

DATED

7th January

2003

BROADLAND DISTRICT COUNCIL

- AND -

HALO HOMES LIMITED

AGREEMENT

Made pursuant to Section 106 of the Town and
Country Planning Act (as amended) 1990 and
any other enabling power relating to the
development of land at Blofield Hall, Hall Road,
Blofield, Norfolk

Steele & Co
2 The Norwich Business Park
Whiting Road
Norwich NR4 6DJ

THIS AGREEMENT is made the

7th day of January

2003

BETWEEN

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, Yarmouth Road, Thorpe St Andrew, Norwich in the County of Norfolk ("the Council") AND
(2) HALO HOMES LIMITED (Company Number 4321952) whose registered office is at 235 West Road Westcliff on Sea Essex SSO 9DE ("the Owners")

RECITALS

- (A) (1) In this Agreement unless the context otherwise requires the following words shall have the following meanings:-

"Application" means the application for planning permission to develop the Land and dated 18th December 2001 submitted to the Council in accordance with the Application plans and other materials deposited with the Council and bearing reference no 20010769

"Development" means the development permitted by the Permission

"Development Plan" has the meaning assigned to it by Section 54A of the 1990 Act

"Director" means the Council's Strategic Director (Community Services) or other officers of the Council acting under his hand

"The Effective Date" The date on which a material operation as defined in Section 56(4) of the Town and Country Planning Act 1990 is undertaken

"the Land" means the land referred to in Recital B

"Landscape Management Scheme" Those matters as set out in Schedule Three hereof

"Permission" means the detailed planning permission granted pursuant to the Application together with any renewal or modification thereof



SCALE 1: 2500

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“Outline Landscape Proposals”	Those matters as set out in Schedule Two hereof
“the Owners”	means the Owners named above or their successors in title being the Owners or Owners for the time being of the Land but excluding purchasers of individual dwellings comprised in the Development
“the Plan”	means the plan annexed hereto
“Works”	means the works set out in Schedule One to this Agreement
“1990 Act”	means the Town and Country Planning Act 1990 (as amended)

(2) In this Agreement unless the context otherwise requires:

- (i) words importing the masculine gender shall where appropriate include the feminine gender and the neuter gender or vice versa as the case may be and words importing the singular number shall where appropriate include the plural number and vice versa
- (ii) “party” or “parties” means a party or parties to this Agreement
- (iii) references to any party shall include the successors in title and assigns of that party
- (iv) where a party includes more than one person any obligations of that party shall be joint and several
- (v) headings in this Agreement shall not form part of or affect its construction
- (vi) references to clauses and schedule are references to clauses in and schedules to this Agreement
- (vii) where a party or any officer or employee is required to give its consent approval or agreement in any specific provision in this Agreement such approval or agreement shall not be unreasonably withheld or delayed
- (viii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act, Section, Regulation or Statutory Instrument has been replaced, consolidated or re-enacted with or without amendment

such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument

- (A) The Council is a Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated
- (B) The Owners are seised of land situated at and known as Blofield Hall in the County of Norfolk (hereinafter called "The Land") shown for the purpose of identification only edged red on Plan 1 annexed hereto (hereinafter called "The Plan") for an estate in fee simple absolute subject only to the matters set out in a conveyance dated the sixth day of September One Thousand Nine Hundred and Eighty Five between the Secretary of State For Social Services Joseph Bernard Kenny Rosemary Erica Kenny Vardon Headley Manning and Olga Dolores Manning but otherwise free from encumbrances
- (C) Having regard to the Development Plan and other material considerations the County Council and the Council consider it expedient in the interests of the proper planning of their area that provision should be made for regulating or facilitating the Development of the Land in the manner hereinafter appearing and the Council is satisfied the Permission can only be granted subject to and upon completion of this Agreement

NOW THIS DEED WITNESSETH as follows:-

- 1.1 This Agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and any other enabling power

- 1.2 The covenants that appear hereinafter are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council
- 1.3 This Agreement is a Deed and may be modified or discharged in part or in total at any time after the date of this Agreement by agreement between the parties in the form of a Deed
- 1.4 This Agreement is a local land charge and upon completion shall be registered by the Council as such
- 1.5 No waiver (whether express or implied) by the Council of any breach or default by the Developers in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof
- 1.6 Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Agreement
- 1.7 This Agreement shall be governed by the laws of England
- 1.8 No party shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement after that party has parted with its interest in the Land or the part of the Land in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any party's interest in the Land or any part thereof in respect of which any such breach has taken place
- 1.9 This Agreement shall cease to have effect if either:-

