DATED 17th March 2010

BROADLAND DISTRICT COUNCIL

- AND -

NORFOLK COUNTY COUNCIL

AGREEMENT UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990
Relating to the development of land at
Burlingham Road, South Walsham, Norfolk

FC/dk-BDCCTR/28418 (Section 106 Agreement)
Created: 06.07.09
Updated: 25.02.10

THIS AGREEMENT is made the 17th day of March 2010

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the first part and

NORFOLK COUNTY COUNCIL ("the Owner") of County Hall Martineau Lane Norwich NR1 2DH of the second part

1. INTERPRETATION AND DEFINITIONS

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	housing within the meaning of Social Housing as defined in Section 68 of the Housing and Regeneration Act 2008
"Affordable Housing Units"	Affordable Housing comprising six residential units to be constructed or provided on the Site as part of the Development
"Affordable Rental Units "	low cost rental accommodation to be let for a rent upon either a weekly basis or monthly tenancy basis not exceeding Homes and Communities Agency target rents (or if such targets cease to be set such other measure of affordable rents as the relevant District Council shall reasonably determine) and to be let by or on behalf of a Registered Social Landlord

"Application"	the application registered on 4 June 2009 for detailed planning permission for four houses and two flats including associated works
"Approved Mix"	Six Affordable Rental Units or other such mix of Shared Ownership Dwellings as may be agreed by the Council (such agreement not to be unreasonably withheld or delayed)
"Development"	the development permitted by the Planning Permission
"Director"	the Council's Strategic Director and Chief Planner or other officers of the Council acting under his hand
"Inflation Provision"	the increase (if any) in the Department for Business Enterprise and Regulatory Reform (BERR) Output Price Index for Public Works from September 2006 until the date upon which a payment of the Open Space Commuted Sum is made pursuant to this Agreement
"Local Lettings Policy"	the order in which the Affordable Housing Units are to be allocated and which is set out under the title "Local Lettings Policy" at Appendix 1 to this Agreement as amended from time to time
"Monitoring Fee"	the total sum of £600 to be paid by way of a monitoring fee for the main contributions specified in this Agreement which fee is required for checking the implementation and compliance with the terms of this Agreement

"Open Space Commuted Sum"	the sum of £20,917
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission granted for the Development dated 24 August 2009 under ref. 20090708
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria as having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally which is reasonably adequate for their needs contained in the Council's policies relating to housing allocation (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1985, 1996 and 2004 and the Homelessness Act 2002) and ranked in accordance with the Local Lettings Policy or where such persons have been exhausted any person as nominated by the Council on the Broadland Housing Register that the Registered Social Landlord owning or managing the Affordable Housing Units on the Site is entitled to house within its rules
"Registered Social Landlord"	a registered social landlord in the register kept by the Homes and Communities Agency under Part 1 of the Housing Act 1996 (or any statutory re-enactment or modification thereof) as

	approved by the Council or Registered Provider in the register established under S111 of the Housing and Regeneration Act 2008
"Shared Ownership Dwellings"	Affordable Housing to be let on a Shared Ownership Lease
"Shared Ownership Lease"	a lease or sub-lease of a Shared Ownership Dwelling granted at a premium whereby up to a maximum of 50% (fifty per cent) on first purchase of the equitable interest in the Shared Ownership Dwelling is paid by the tenant upon completion of such lease or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to and including 80% (eighty per cent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates
"Site"	the land at Burlingham Road South Walsham shown for the purposes of identification only edged red on the Plan

In this Agreement unless the context otherwise requires:

(i) references to any party shall include the successors in title and assigns of that party

(ii) references to clauses and schedules are references to clauses in and schedules to this Agreement

(iii) 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

(iv) headings in this Agreement shall not form part of or affect its construction

WHEREAS:

