

DATED

29 March

2012
~~2011~~

NORFOLK COUNTY COUNCIL

-AND-

BROADLAND DISTRICT COUNCIL

- AND -

GLADEDALE ESTATES LIMITED

-AND-

BANK OF SCOTLAND PLC

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

Relating to the development of land at
School Road, Drayton, Norfolk

Broadland District Council
Thorpe Lodge
Yarmouth Road
Norwich
NR7 0DU

THIS AGREEMENT is made the 29 day of March 2012

BETWEEN:

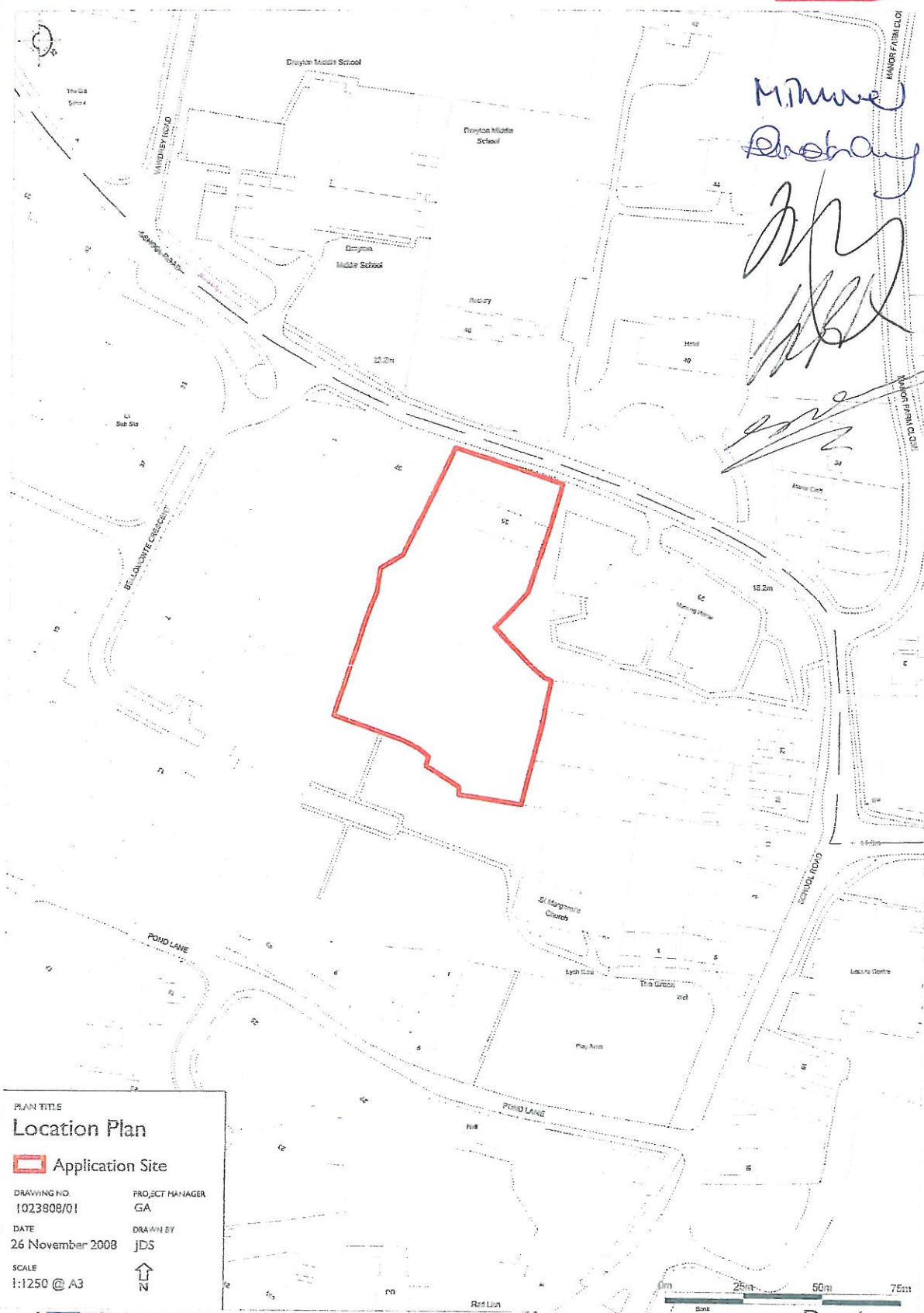
- (1) NORFOLK COUNTY COUNCIL ("the County Council") of County Hall Martineau Lane Norwich NR1 2DH
- (2) BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council")
- (3) GLADEDALE ESTATES LIMITED (Co. Regn. No. 04113703) of 30 High Street Westerham Kent United Kingdom TN16 1RG ("the Owner")
- (4) BANK OF SCOTLAND PLC (Company Number SC327000) of 7th Floor Princess House 1 Suffolk Lane London EC4R 0AX ("the Mortgagee")