- 1.9.1 the Permission is quashed revoked or otherwise withdrawn; or
- 1.9.2 planning permission on the Land is granted subsequently and implemented for proposals incompatible with the Development

1.10 NOTICES

1.10.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be deemed to have been validly served or given if received by facsimile, delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is addressed and delivered or sent by facsimile or by recorded delivery post to the address of the party concerned as nominated in sub-clause 1.10.2 or as subsequently notified in writing

1.10.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council:	The Strategic Director (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich
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The Owners:	Halo Homes Limited 235 West Road Westcliff on Sea Essex SSO 9DE
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1.11 Any notice or other written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer

2. GENERAL

- 2.1 The Owners HEREBY FURTHER AGREE that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Land under the terms of the Agreement are hereby waived
- 2.2 All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the developers and at no cost to the Council
- 2.3 All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not presently been charged in respect of that supply the person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

3. ARBITRATION

- 3.1 Any dispute or difference arising between the parties as a result of this Agreement shall be referred to the arbitration or a single arbitrator to be agreed upon between the parties, or failing agreement within fourteen days after any of the parties has given to the other parties a written request requiring the appointment of an Arbitrator, to a person to be appointed at the request of any of the parties by the President of The Institution of Civil Engineers for the time being
- 3.2 Any reference to arbitration shall be undertaken in accordance with and subject to the provisions of the Arbitration Act 1996 save as follows:-

- (a) the seat of the arbitration shall be at the Council's offices in Norwich
- (b) where appropriate the Arbitrator may consolidate arbitral proceedings;
- (c) with the parties agreement the Arbitrator may appoint experts or legal advisers

3.3 Any of the parties mentioned in clause 3.1 concerned in any such dispute or difference arising from this Agreement wishing to refer any such dispute or difference to arbitration shall notify the other parties in writing of such intention without delay

3.4 The Arbitrator shall act as a referee and not as an expert except in any case where the parties to a dispute or difference agree on the Arbitrator when such parties may also agree that such Arbitrator shall act as an expert

3.5 Subject to Sections 67, 68 and 69 of the Arbitration Act 1996, the parties agree to be bound by the decision of the Arbitrator

4. RIGHTS OF THIRD PARTIES

The Contracts (Rights of Third Parties) Act shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act.

COVENANTS

The Owners

5.1 The Owners hereby covenant and undertake with the Council so as to bind the Land and each and every part thereof to carry out and comply with the obligations set out in this Agreement

THE OBLIGATIONS

6. LANDSCAPING MANAGEMENT SCHEME

- 6.1 Within two months of the date of this Agreement the Owners shall appoint an arboricultural consultant who shall be approved in writing by the Director.
- 6.2 Within two months of The Effective Date the Owners shall ensure that the arboricultural consultant has submitted to the Council for approval a landscape management scheme (hereinafter called "the Scheme") which will be based on the Outline Landscape Proposals in Schedule Two hereof and shall cover the matters set out in Schedule Three hereof and upon approval the Scheme shall be deemed to be incorporated into the terms of this agreement.
- 6.3 The Owners shall implement all the works set out in the Landscape Management Scheme within five years of the Effective Date
- 6.4 Following the approval of the Scheme the Owners will as often as may be necessary appoint an arboricultural consultant who shall be approved in writing by the Director to
 - (a) prepare and submit to the Director for approval ongoing Management Plans (hereinafter called the ("Management Plans")) within the last three months of the previous management plan to ensure the proper distribution of species and age mix taking into account the matters set out in Schedule Three hereof and upon approval the Management Plans shall be deemed to be incorporated into the terms of this agreement.
 - (b) to undertake maintenance inspections identified in Management Plans submitted in accordance with clauses 6.2 and 6.4 hereof and to identify all works that are necessary to ensure that the Management Plans are implemented successfully and to

prepare a timetable for their implementation.

