does not exceed 80% of gross local market rent (inclusive of service charges) for an equivalent property of that size and location or the applicable Local Housing Allowance rate for the Council (whichever is the lower) |
| <b>"Affordable Rented Units"</b>               | means the Affordable Dwellings that will be let to persons in Housing Need at an Affordable Rent in accordance with the HEs Tenancy Standard (April 2012) as may be amended updated or replaced from time to time  |
| <b>“Allocations Scheme”</b>                    | means the Borough Council’s published scheme of allocations presently contained in the Borough Council’s document entitled “Housing Allocations Policy 2020” ) or any amendment update or variation thereto or any subsequent replacement thereof  |
| <b>“Deed of Nomination Rights”</b>             | means the Deed agreed between the Borough Council and the Registered Provider in relation to the nomination rights in respect of the Affordable Dwellings  |
| <b>"HE"</b>                                    | means the body known as the Homes and Communities Agency whose trading name is Homes England (or any successor body to its functions) within the meaning of Part I of the Housing and Regeneration Act 2008 that funds new affordable homes and regulates Registered Providers in England  |
| <b>“HE East and South East Operating Area”</b> | consists of the counties of Buckinghamshire Cambridgeshire East Sussex Essex Hertfordshire   |



Kent Norfolk Suffolk Surrey and West Sussex and the unitary authorities of Brighton and Hove Medway Towns Peterborough Southend-on-Sea and Thurrock but shall not include Greater London

**“Housing Need”**

means

- a) the requirement by a person for social housing allocation in accordance with the Borough Council’s Allocations Scheme

**“Local Housing Allowance”**

means the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework that may replace it

**“Neighbouring Councils”**

means Councils who share the same housing market within the Borough Council’s Strategic Housing Market Assessment

**“Part M4(2)”**

means Part M4(2) Category 2: Accessible and adaptable dwellings of Schedule 1 to the Building Regulations 2010 as supported by “Approved Document M: Access to and use of buildings, volume 1: Dwellings” as such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Council

**“Part M4(3)”**

means Part M4(3) Category 2: Wheelchair user dwellings of Schedule 1 to the Building Regulations 2010 as supported by “Approved Document M: Access to and use of buildings, volume 1: Dwellings” as such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Council

**"Registered Provider"** means any person body or entity which is registered with HE as a provider of social housing in accordance with section 80(2) and chapter 3 of the Housing and Regeneration Act 2008 (or any other body defined by subsequent legislation as having a similar role)

## **2. General Provisions**

- 2.1. The Owner covenants that it shall construct and deliver the Affordable Dwellings on the Affordable Housing Land in accordance with the Affordable Housing Scheme and the other provisions of this Schedule
- 2.2. The Owner covenants that
  - 2.2.1. Two(2) of the Affordable Dwellings comprising one (1) 1-bedroom and
  - 2.2.2. one (1) 2-bedroom ground floor level flats shall be constructed by the Owner in accordance with Part M4(2)
  - 2.2.3. One (1) of the Affordable Dwellings comprising a 1-bedroom ground floor level flat shall be constructed by the Owner in accordance with Part M4(3)
  - 2.2.4. The remainder of the Affordable Dwellings shall be internally but not externally compliant with Part M4(2)
- 2.3. The Owner covenants that the Affordable Dwellings shall be Practically Completed within prior to the Occupation of more than 50% of the Open Market Dwellings
- 2.4. The Owner covenants that the Affordable Dwellings shall not be Occupied or used for any other purpose other than as Affordable Housing unless otherwise agreed by the Borough Council
- 2.5. The Owner covenants that
  - the Affordable Rented Units shall not be Occupied other than by persons who are in Housing Need

### **3. Transfer of the Affordable Dwellings**

3.1. Prior to Commencement of Development the Owner covenants that it shall have secured the exchange of contracts of the Affordable Dwellings to a Registered Provider and shall provide to the Borough Council sufficient evidence as the Borough Council shall require to show that this Paragraph has been complied with and the Owner covenants that it shall not Commence Development unless and until the provisions of this Paragraph have been complied with

3.2. Prior to Occupation of more than 50% of the Open Market Housing Units the Owner shall ensure that

3.2.1. all of the Affordable Dwellings have been constructed on the Land and Practically Completed in accordance with the Planning Permission and covenants and obligations in this Schedule (a copy of the Certificate of Practical Completion shall be provided to the Affordable Housing Manager with a copy to the Section 106 Monitoring Officer) and

3.2.2. a freehold interest or a leasehold interest of at least 125 years on a full repairing and insuring basis of each of the Affordable Dwellings has been transferred or granted to the Registered Provider free from all encumbrances (other than those on the title of the Land at the date of this Deed) and free from all financial charges for the Affordable Dwellings