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 which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market
"Affordable Housing Contribution"	the sum to be paid to the Council pursuant to the Affordable Housing Provisions
"Affordable Housing Provisions"	the provisions set out in the Schedule relating to the assessment of the viability of the Development to support Affordable Housing

"Application"	the planning application received on the 2 nd July 2010 and given reference 20101010 for the erection of 28 dwellings (comprising 2 detached houses, 1 pair of semi-detached houses and 24 apartments with associated access, garages, parking and landscaping) without complying with condition 4 attached to the planning permission granted on 29 th June 2010 under reference 20090511
"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not including any operations relating to the demolition of any existing buildings or clearance of the Site) and "commence" shall be interpreted in accordance with this definition
"Council's Monitoring Fee"	the sum of six hundred and thirty eight pounds (£638)
"County Council's Monitoring Fee"	the sum of six hundred pounds (£600)
"Development"	the development permitted by the Planning Permission
"Director"	the Council's Chief Executive or other officers of the Council acting under his hand
"Education Contribution"	the sum of twenty three thousand two hundred and eighty eight pounds (£23,288) such sum to be Index Linked



PLAN TITLE

Location Plan



 Application Site

DRAWING NO.
1023808/01

PROJECT MANAGER
GA

DATE
26 November 2008

DRAWN BY
JDS

SCALE
1:1250 @ A3



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BROADLAND COUNCIL

02 JUL 2010

PLANNING CONTROL

"Index Linked"	Index-linked from 13 th May 2009 until such time that payment of the Library Contribution is made and index linked from 29 th June 2011 until such time that payment of the Education Contribution is made such index linking to be equivalent to any increase or decrease in such sums in proportion to the increase or decrease in the Royal Institution of Chartered Surveyors Building Cost Information Service All in Tender Index (or if such index ceases to be published such other closest equivalent index as the County Council shall reasonably determine)
"Inflation Provision"	the increase (if any) in the Department for Business Innovation and Skills (BIS) Output Price Index for New Construction (2010) : All New Construction between September 2006 and the date upon which a payment of the Off-Site Open Space Contribution is made pursuant to this Agreement
"Library Contribution"	the sum of one thousand six hundred and eighty pounds (£1,680) such sum to be Index Linked
"Off-Site Open Space Contribution"	the sum of one hundred and thirteen thousand one hundred and sixty two pounds (£113,162) as increased by the Inflation Provision
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission to be granted pursuant to the Application

"Residential Unit"	a self-contained house flat or apartment approved pursuant to the Planning Permission
"Site"	the land at 35 School Road, Drayton, Norfolk NR8 6EF which is 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 except where otherwise specified
- (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 and the County Council is also a Local Planning Authority for the purposes of the Act
- B. The Owner is the freehold owner of the Site pursuant to Title number NK291876 and the Mortgagee has a charge over the Site

- C. The Owner has submitted the Application
- D. The Council has resolved to approve the Application subject to the completion of this Agreement

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 for the purposes of the Act and enforceable by the Council and the County Council against the Owner and its respective successors in title and assigns
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with the interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place
- 2.4 The provisions of this Agreement shall have immediate effect upon completion of this Agreement
- 2.5 This Agreement shall cease to have effect if:
 - 2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn
 - 2.5.2 the Planning Permission shall expire prior to the Commencement Date