7 PHASED SCHEDULE OF WORKS

- 7.1 The Works shall be carried out in accordance with the Phased Scheme set out in Schedule One hereof

8 PAYMENT

- 8.1 As from the date of this Agreement the Owners shall make available to the Council in accordance with requests made by the Council all information as the Council may require to determine if the Developer has made a profit over and above the figure as set out in Clause 8.2 hereof
- 8.2 Where the Owners' net profit from the Development exceeds twenty five per cent (25%) of the total costs incurred by the Owners in connection with the Development (which for the avoidance of doubt shall include the costs to the Owners of acquiring the Land together with the incidental costs of acquisition and disposal) the Owners shall within 21 days of a demand therefor make a payment to the Council of a sum as calculated in accordance with Schedule Four hereof as a contribution towards the provision of Affordable Housing by the Council
- 8.3 No demand for payment shall be made by the Council until the whole of the Development has been completed and audited accounts of the Owners' have been prepared to enable the amount of any payment to be ascertained and the Owners shall thereupon deliver to the Council a statement prepared by the Owners' accountants of the calculation of the net profits received [if any] in respect of the Development and the amount of the payment to be made to the Council
- 8.4 The Owners shall pay the proceeds of sale of the final two dwellings forming part of the Development into a separate interest-bearing account with a financial

institution previously approved in writing by the Council ("the Account") which shall be accessible by the Owners and the Council on a joint instruction from both of them and together with all interest that may from time to time accrue be applied by the Owners and the Council towards the sum {if any} payable under Clause 8.2 hereof

- 8.5 The Owners shall not make any withdrawal from the Account except in accordance with Clause 8.2 with the written consent of the Council and shall ensure that the Council shall be given all necessary rights in respect of the Account to enable it to direct the payment of moneys due to it under this agreement and that any balance is forthwith released to the Owners

9 COMMENCEMENT OF DEVELOPMENT

- 9.1 The Owners shall give seven days prior written notice of its intention to implement the Permission.

IN WITNESS whereof this Agreement has been executed and delivered as a Deed on the date first written above

SCHEDULE ONE

PHASED SCHEDULE OF WORKS

Phase 1

- # Tree protection fencing to be erected
- # Commence and complete refurbishment of the external elements (i.e. repair/refurbishment of existing outer skin) of the existing Hall in accordance with the approved plans (781700/07B and 781700/08B)
- # Commence and complete internal structural alteration to existing Hall in accordance with the approved plans (7817/004A, 7817/005B and 7817/006)
- # Commence and complete necessary works to retain and refurbish the facade of the Western Elevation of the existing Hall

Once the bricklayers have completed all necessary works to units 1, 2, 3, 4, 5, 6, 14, 15 and 16 the bricklayers will commence building works on the new East Wing (units 7, 8, 9, 10, 11, 12 and 13).

Phase 2

- # Commence and complete building works on new East Wing in accordance with the approved plans (781700/07B and 781700/08B)
- # Commence and complete second fixings to existing Hall
- # Commence and complete second fixings to new East Wing

Phase 3

- # Commence and complete construction of parking areas
- # Commence and complete alterations to vehicular access
- # Commence and complete construction of footpath to Hall Road
- # All roads and footways to be constructed and completed

Phase 4

- # Commence and complete building works on garaging in accordance with the approved plans (7817/010C and 7817/011)
- # Commence and complete construction of boundary walls
- # Commence and complete necessary landscaping works

Phase 4 will be undertaken before the last unit on the site is sold.

SCHEDULE TWO

OUTLINE LANDSCAPE PROPOSALS

BLOFIELD HALL, NORFOLK

Parkland Landscape enhancement proposals.



Supporting document to accompany the Tree and Landscape Survey prepared during January 2002

Accompanying Plans

- | | |
|--------|-------------------------------------|
| 264/13 | Tree Planting and removal proposals |
| 264/14 | Parkland masterplan |

Introduction

As outlined in the earlier tree and landscape survey, the parkland associated with Blofield Hall has a neglected appearance, in common with the Hall itself, with parts becoming overgrown due to lack of maintenance, and established trees requiring extensive arboricultural maintenance.

The original Beech avenue, although a substantial landscape feature, has lost about 35% of its original trees and those remaining are in a poor condition.