3.2.3. the Owner has granted (or if the Owner is not a Registered Provider shall ensure that the Registered Provider shall grant) to the Borough Council the exclusive right to nominate suitable households in Housing Need to the Affordable Dwellings in accordance with the Borough Council's published Allocations Scheme and the provisions of this Deed and on the terms set out in the Deed of Nomination Rights

**AND** the Owner covenants that no more than 50% of the Open Market Dwellings shall be Occupied unless and until the provisions of this Paragraph 3.2 have been complied with

3.3. The Owner covenants that it shall provide evidence of the transfer of the freehold or leasehold interest of the Affordable Dwellings referred to in Paragraph 3.2.2 of this Schedule to the Affordable Housing Manager within five (5) Working Days of completion

of the transfer

- 3.4. The Owner covenants that it shall ensure that the price to be paid for the Affordable Rented Units by the Registered Provider (or the Borough Council as the case may be) shall be at a level that allows the Affordable Rented Units to be paid for through rents to be charged as Affordable Rent
- 3.5. Unless otherwise agreed by the Borough Council or directed by HE any proceeds derived from the proceeds from the right to buy or right to acquire an Affordable Housing Rental Unit shall be used by the Registered Provider to re-invest in affordable housing within (in order of priority)
  - 3.5.1. the local authority district of Swale
  - 3.5.2. then Neighbouring Councils
  - 3.5.3. then the County of Kent and
  - 3.5.4. then the HE East and South East Operating Area (but excluding the County of Kent)

with priority given to the provision of new dwellings for Affordable Rent

#### **4. Miscellaneous Provisions**

- 4.1. The Owner covenants that prior to Practical Completion of the Affordable Dwellings
  - 4.1.1. all public highways (if any) and public sewerage and drainage serving the Affordable Dwellings shall be in place and shall meet all statutory requirements for such public sewerage and drainage including any build over consents or agreements that might be required
  - 4.1.2. all private roads footways and footpaths (if any) serving the Affordable Dwellings shall be in place and constructed to an adoptable standard
  - 4.1.3. all private sewage and drainage pipes channels and gutters and all mains water gas and electricity pipes and cables serving the Affordable Dwellings shall be constructed laid connected operational and serviceable

## 5. Exclusions

5.1. The obligations contained in this Schedule shall not be binding upon nor enforceable against

5.1.1. any mortgagee or chargee or any receiver (including an administrative receiver) or manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a “Receiver”) of a Registered Provider of the Affordable Housing Land and/or Registered Provider of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or receiver **PROVIDED ALWAYS THAT**

5.1.1.1. any power of sale available to any Receiver shall only be exercised in the event of there being a default of any obligation under the security documentation

5.1.1.2. such Receiver shall first have notified the Council and the Affordable Housing Manager that it wishes to exercise its statutory power of sale

within 3 clear calendar months of the date of such notification the Receiver shall use reasonable endeavours to complete a disposal of the relevant Affordable Housing Land and/or Affordable Dwelling to another Registered Provider (who shall take subject to the provisions of this Deed) for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses and for the avoidance of doubt if such disposal has not been completed within such 3 month period then the Receiver shall be entitled to dispose of the relevant Affordable Housing Land and/or Affordable Dwelling free from the obligations contained in this Schedule which provisions shall determine absolutely

5.1.2. a tenant of an Affordable Rented Units who has exercised a statutory right to acquire

5.1.3. a tenant of an Affordable Rented Unit who has exercised a statutory right to

buy

- 5.1.4. any successor in title of any persons detailed in Sub-Paragraphs 5.1.2 and 5.1.3 above or their mortgagee or charge

## SCHEDULE 5 : SPECIAL PROTECTION AREA

### 1. Interpretation of this Schedule

1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of Schedules 3 4 6 and 7

**“Natural England”** means the executive non-departmental public body established pursuant to the Natural Environment and Rural Communities Act 2006 which is responsible for ensuring that the natural environment is conserved enhanced and managed for the benefit of present and future generations or any successor body that replaces it

**“SAMMS”** means the ‘Thames, Medway & Swale Estuaries – Strategic Access Management and Monitoring Strategy’ produced by Footprint Ecology dated 22 July 2014 (or any modification or amendment thereto or replacement thereof as approved by the Borough Council)

**“SPA Mitigation Contribution”** means the sum of Twenty six Thousand Seven Hundred and Ninety One Pounds and Seventy Three Pence (£26,791.73) *Index Linked*

**“SPA Mitigation Measures”** means the strategic mitigation measures employed pursuant to the SAMMS to avoid adverse effects on the Special Protection Area comprising (but not limited to) some or all of the following elements