A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated

B. The Owner is the freehold owner of the Site

C. The Owner submitted the Application and the Council has granted the Planning Permission

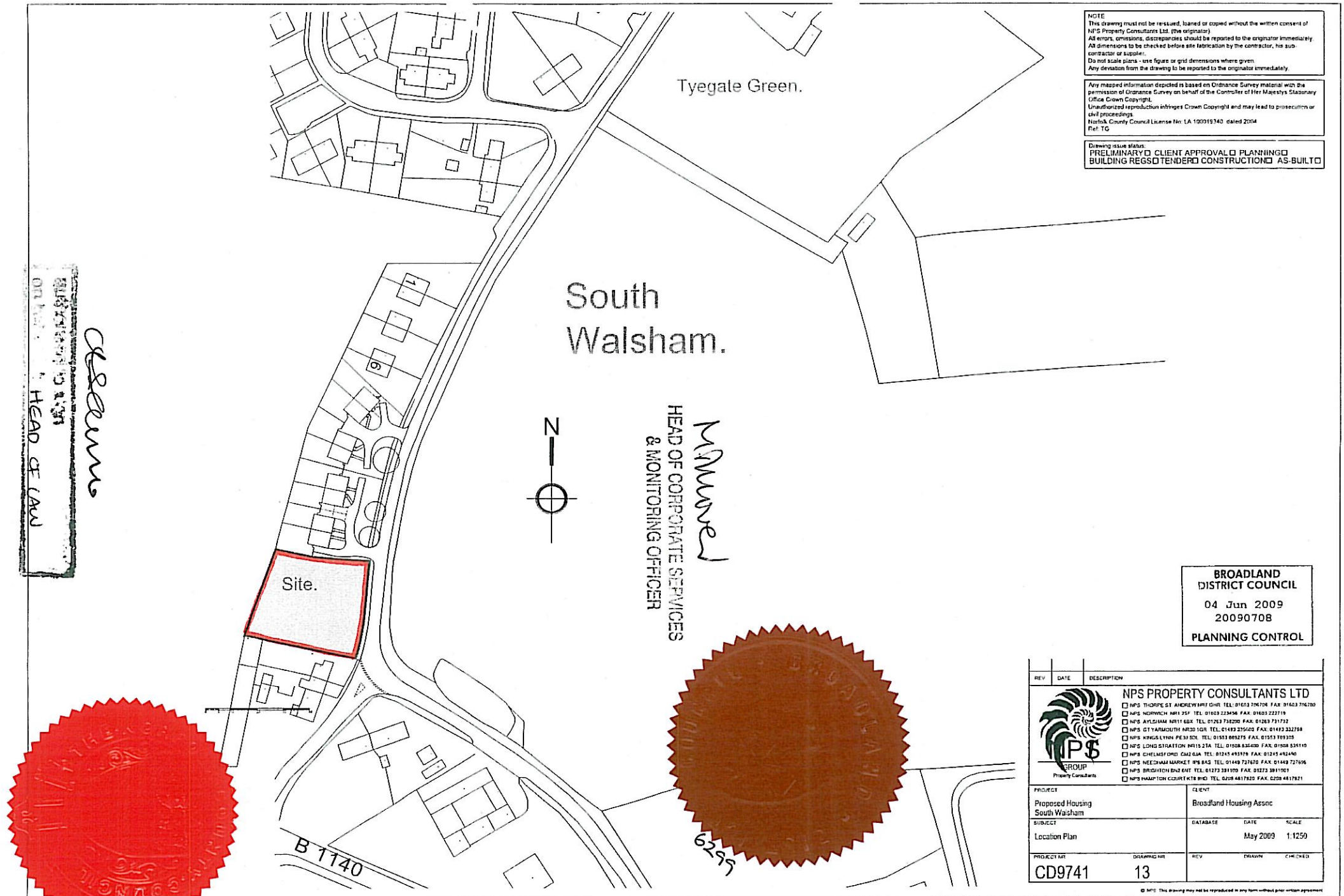
2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

2.1 This Agreement is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and any other enabling powers

2.2 The obligations of the Owner hereunder are planning obligations enforceable by the Council against the Owner and its successors in title and assigns

2.3 The provisions of this Agreement shall have immediate effect upon completion of this Agreement

2.4 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn



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M Munnery
HEAD OF CORPORATE SERVICES
& MONITORING OFFICER

BROADLAND
DISTRICT COUNCIL
04 Jun 2009
20090708
PLANNING CONTROL

REV	DATE	DESCRIPTION

NPS PROPERTY CONSULTANTS LTD
NPS THORPE ST ANDREW NR7 0HR TEL: 01603 706706 FAX: 01603 706700
NPS NORWICH NR1 2SP TEL: 01603 223456 FAX: 01603 222719
NPS AYLSHAM NR11 6BX TEL: 01263 738200 FAX: 01263 731732
NPS GT YARMOUTH NR30 1QR TEL: 01493 335500 FAX: 01493 332798
NPS KINGS LYNN PE30 5DL TEL: 01553 669275 FAX: 01553 769305
NPS LONG STRATTON NR15 2TA TEL: 01508 535400 FAX: 01508 535110
NPS CHELMSFORD CM2 0AA TEL: 01245 493570 FAX: 01245 492460
NPS NEEDHAM MARKET IP6 8AQ TEL: 01449 727670 FAX: 01449 727606
NPS BRIGHTON BN2 6NT TEL: 01273 391109 FAX: 01273 391101
NPS HAMPTON COURT KT8 9HD TEL: 0208 4817920 FAX: 0208 4817921

PROJECT	CLIENT
Proposed Housing South Walsham	Broadland Housing Assoc
SUBJECT	DATABASE / DATE / SCALE
Location Plan	May 2009 1:1250
PROJECT NR / DRAWING NR	REV / DRAWN / CHECKED
CD9741 13	

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2.5 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges

2.6 In the event that this Agreement comes to an end the Council if so requested by the Owner will execute a Deed of Release (or partial release) from the relevant provisions of this Agreement and procure that a note thereof shall be registered on the Council's Register of Local Land Charges