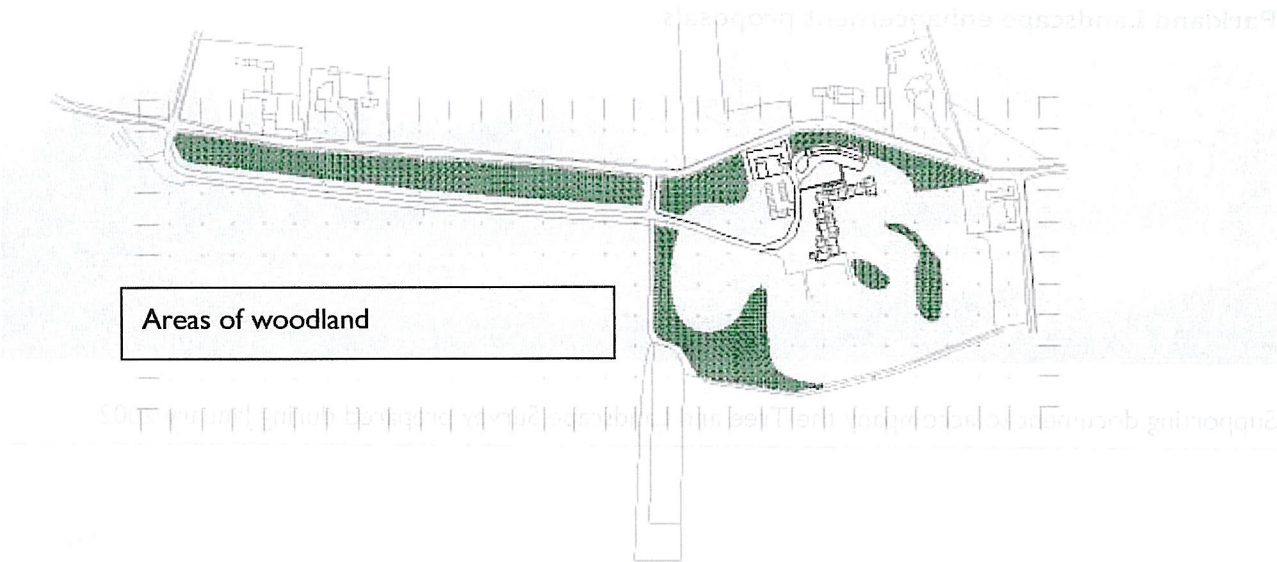
Further areas of tree planting have been undertaken at a later date using inappropriate species and locations, creating incongruity to the parkland character and the setting of the Hall. Existing parkland trees, while some are imposing landscape features, are of variable quality with some requiring tree surgery or even removal.

Some beech hedges have been planted in the park, for example on the southern side of the avenue and running Eastwards from the North wing, but these have not been trimmed for several years and are developing as trees.

Proposals

It is therefore considered that a phased programme of renewal, involving woodland management, tree surgery, selective felling and replanting be undertaken throughout the parkland. These proposals are summarised in drawing nos. 264/13 and 264/14, and outlined below.

Woodland management



The woodland belts and blocks at Blofield Hall consist of a mix of mature trees, largely Oak (*Quercus robur*) with some Beech (*Fagus sylvatica*) and Scots Pine (*Pinus sylvestris*). Leyland Cypress (*Cupressus* sp.) and Laurel (*Prunus laurocerasus*) has also been planted within the woodland and is beginning to shade out the understorey, particularly in the belt alongside the road to the north of the Hall.

While the *Cupressus* and Laurel provides some screening, particularly during the winter, its shade prevents regeneration of other plants, and the declining understorey is beginning to allow views through the woodland. It also has detrimental impacts on the wildlife and conservation value of the woodland. The understorey, originally consisting largely of Hazel (*Corylus avellana*), Dogwood (*Cornus sanguinea*) and Field maple (*Acer campestre*) coppice, is becoming sparse, with the old coppice growth dying off. Similarly, low-level herbaceous plants are being shaded out.