- provision of wardens
- visitor access management
- infrastructure works including site protection

- habitat improvements and/or management
- education
- enforcement
- codes of conduct
- interpretation and signage
- dog project – to include education and involvement of dog owners
- monitoring of birds and visitors and the effectiveness of mitigation measures
- provision of alternative natural greenspace sites

or such other mitigation measures as may be required by Natural England

**“Special Protection Area”**

*means* the protected habitat sites identified in the SAMMS (and the acronym “SPA” shall be construed accordingly)

**2. SPA Mitigation Contribution**

- 2.1. The Owner covenants that it shall pay to the Borough Council the SPA Mitigation Contribution before Commencement
- 2.2. The Owner shall not Commence Development unless and until it has paid to the Borough Council the SPA Mitigation Contribution
- 2.3. Following Commencement of Development the Owner shall not seek repayment of the SPA Mitigation Contribution or any part thereof
- 2.4. The Borough Council agrees that it shall apply the SPA Mitigation Contribution and any interest accrued on it or any interest paid in accordance with Clause <sup>18</sup>~~20~~ towards the cost of the SPA Mitigation Measures and for no other purpose whatsoever

*ell*



**SCHEDULE 6 OPEN SPACE**

**1. Interpretation of this Schedule**

1.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of Schedules 3 4 5 and 7

|  |  |                   |
|--|--|-------------------|
| <p><b><del>“ADR Procedure”</del></b></p> | <p><del>means the dispute resolution procedure set out in Sub-Paragraph 6.3.2 of this Schedule</del></p>   | <p><i>all</i></p> |
| <p><b><del>“Bank Account”</del></b></p>  | <p><del>means the bank account of the Management Company to be set up and operated in accordance with Paragraph 5.4 of this Schedule</del></p>   | <p><i>all</i></p> |
| <p><b>“Maintenance Contribution”</b></p> | <p>means the sum of Twenty Five Thousand Four Hundred and Fifteen Pounds (£25,415)<sup><i>Index Linked</i></sup> towards the Council's costs in managing and maintaining the Open Space</p>  | <p><i>all</i></p> |
| <p><b>“Management Company”</b></p>       | <p>means a body established by the Owner to carry out the long term management and maintenance of any Open Space to be managed by it in accordance with the provisions of this Deed and whose objectives shall include:</p> <p>(a) managing the maintenance of the Managed Land;</p> <p>(b) setting the level of charges for funding the running of the Management Company and collecting such charges</p> |                   |
| <p><b>Open Space</b></p>                 | <p>means those areas of the Land identified in and approved pursuant to the Open Space Specification <b>AND WHICH FOR THE AVOIDANCE OF DOUBT</b> shall not include:</p> <p>(a) privately owned domestic gardens that form the curtilage of each Dwelling</p>   |                   |

|                                     |   |
|-------------------------------------|---|
|                                     | (b) those communal areas within the Development or the curtilage of or adjacent to a Dwelling which are not large enough to be nor can reasonably expected to comprise public open space  |
| <b>“Open Space Location Plan”</b>   | means drawing number AT-1000 Rev A appended to this Deed <i>at Appendix 2</i>   |
| <b>“Open Space Management Plan”</b> | means a scheme approved by the Borough Council setting out procedures and measures to secure the future on-going monitoring management and maintenance of the Open Space which scheme shall inter alia provide a verifiable indication as to the annual costs associated with the monitoring management and maintenance (allowing for contingencies and indexation) of the Open Space |
| <b>“Open Space Specification”</b>   | means the scheme approved by the Borough Council pursuant to this Schedule 6 to secure the delivery of the Open Space   |
| <b>“Retained Amount”</b>            | means an amount equivalent to one years' estimated annual cost of managing monitoring and maintaining (allowing for contingencies and indexation) the Open Space pursuant to the Open Space Management Plan   |

## 2. Open Space Specification

- 2.1 Prior to Commencement of the Development the Owner shall submit to and have approved by the Borough Council the Open Space Specification and the Owner shall not Commence Development unless and until the Open Space Specification has been approved by the Borough Council
- 2.2 The Open Space Specification shall include (but not be limited to)

- 2.2.1 a plan identifying
  - 2.2.1.1 the layout of the Open Space
  - 2.2.1.2 the access for the general public to the Open Space
- 2.2.2 surfacing and landscaping of the Open Space
- 2.2.3 a works schedule for the delivery of the Open Space
- 2.2.4 an Open Space Management Plan

**AND** such other matters as the Borough Council may approve

### **3 Implementation**

- 3.1 Prior to Occupation of the 60th Dwelling (the Owner shall
  - 3.1.1 deliver the Open Space in accordance with the Open Space Location Plan and the Open Space Specification to the satisfaction of the Borough Council
  - 3.1.2 pay the Retained Amount to the Borough Council