3. Agreements and Declarations

IT IS HEREBY AGREED AND DECLARED as follows:

3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council were not a party to this Agreement

3.2 Invalidity or Unenforceability of any of the Terms of this Agreement

If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 No Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Owner 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

3.4 No person shall be liable under this Agreement for any breach of the covenants contained in this Agreement after that party has parted with its interest in the Site or the part of the Site in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any person's interest in the Site or any part thereof in respect of which any such breach has taken place

4. Notices

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter or facsimile

4.2 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 and Chief Planner Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich NR7 0DU
The Owner	Head of Law Norfolk County Council County Hall Martineau Lane Norwich NR1 2DH

4.3 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

5. Third Parties

5.1 The Contracts (Rights of Third Parties) Act 1999 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

6. Costs

6.1 The Owner shall on completion of this Agreement pay the Council's legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

7. Payment Of Interest

7.1 The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received

8. VAT

8.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable

8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply the person making the

supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

9. Jurisdiction

9.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales

10. The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Agreement are hereby waived

11. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

11.1 To carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement

11.2 Prior to the occupation of the Affordable Housing Units on the Site to pay the Council the Open Space Commuted Sum as increased by the Inflation Provision

11.3 The Monitoring Fee which is required for checking the implementation and compliance with the terms of this Agreement shall be paid to the Council prior to commencement of the Development on the Site

12. THE COUNCIL'S OBLIGATIONS

12.1 The Council agrees with the Owners that the Open Space Commuted Sum shall be applied towards the provision of new open space in the Parish of South Walsham or towards the improvement and maintenance of existing open space in the Parish of South Walsham

SCHEDULE 1

1. AFFORDABLE HOUSING

1.1 To construct or procure the construction of the Affordable Housing Units in accordance with current NHBC standards and building regulations in force at the time of building and to complete the construction of the Affordable Housing Units by 1st March 2011

1.2 Not to use allow or permit the Affordable Housing Units to be occupied under any other tenure than the Approved Mix

1.3 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers

1.4 The Owner shall not dispose of its interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Social Landlord

1.5 Paragraphs 1.2 1.3 and 1.4 above shall not be binding upon any mortgagee in possession of the Affordable Housing Units or part thereof nor any receiver or manager (including an administrative receiver) for such mortgagee and shall cease to apply to any of the Affordable Housing Units where the Owner shall be required to dispose of such Units pursuant to a right to buy under Part 5 of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable

APPENDIX 1

Local Lettings Policy for Burlingham Road, South Walsham

1. Nomination Rights Policy

   1.1 The Policy will apply to all categories of properties on the basis of 100% of all lettings for the first 80 years.

   1.2 The Council and the Association are both committed to eradicating double scrutiny of nominated households for general needs accommodation. They are also agreed on the move away from a pool nomination system to a direct nomination system where a maximum of 2 households will be nominated in priority order for any letting other than those designated as hard to let where a maximum of 3 households will be nominated

2. Allocations will be made to applicants on the Common Housing Register managed and maintained by Broadland District Council on the following priority basis:

   2.1 Residents of parish South Walsham who have lived in the Parish for a total of at least 3 of the last 10 years.

   2.2 Former residents of South Walsham who have had their main home in the Parish for 3 of the last 10 years.

   2.3 Households who need to move to South Walsham to give/receive support from family/relatives.

   2.4 Residents of the adjacent parishes of Upton with Fishley, Lingwood and Burlingham, Hemblington, Woodbastwick who have lived in these parishes for the last three years.

   2.5 People working in the parish of South Walsham who have done so for a year or more.

   2.6 Residents of South Walsham who have lived in the parish for less than three years.

   2.7 Residents of the parish Upton with Fishley, Lingwood and Burlingham, Hemblington, Woodbastwick who have lived in these parishes for less than 3 years.

   2.8 Residents of the adjacent parishes of Acle, Beighton, Strumpshaw, Blofield, Great and Little Plumstead, Brundall, Salhouse who have lived in these parishes for the last three years.

   2.9 Residents of the parishes of Acle, Beighton, Strumpshaw, Blofield, Great and Little Plumstead, Brundall, Salhouse who have lived in these parishes for less than 3 years.

   2.10 Residents of Broadland District

   2.11 Any other person

3. Administrative Procedure for Nominations

3.1 The administrative procedure for nominations shall be in accordance with the operational procedures of the Home Options Choice Based Lettings as amended from time to time or in accordance with alternative procedures as the Council and the Owner shall agree between them.

EXECUTED by the parties hereto as a deed on the date written above

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

6299

.....
Authorised Signatory

HEAD OF CORPORATE SERVICES
& MONITORING OFFICER

.....
Authorised Signatory

THE COMMON SEAL of)
NORFOLK COUNTY COUNCIL)
was hereunto affixed in the presence of)

authorised to sign
on behalf of: Head of Law