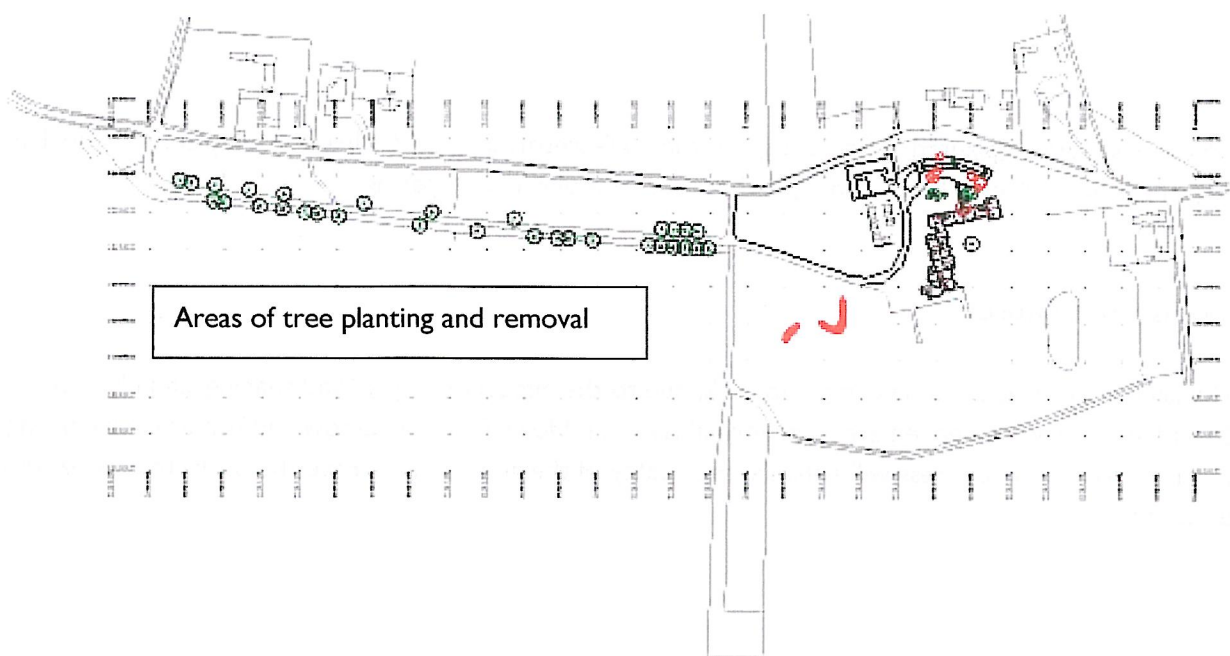
It is therefore recommended that a programme of selective felling of areas of *Curpressus* and Laurel be implemented. This should be phased over a period of, say five, years to reduce the immediate loss of cover caused by the felling. The areas opened up by this felling should then be replanted with the following species mix, protected with tree shelters and planted at a spacing of 2 metres:

10%	English Oak	<i>Quercus robur</i>
7.5%	Holly	<i>Ilex aquifolium</i>
30%	Hazel	<i>Corylus avellana</i>
30%	Field Maple	<i>Acer campestre</i>
7.5%	Spindle	<i>Euonymus europaeus</i>
15%	Dogwood	<i>Cornus sanguinea</i>

Any gaps elsewhere within the woodland should also be planted with the same species mix.

Existing coppice stools throughout the woodland belts should be cut to the base of the stumps on a ten year cycle, again phased over a period of, say, five years to reduce the immediate impact. Any gaps thus created should be planted with the same species mix.

The aim of these proposals is to create a varied age and species structure for the planting, and provide a long-term density of vegetation cover from tree to ground level.



Hedges

Beech and hawthorn hedges have been extensively planted along the boundaries of the site, particularly on the southern side of the main drive, and along Hall Road.

These have not been maintained for a number of years, and the Beech hedge plants particularly are now developing into trees. These should be cut back to a height of approximately 1 metre to allow regrowth, and any gaps should be replanted with a double row of Beech plants at 500mm centres.

Specimen Planting

As discussed, the parkland trees are of variable quality, and some inappropriately-located specimens are considered to be detrimental to the parkland setting of the hall. It is therefore recommended that selected trees be removed, and new planting installed where appropriate.

Beech avenue

There are substantial gaps in the avenue, and it is recommended that these be filled with healthy Extra-heavy standard trees (*Fagus sylvatica*) planted in well-prepared ground. Existing trees to have dead limbs removed, and complete removal and replacement if deemed too sick or dangerous for retention by qualified arborist.

Parkland Trees

Certain belts of Cupressus, which were probably originally planted as hedges, have now developed into semi mature trees and are becoming incongruous landscape features. They are also creating shade and enclosure, which is affecting other trees and causing lawn areas to become rank and damp.