**AND** the Owner shall not Occupy more than 59 Dwellings unless and until the Open Space has been delivered and the Retained Amount has been paid to the Borough Council **AND** the Owner shall thereafter monitor manage and maintain the Open Space in accordance with the Open Space Management Plan to the satisfaction of the Borough Council until the transfer of the Open Space in accordance with paragraph 4 of this Schedule is completed

- 3.2 Without prejudice to any other rights under this Schedule the Borough Council covenants with the Owner that it shall only use the Retained Amount in those circumstances where it is required to exercise its rights pursuant to Paragraph ~~5~~<sup>6</sup> of this Schedule (Enforcement) (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the Borough Council) and not to use the Retained Amount otherwise than for such purposes **PROVIDED THAT** for the avoidance of doubt the Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 19 of the Deed as if it were part of the principal sum paid by the Owner

- 3.3 The Owner covenants that

3.3.1 no permanent operational or other development will take place on the Open Space other than works required or permitted pursuant to the Open Space Specification and/or the Open Space Management Plan or as otherwise permitted under the Planning Permission

3.3.2 it shall not grant any rights or easements over or under the Open Space or any part thereof

without the prior written consent of the Borough Council **PROVIDED THAT** this will not prevent the laying beneath the Open Space of underground pipes cables and conduits which may be required to supply the Development with electricity gas water telephone television internet and related services and the maintenance of the same thereafter

3.4 The Owner shall provide a right of access for the general public to the Open Space following the delivery of the Open Space

#### **4 Disposal of the Open Space**

3.1 4.1 Following the completion of the Open Space to the Borough Council's satisfaction the Owner shall :

4.1.1 offer to transfer the unencumbered freehold of the Open Space to in the first instance the Borough Council subject to a covenant that that the Open Space shall retained and maintained as public open space for the benefit and use of the public and occupiers of the Development in perpetuity and such transfer to be in consideration of the sum of £1.00

4.1.2 within one (1) month of the offer to transfer the Open Space to it the Borough Council shall notify the Owner whether or not it wishes to accept the transfer of the Open Space

4.1.3 If the Borough Council refuses to accept the transfer of the Open Space or if the transfer is not completed within three (3) months of the Borough Council's acceptance of the offer to transfer (or within such other period as the parties may agree), the Owner may transfer the Open Space to the Management Company

4.2 If the Open Space is to be transferred to the Borough Council the Owner shall not complete the transfer of the Open Space to the Borough Council unless and until the Owner has paid to the Borough Council the Maintenance Contribution

**AND** the Borough Council shall

- 4.2.1 following completion of the transfer of the Open Space to the Borough Council repay to the Owner the Retained Amount to the Owner within 20 Working Days of completion of the transfer pursuant to this Sub-Paragraph ~~5.2.3~~ 
- 4.2.2 only use the Maintenance Contribution (together with any accrued interest or any interest payable under Clause 18 of this Deed) for the monitoring management and maintenance of the Open Space
- 4.3 Where the Open Space is to be transferred to the Management Company then
  - 4.3.1 such transfer shall be
    - 4.3.1.1 with full title guarantee
    - 4.3.1.2 with vacant possession and
    - 4.3.1.3 upon the terms set out in this Schedule and/or such other terms as agreed with the Owner
  - 4.3.2 such transfer will not be completed unless and until
    - 4.3.2.1 the Open Space Management Plan has been submitted to and approved by the Borough Council
    - 4.3.2.2 the Management Company has been established in accordance with the terms of Sub-Paragraph 4.3.3 and a certified copy of the certificate of incorporation of the Management Company together with the memorandum and articles of association and its registered address
  - 4.3.3 the Management Company
    - 4.3.3.1 shall be established as a management company limited by guarantee where
      - 4.3.3.1.1 there shall be no distribution of profits
      - 4.3.3.1.2 all income and receipts net of expenditure shall be retained and applied for the maintenance or improvement of the Open Space

