

DATED

12 July

2017

**BELLWAY HOMES LIMITED**  
**TO**  
**ASHFIELD DISTRICT COUNCIL**

---

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER SECTION 106 OF THE  
TOWN AND COUNTRY PLANNING ACT 1990 RELATING TO LAND AT 181-185 PAPPLEWICK LANE,  
HUCKNALL**

---

Freeths LLP  
1 Vine Street  
Mayfair  
London  
W1J 0AH

[Jennifer.roe@freeths.co.uk](mailto:Jennifer.roe@freeths.co.uk)  
0845 404 1735

**This Undertaking is**

Dated *12 July* 2017

Given by

(1) BELLWAY HOMES LIMITED (Co. Reg 670176) of Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle upon Tyne, NE13 6BE ("Owner")

To  
(2) ASHFIELD DISTRICT COUNCIL of Urban Road, Kirkby-in-Ashfield Nottingham, NG17 8DA ("Council")

**BACKGROUND**

(A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Site is situated.

(B) The Owner is the freehold owner of the Site registered at HM Land Registry under title numbers NT302405, NT155121 and NT345868.

(C) The Owner has made the Planning Application and is proposing to carry out the Development.

**DEED TERMS**

**1. INTERPRETATION**

The following definitions and rules of interpretation apply in this deed.

**Commencement of Development:** the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations; demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property

**Commenced and Commences** shall be construed accordingly;

**Development:** the development of the Site to be carried out pursuant to the Planning Permission;

**Management Company:** means a management company appointed by the Owner whose principal objects of which are to maintain and enhance the Open Space in accordance with a Management Scheme;

**Management Scheme:** means a scheme prepared by the Management Company and approved in writing by the Council, for the future management of the Open Space;

**Open Space:** the land shown marked green on Plan 1 consisting of land to be used for verges and acoustic fencing;

**Plan 1:** the plan attached to this Deed showing the Open Space in green and acoustic fencing position in red;

**Plan 2:** the plan attached to this Deed showing the Site

**Planning Application:** an application for demolition of three properties and formation of vehicular access to serve a neighbouring authority approved development for residential development of up to 300 dwellings registered by the Council on 30/03/17 under reference number V/2017/0168;

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application;

**Site:** the freehold land as shown edged red on Plan 2 known as 181-185, Papplewick Lane, Hucknall against which this Deed may be enforced;

**TCPA 1990:** Town and Country Planning Act 1990;

**Working Day:** any day from Monday to Friday (inclusive) that is not Christmas Day, Good Friday or a statutory Bank Holiday.

- 1.1 Where in this Deed reference is made to any clause paragraph schedule or recital such reference unless the context otherwise requires is a reference to a clause paragraph schedule or recital in this Deed.
- 1.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless an express provision indicates otherwise.
- 1.5 A reference to an Act of Parliament shall include any later modification extension or re-enactment of that Act of Parliament and shall include all statutory instruments orders and regulations made under that Act of Parliament or deriving validity from it.
- 1.6 References to any party to this Deed shall include the successors in title to that party and to any persons deriving title through or under that party and in the case of the Council the successors to its statutory functions.

## **2. LEGAL BASIS**

- 2.1 This Deed is made pursuant to Section 106 of the Act and in so far as any provision contained herein is not a planning obligation it is made pursuant to section 111 of the Local Government Act 1972 and all other enabling powers.
- 2.2 The obligations restrictions and requirements contained in this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns.
- 2.3 This Deed shall come into effect on the date of grant of the Planning Permission.

## **3. OBLIGATIONS WITH THE COUNCIL**

- 3.1 The Owner undertakes to the Council:
  - 3.1.1 to layout the Open Space in accordance with Plan 1 and any conditions attached to the Planning Permission (unless otherwise agreed in writing with the Council);
  - 3.1.2 To remedy any defects in the Open Space and replace any planting that is diseased or dying or items that are broken or damaged from the date that the same is provided until the Open Space is transferred to the Management Company;
  - 3.1.3 To provide a copy of the Management Scheme to the Council for their written approval in advance of the transfer of the Open Space to the Management Company;
  - 3.1.4 To transfer the Open Space to the Management Company in accordance with the Management Scheme.

## **LIABILITY**

- 4.1 No person shall be liable for any breach or non-performance of the obligations contained herein in respect of the whole or any part of the Site in which they no longer have a legal interest save in respect of any prior subsisting breach.
- 4.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or any renewal thereof or any reserved matters approval with respect thereto) granted after the date of this Deed in respect of which development this Deed will not apply.
- 4.3 The provisions contained therein the obligations, restrictions and requirements contained in this Deed shall not be enforceable against:
- 4.3.1 individual purchasers or lessees of dwellings or their mortgagees.
- 4.3.2 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site.
- 4.4 In the event of the Planning Permission being refused quashed revoked expiring or withdrawn before the Commencement of Development the obligations under this Deed shall cease absolutely BUT FOR THE AVOIDANCE OF DOUBT where permission is issued pursuant to an application under section 73 of the Act this Deed shall continue in full force and effect subject to and in accordance with the provisions contained herein.
- 4.5 In the event of determination of this Deed under Clause 4.4 above the Council shall upon request procure that any entry referring to this Deed in the Register of Local Land Charges shall be removed.
- 4.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed which shall continue in full force and effect.
- 4.7 No waiver (whether express or implied) by the Council of any breach or default by the Owner or their successors in title in performing or observing any of its obligations under this Deed shall constitute a continuing waiver or prevent the Council from enforcing those obligations or from acting upon any subsequent breach or default.