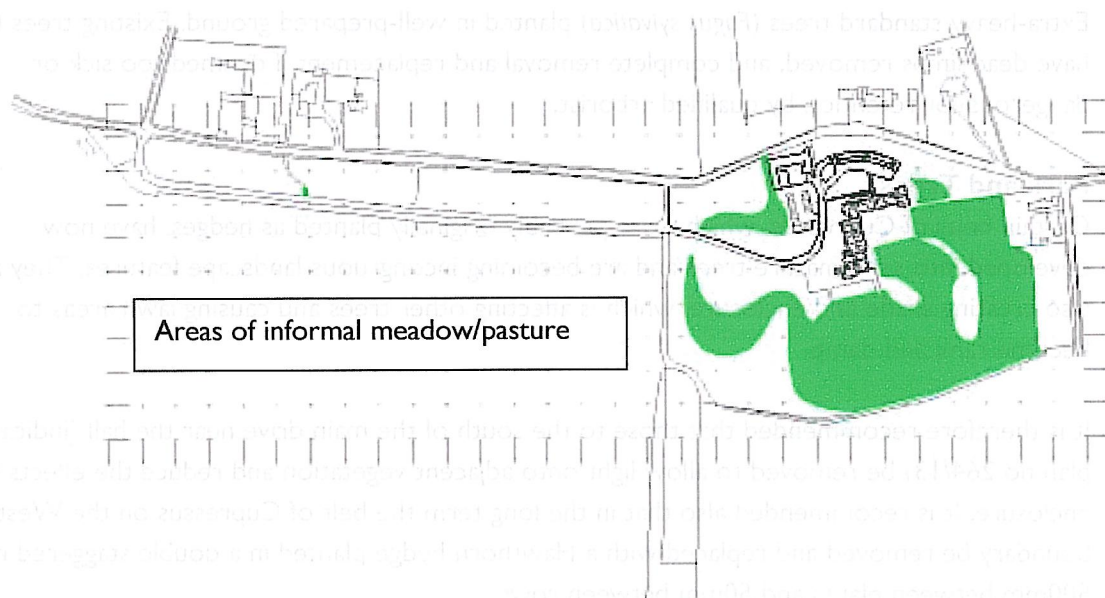
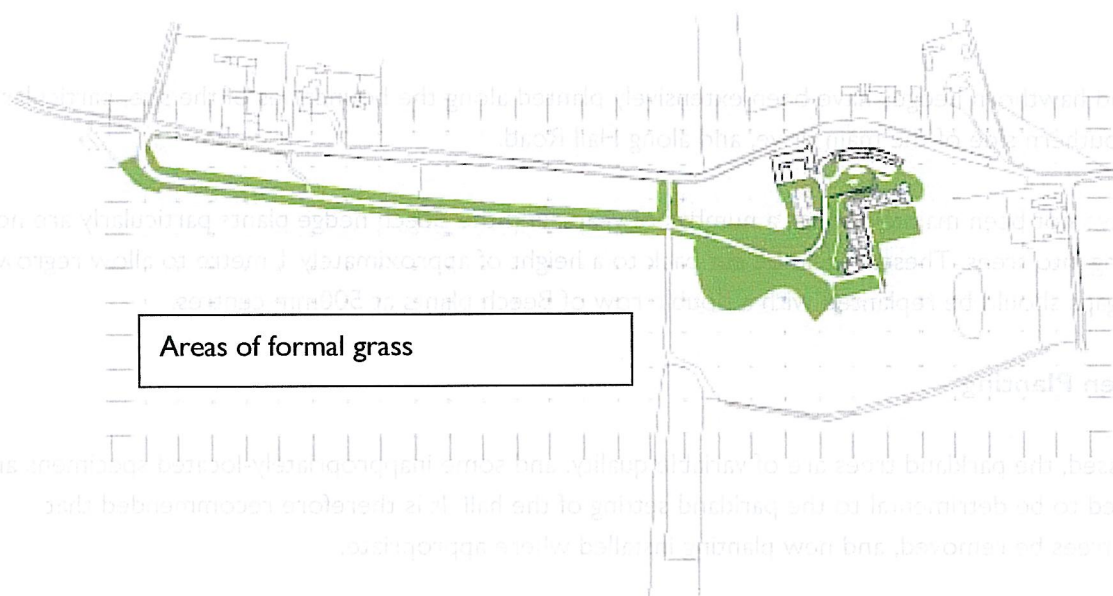
It is therefore recommended that those to the south of the main drive near the hall (indicated on plan no 264/13) be removed to allow light onto adjacent vegetation and reduce the effects of enclosure. It is recommended also that in the long term the belt of Cupressus on the Western boundary be removed and replaced with a Hawthorn hedge planted in a double staggered row, 500mm between plants and 50mm between rows.