- 4.3.3.1.3 each of the owners of the Dwellings shall be a member of the Management Company
  - 4.3.3.2 shall include within its aims and objects the monitoring management and maintenance of the Open Space in accordance with the Open Space Management Plan and any resolution to alter or amend the constitution or memorandum and/or articles of association of the Management Company shall be submitted to the Borough Council for written approval at least seven (7) days before a vote being taken on such a resolution and any such resolution of the Company shall not be effective unless and until the written approval of the Borough Council is received
- 4.3.4 the Management Company shall
  - 4.3.4.1 carry out the monitoring management and maintenance of the Open Spaces in accordance with the terms of this Deed and the approved Open Space Management Plan
  - 4.3.4.2 keep a maintenance log of all monitoring management and maintenance carried out in relation to the Open Space and the Management Company shall on receipt of notice provide the Borough Council with access to or a copy of the maintenance log and any associated documentation either in electronic or paper format which documentation shall be provided to the Borough Council within 10 Working Days of receipt of the notice from the Borough Council
- 4.3.5 the Management Company shall be funded by means of annual service charges payable by all owners of the Dwellings
- 4.3.6 The Owner shall
  - 4.3.6.1 not transfer the freehold of (or grant a leasehold interest in) a Dwelling unless and until there shall be included in the transfer deed of the freehold or leasehold interest in each of the Dwellings a requirement that each transferee or grantee (as the case may be) shall pay an annual service charge to the Management Company for the ongoing monitoring maintenance and management of the Open

Space

4.3.6.2 ensure that the annual service charge shall be set (and thereafter maintained) at a level that allows the Management Company to fund the monitoring management and maintenance of the Open Space to be paid for through the annual service charge levied against each of the Dwellings

4.3.6.3 ensure that a restriction on title is entered on the title of each Dwelling transferred requiring on any subsequent transfer of the Dwelling a deed of covenant to be given to the Management Company by the new owner of the relevant Dwelling to pay the sums due under the service charge and requiring the restriction to be retained on the title of the Dwelling

4.3.7 the first levy payable pursuant to Paragraph 4.3.5 of this Schedule to the Management Company shall be payable prior to the first Occupation of each Dwelling and no Dwelling shall be first Occupied unless and until this payment has been made to the Management Company

## **5 Review of the Open Space Management Plan**

5.1 Following approval of an Open Space Management Plan and until the transfer of the Open Space to the Borough Council:

5.1.1 the Owner shall implement the Open Space Management Plan as approved by the Borough Council pursuant to this Schedule

5.1.2 the Owner shall submit a written report demonstrating to the satisfaction of the Borough Council the Owner's compliance with the Open Space Management Plan:

5.1.2.1 on an annual basis commencing on the first anniversary of the date of Practical Completion of the Open Space for a period of five (5) years; and

5.1.2.2 on a five (5) yearly basis thereafter

5.2 The Owner shall:

5.2.1 undertake a review of the Open Space Management Plan every five (5) years, or at such intervals as may be requested in writing by the Borough Council, and to submit

the outcome of that review to the Borough Council; and

- 5.2.2 carry out such measures as are reasonably required and specified by the Borough Council in writing following the review to ensure that the objectives of the Open Space Management Plan continue to be met within the timescales specified by the Borough Council.

## 6 Enforcement pdx

- 6.1 In addition to Clause ~~3.1~~<sup>5.2</sup> and without prejudice to the Borough Council's statutory powers and to any other means at its disposal to enforce this Deed at law where there is any failure breach or non-compliance by the Owner with any term of the approved Open Space Management Plan for the time being in force or any of the obligations contained in this Schedule the Borough Council may

6.1.1 (and the Owner hereby grants authority for the Borough Council and its authorised employees and agents) enter onto the Open Space with staff contractors plant and equipment and carry out such steps measures or operations on the Open Space as the Borough Council considers to be necessary to (without prejudice to the generality of the provision) ensure compliance with and/or to remedy any non-compliance with the approved Open Space Management Plan and

6.1.2 recover from the Owner (being the owner of the Open Space at the time of the breach) or from the Retained Amount the costs and expenses (including legal and administrative costs and expenses and any professional and other fees and investigative works and studies) incurred by the Borough Council in remedying such non-compliance (which shall be paid within 20 Working Days of the date of notification for payment from the Borough Council and if not paid within that period may be charged on the Owner's interest in the Open Space)

**PROVIDED THAT** the Borough Council shall (unless otherwise agreed by the Borough Council) give the Owner or the Management Company (as the case may be) not less than 20 Working Days prior notice of its intention to remedy such non-compliance to allow the Owner or the Management Company (as the case may be) an opportunity to remedy the same themselves



## SCHEDULE 7 OWNER'S HIGHWAY WORKS

### 1. Interpretation of this Schedule

- 1.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of Schedules 3 4 5 and 6

|                                |  |
|--------------------------------|--|
| <b>“Owner’s Highway Works”</b> | means alterations to the A2/Crown Quay Lane Junction Traffic Signals as set out in the Transport Technical Note produced by DHA dated March 2021 |
|--------------------------------|--|

### 2. Owner’s Highway Works

- 2.1 The Owner covenants with the Borough Council as follows:
- 2.1.1 To carry out and complete the Owner’s Highway Works prior to the first Occupation of the Development.
- 2.1.3 Not to Occupy or permit first Occupation of the Development until the Owner’s Highway Works have been completed