## **6. MISCELLANEOUS**

- 6.1 This Deed is a local land charge and shall be registered as such by the Council.
- 6.2 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property that is necessary to be bound into this Deed.
- 6.3 A notice or other communication to be given under or in connection with this deed must be in writing and must be delivered by hand or sent by pre-paid first class post or other next working day delivery service. The address for service for the Owner and Council are those stated in this Deed.
- 6.4 Any notice or other communication given in accordance with Clause 6.3 will be deemed to have been received if left at the relevant address or if by letter forty eight (48) hours after posting.
- 6.5 A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.
- 6.6 This Deed is governed by and interpreted in accordance with the law of England.

**Plan 1**

**KEY**

— ACOUSTIC BARRIER

■ LAND TO BE PRIVATELY MANAGED AND MAINTAINED

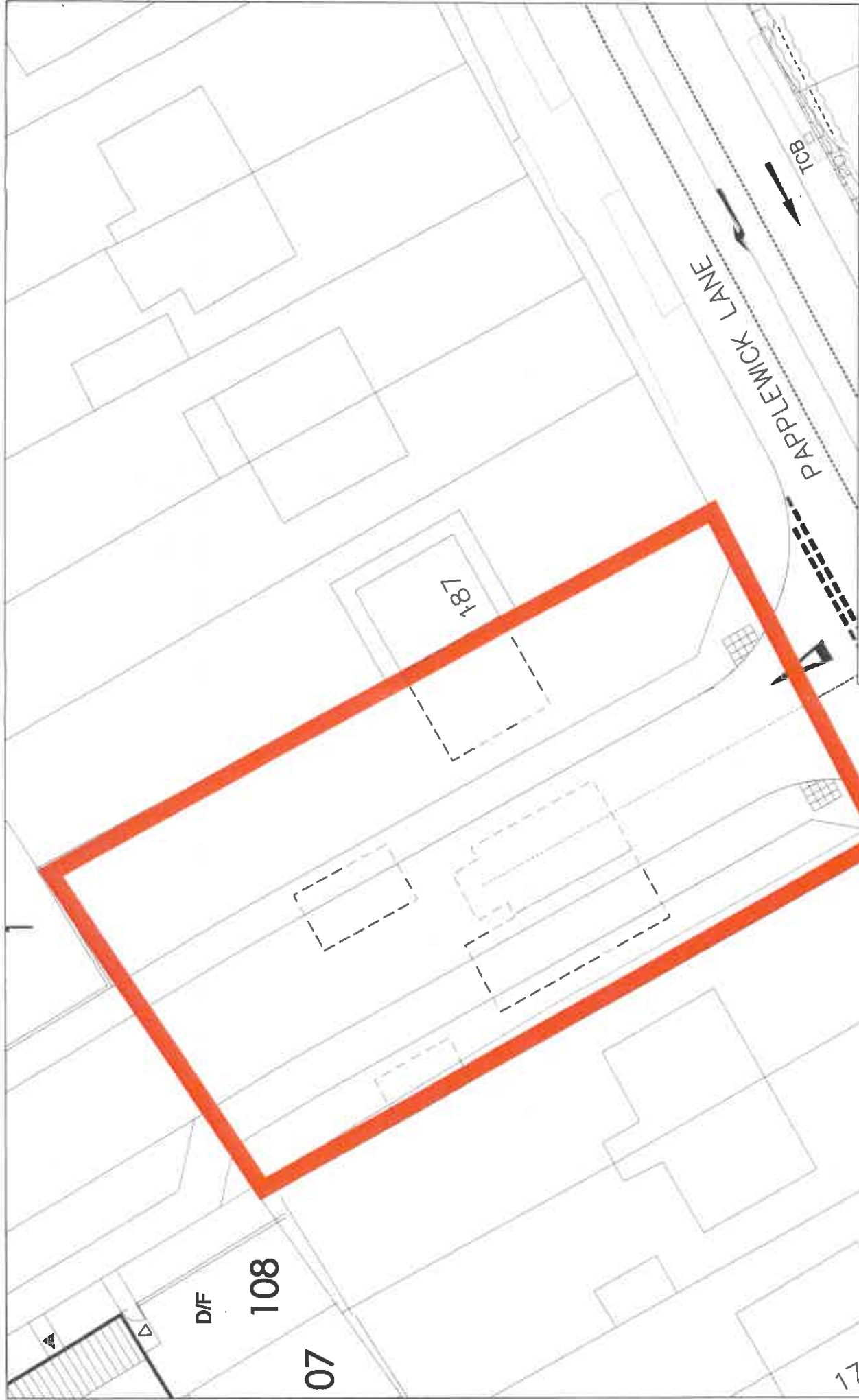


MAY 2017  
Scale 1:200 @ A3  
SSG  
PC/0320\_106

PAPLEWICK LANE  
LINBY  
SECTION 106 PLAN 1



**Plan 2**



DATE: MAY 2017  
SCALE: 1:200 @ A3  
DRAWN BY: SSG  
PROJECT: PC/0820\_106.P2

PAPPLEWICK LANE  
LINBY

SECTION 106 PLAN 2



This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**EXECUTED as a DEED by  
BELLWAY HOMES LIMITED**  
acting by two Directors or  
A Director and its Secretary

.....  
Director



.....  
Director/Secretary