Where selected trees are to be removed as part of the proposals for the new wing and the garage block, it is proposed to reinforce remaining blocks of Pines and Spruce with new planting. In these areas, Pinus

sylvestris should be planted at 3metre spacing in well-prepared ground. Mixed shrub planting should also be planted in the areas shown, amongst the trees, at 3 per metre spacing.

Lawns and Pasture

The lawn areas have become damp and rank, due to the effects of neglect and shading, and plan no 264/13 shows recommended areas for formal lawns and for informal meadow and pasture. Maintaining certain areas as formal grass will enhance the quality of the grass and improve the neglected appearance of the site.



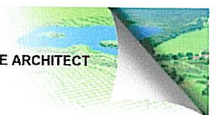
Formal grass areas should be cut regularly during the growing season, say fortnightly, while informal grass areas should be mown three or four times per year, or grazed where possible.

SUMMARY

The aim of the proposals outlined above is to renew the parkland landscape after several decades of neglect, by a phased removal of inappropriate planting, the installation of new tree planting and enhanced maintenance of remaining features. The details specified are intended as a general guide for the aims of the landscape development of the park.

Luke Broom-Lynne BA DipLA MLI CHARTERED LANDSCAPE ARCHITECT

Rosebank House
The Street
South Lopham
Diss
IP22 2LH
01379 688360
luke@broom-lynnne.com
www.broom-lynnne.com



SCHEDULE THREE

LANDSCAPE MANAGEMENT SCHEME

Ongoing Maintenance Plans shall be prepared every five years. The plans shall be submitted to the Council for approval and upon approval the terms shall be deemed to be incorporated into the terms of this agreement.

The Scheme and the Management Plans shall ensure the proper distribution of species and age mix to take into account:-

(i) Woodland Management:- Demonstrate by way of scaled plans and supporting written statements how natural regeneration will be managed in each year of the five year plan together with full details of replacement planting following selective felling

(ii) Coppice Management:- Demonstrate by way of scaled plans and supporting written statements how the coppiced stools are to be placed in 10 year cycles over two 5 year plans

(iii) Hedge Management:- Demonstrate by way of a five year plan those hedgerows which will be renewed in each year of the five year plan including those hedgerows to be cut back to a height of approximately 1 metre and any associated replanting

(iv) Beech Avenue:- Demonstrate by way of a written report from an arboriculturalist the works necessary to the Beech avenue trees on the Land in each year of the five year plan including full details of replacement planting

(v) Parkland Trees:- Demonstrate by way of a written report from an arboriculturalist the works necessary to the Parkland Trees shown edged green on the Plan hereto in each year of the five year plan including full details of replacement planting

SCHEDULE FOUR

CALCULATION OF AFFORDABLE HOUSING CONTRIBUTION

In this Schedule the expression "excess net profit" means net profit from the development in excess of 25%

The contribution towards affordable housing shall be calculated as follows:-

Where the net profit from the development does not exceed 25% Nil Contribution

Where the net profit from the development does not exceed 26% the contribution shall be 25% of the excess net profit

Where the net profit from the development does not exceed 27% the contribution shall be 30% of the excess net profit

Where the net profit from the development does not exceed 28% the contribution shall be 35% of the excess net profit

Where the net profit from the development does not exceed 29% the contribution shall be 40% of the excess net profit

Where the net profit from the development does not exceed 30% the contribution shall be 40% of the excess net profit

Where the net profit from the development does not exceed 31% the contribution shall be 45% of the excess net profit

Where the net profit from the development does not exceed 32% the contribution shall be 50% of the excess net profit

Where the net profit from the development exceed 33 % the contribution shall be 50% of the excess net profit PROVIDED THAT the total contribution payable shall in any event not exceed one hundred and fifty nine thousand pounds (£159 000)

THE COMMON SEAL of
BROADLAND DISTRICT COUNCIL
was hereunto affixed in the presence of

)

)

)

John J. Durrell



5387

HEAD OF FINANCE

SIGNED as a Deed by
HALO HOMES LIMITED
acting by its secretary and
one of its directors or by
two of its directors

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SECRETARY/DIRECTOR

)

DIRECTOR

)

Paul Fern
[Signature]