The COMMON SEAL of SWALE )  
BOROUGH COUNCIL was affixed to )  
this Deed in the presence of )



*[Handwritten signature]*

ROBIN HARRIS

Authorised Signatory

EXECUTED AS A DEED on behalf of  
BELLWAY HOMES LIMITED by

*[Handwritten signature]*

(signature 1)

NIGEL CLASBY

(print name)

.....  
(signature 2)

Duncan Fletcher  
Group Legal Manager  
Bellway Homes Limited  
Woolston House  
Woolston  
Newcastle upon Tyne  
NE13 8BF  
(print name)

in exercise of the powers conferred on them by  
a Power of Attorney dated ~~1<sup>st</sup> October 2021~~ in  
the presence of:- 21<sup>st</sup> MAY 2022

*[Handwritten signature]*  
(witness)

.....  
Attestation of signature 1

.....  
Attestation of signature 2

Witness Name:.....

Witness Name:.....

Address:.....

Address:.....

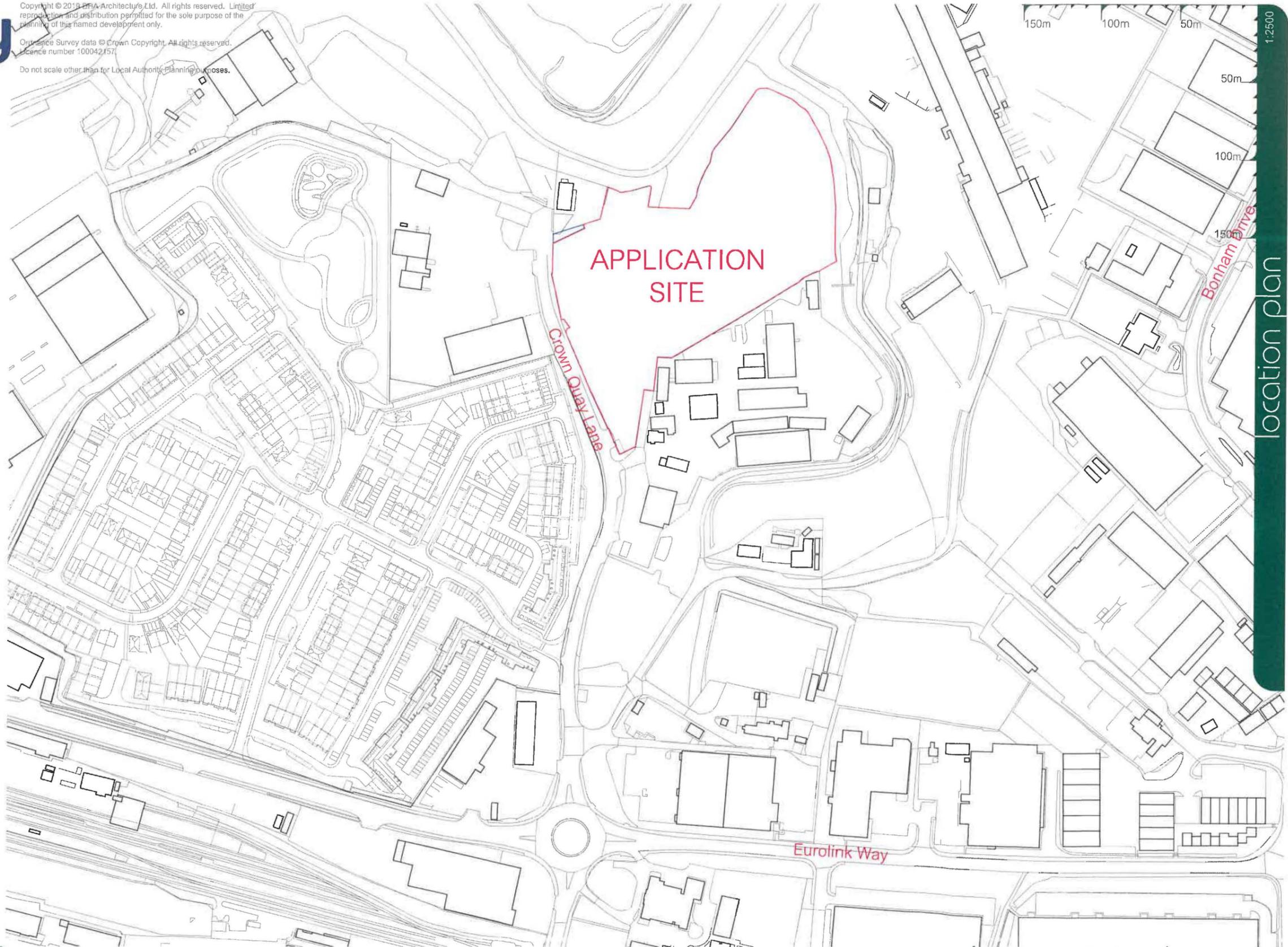
.....

.....

Post Code:.....

Post Code:.....

**APPENDIX 1 : PLAN**



location plan

**APPENDIX 2 : OPEN SPACE PLAN**

| Rev | Comment                 | Name | Date     |
|-----|-------------------------|------|----------|
| A   | Open Space area altered | RB   | 14/03/22 |



Crown Quay Lane  
Site frontage amended to  
include revised carriageway  
width, verge with layby  
parking and street trees  
with 2.0m wide footpath. All  
to engineers design.

New vehicle  
access to  
Engineers'  
design

Key  
— Open Space = 0.3559  
Hectares

**Bellway**  
Bellway Homes Kent

Bellway Homes Ltd (Kent Division)  
30 Tower View, Kings Hill, West Malling, Kent, ME19 4UK  
Tel: 01732 879 750 Fax: 0872 352 5257

Crown Quay Lane  
Sittingbourne

Open Space

MARCH 22 Drawn RB  
1:500 @ A1 Checked JG

Drawing No. AT-1000 Rev. A

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# Appendix B

## Planning Drawings



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 Do not scale other than for Local Authority Planning purposes.

### LEGEND

- Proposed trees and landscaping - shown indicatively - refer to Landscape Architects' details
- bs cs rcp Bin store / Cycle store / Refuse Collection Point
- Vehicle turning - refuse vehicle and fire appliance
- Generic turning and subject to Highways Consultants' swept path analysis
- Proposed retaining structures subject to Engineers' design
- 8m buffer from Water Course

### LEGEND - PARKING ALLOCATION

The parking provision has been designed in accordance with the emerging Swale Borough Council Parking Standards - dated October 2019

- 84 Parking allocated to Plot number quoted
- 58 Apartment Residents - Unallocated
- 22 Visitors - Unallocated

### Quantum of Parking Spaces

The following minimum requirements are taken from Appendix A. Requirements for "On-street controls absent or limited" and "None or very limited" are the same other than for 4 Bed Houses; none of which are proposed for this development.

|                      |                       |  |
|----------------------|-----------------------|--|
| 1 & 2 Bed Apartments | 1 space per unit      |  |
| 1 & 2 Bed Houses     | 1 - 2 spaces per unit |  |
| 3 Bed Houses         | 2 - 3 spaces per unit |  |
| Visitor Parking      | 0.2 per unit          |  |

|                       | Required spaces | Provided spaces   |
|-----------------------|-----------------|-------------------|
| 58 x Apartments       | 58              | 58                |
| 18 x 1 & 2 Bed Houses | 16 - 32         | 22                |
| 31 x 3 Bed Houses     | 62 - 93         | 62                |
| 107 Units x 0.2       | 21.4            | 22 Visitor Spaces |



supporting planning layout



dha architecture ltd

Brooklands Farm Business Park  
 Bottle Lane  
 Binfield  
 Berkshire  
 RG42 5QX

t. 0118 934 9666  
 e. surname@dhaarchitecture.co.uk  
 w. www.dhaarchitecture.co.uk

crown quay lane, sittingbourne

Supporting Planning Layout

10.07.2020 created  
 1:500 @ A1 scaling  
 JeH contact

reference 051904-BEL-K-02 revision

rev date by details



**Important Information:**

Any Drainage that has been investigated should be checked against statutory records to confirm details before proceeding with any design work.

We advise that an arborologist be appointed to correctly determine the species and condition of all trees surveyed prior to any design work.

All information contained in this drawing (including digital data) should be checked and verified prior to any fabrication or construction.



**Survey Legend**

| FENCES                |     |
|-----------------------|-----|
| BARBED WIRE FENCE     | BWF |
| CORRUGATED IRON FENCE | CI  |
| CLOSE BOARD FENCE     | CB  |
| CHESTNUT PALING FENCE | CP  |
| IRON RAILING FENCE    | IR  |
| POST AND CHAIN FENCE  | PC  |
| POST AND RAIL FENCE   | PR  |
| POST AND WIRE FENCE   | PWF |
| CHAIN LINK FENCE      | CL  |
| LARCH LAF FENCE       | LL  |
| INTERWOVEN FENCE      | IWF |
| WIRE MESH FENCE       | WM  |

| ABBREVIATIONS              |     |
|----------------------------|-----|
| BOLLARD                    | Bv  |
| BRITISH TELECOM IC         | BT  |
| CONCRETE PAVING SLAB       | CPS |
| COVER LEVEL                | CL  |
| DROP KERB                  | DK  |
| ELECTRIC REDIRECTION COVER | EC  |
| ELECTRICITY POLE           | EP  |
| FIRE HYDRANT               | FH  |
| FLOWER BED                 | FB  |
| FOOTPATH                   | FP  |
| GAS VALVE                  | GV  |
| GALLY                      | Gy  |
| REDIRECTION COVER          | RC  |
| PIPE INVERT LEVEL          | IL  |
| KERB OUTLET                | KO  |
| MAN HOLE                   | MH  |
| THRESHOLD                  | TH  |

**Sheet Layout**



Grid: OS GPS  
 Levelling: OS GPS

Drawing Title:  
 Topographical Survey Sheet 1

Site Address:  
 Crown Quay Lane,  
 Sittingbourne



|                    |                            |                  |                |
|--------------------|----------------------------|------------------|----------------|
| Surveyor: JL       | Drawn By: MWi              | Verified By: MWi | Date: 14.09.18 |
| CM No: CM/18/1000  | Rev: A - additional levels |                  |                |
| Scale: 1:500m @ A1 | Date: September 2018       |                  |                |

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 E: info@cadmap.co.uk  
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**Proposed Trees:**  
 Alnus glutinosa, Alnus glutinosa 'Laciniata', Alnus glutinosa 'Imperialis',  
 Betula papyrifera kenaica, Magnolia grandiflora 'Goliath', Quercus rubra

Areas of coastal grassland and native planting is proposed to compliment the creek situation and provide an attractive view around the estuary.

Proposed species rich wildflower meadows to line the salt marshes with scattered native species tree specimens.



**Native Hedge Planting:**  
 Crataegus monogyna, Ilex aquifolium, Ligustrum vulgare,  
 Prunus spinosa, Viburnum lantana, Viburnum opulus

1.4-1.6m high native hedge, and post and wire fencing with stock netting, to provide formal edge to ecological corridor, enhance biodiversity and prevent access to the foreshore. Same height close board fence to be erected while hedge matures.

Additional ecological enhancements to be incorporated through the plots with the addition of building mounted bird and bat boxes and hedgehog friendly boundary treatments.

Structural native planting along southern boundary to provide landscape buffer to adjacent timber yard and land uses to the south.

A proposed green corridor will buffer the development from Milton Creek and assist with the integration between both the creek and the residential frontages.

Creek enhancement will provide a new area of mudflat habitat. Hazel brush pile faggots help retain vegetation around the head wall and screen the



Formal landscape frontage with feature tree and ornamental shrub planting.

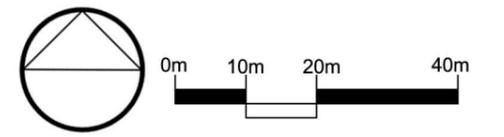
Viewing screen adjacent to creek enhancement; providing disturbance free, scenic views of the new mudflat habitat.



**Proposed Shrub:**  
 Berberis thunbergii, Cornus stolonifera 'Flaviramea', Cornus stolonifera, Cornus stolonifera 'Kelsey Gold',  
 Eleagnus ebbingei, Hebe 'Autumn Glory', Ilex aquifolium, Mahonia aquifolium, Phormium tenax, Prunus lusitanica  
 Viburnum davidii, Viburnum tinus

**NOTES:**  
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 No Dimensions to be scaled from this drawing.



- Key:**
- Application Site Boundary
  - Proposed Tree Planting
  - Proposed Native Hedge Planting
  - Proposed Shrub Planting
  - Wildflower Planting
  - Wetland Wildflower Planting
  - Hazel Brush Pile Faggots
  - Post and Wire Fence
  - Maintenance Gates
  - Information Boards
  - 8m Environment Agency Maintenance Easement
  - Proposed Salt Marsh Planting
  - Viewing Screen

|           |          |                            |       |       |
|-----------|----------|----------------------------|-------|-------|
| A         | 12.07.20 | Updated to new base layout | CW    | CJ    |
| REV       | DATE     | NOTE                       | DRAWN | CHK'D |
| REVISIONS |          |                            |       |       |

**aspect landscape planning**

**TITLE**  
 Crown Quay Lane, Sittingbourne  
 Landscape Strategy Plan

**CLIENT**  
 Bellway Homes

|                |          |       |       |
|----------------|----------|-------|-------|
| SCALE          | DATE     | DRAWN | CHK'D |
| 1:1000@A3      | NOV 2019 | NB    | CW    |
| DRAWING NUMBER | REVISION |       |       |
| 7037.LS.1.0    | A        |       |       |

# Appendix C

## Design and Access Statement

## crown quay lane, sittingbourne



















































































































































