- 2.6 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges
- 2.7 This Agreement shall not be enforceable against an individual purchaser or lessee (or their successors in title) of any Residential Unit in relation to any breach of this Agreement which occurs after that individual purchaser or lessee has completed the purchase or lease of the Residential Unit

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 discretions powers duties and obligations of the Council or the County Council in the exercise of their functions as Local Planning Authorities 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 or the County 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 or the County 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 or the County Council from enforcing any of

the covenants or from acting upon any subsequent breach or default in respect thereof

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 Chief Executive, Broadland District
Council Thorpe Lodge 1 Yarmouth Road
Thorpe St Andrew Norwich Norfolk
NR7 0DU

The Owner

Gladedale (Anglia) Limited
(Attn: Company Secretary)
30 High Street Westerham Kent
TN16 1RG

The County Council

Practice Director nplaw Norfolk County
Council County Hall Martineau Lane
Norwich
NR1 2DH

The Mortgagee

Bank of Scotland PLC
7th Floor Princess House 1 Suffolk Lane
London EC4R 0AX

- 4.3 Any notice or other written communication to be given by the Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or the County 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 to the Council and the County Council their 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

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

10. DISPUTE RESOLUTION

- 10.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 10.2 If the matter is not resolved through negotiations the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre of Dispute Resolution
- 10.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties
- 10.4 Nothing in Clause 10.1 10.2 and 10.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

11. TITLE WARRANTY

- 11.1 The Owner hereby warrants that it is the freehold owner of the Site which is registered at the Land Registry under title numbers NK 291876 subject to the Mortgagee's interest and has full power to enter into this Agreement and that save for the Mortgagee's interest the Site is free from all mortgages charges or other encumbrances

12. NOTIFICATION

- 12.1 The Owner shall notify the Council and the County Council of the Commencement Date and upon occupation of the first tenth fourteenth twenty seventh and twenty eighth Residential Unit

13. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

- 13.1 prior to the occupation of the first Residential Unit on the Site to pay to the Council 25% of the Off-Site Open Space Contribution as increased by the Inflation Provision, 50% prior to occupation of the 14th Residential Unit and the balance prior to occupation of the 27th Residential Unit
- 13.2 to put in place prior to the occupation of the first Residential Unit on the Site arrangements approved by the Council (such approval not to be unreasonably refused or delayed) for the maintenance in perpetuity of the underground pumping station within the Site
- 13.3 to comply with the Affordable Housing Provisions
- 13.4 to pay the Council's Monitoring Fee to the Council prior to the Commencement Date

- 13.5 to pay to the County Council the Library Contribution prior to the occupation of the tenth Residential Unit on the Site
- 13.6 to pay to the County Council the Education Contribution prior to the occupation of the 14th Residential Unit on the Site
- 13.7 to pay the County Council's Monitoring Fee to the County Council prior to the Commencement Date
- 13.8 that where action has to be taken prior to the Occupation of a specified number of Residential Units no additional Residential Units shall be occupied until the action has been taken

14. THE COUNCIL'S OBLIGATIONS

- 14.1 The Council agrees with the Owners that the Off-Site Open Space Contribution shall be applied towards the provision and maintenance of new open space in the Parish of Drayton or towards the improvement and maintenance of existing open space in the Parish of Drayton
- 14.2 The Council agrees with the Owners that the Affordable Housing Contribution will be used for the provision of Affordable Housing in the administrative area of the Council
- 14.3 The County Council agrees with the Owner that the Education Contribution and the Library Contribution shall be applied towards the costs of school provision and providing library services and/or facilities (as appropriate) the need for which has been created by the Development

15. MORTGAGEE

The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the

mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall only be liable for any breach of this Agreement during such period as it is a mortgagee in possession of the Site and then only if it shall have caused such breach SAVE THAT from such time as the Mortgagee continues with the Development (and the Mortgagee's continuation of Development shall be deemed to be defined by the definition of "development" under Section 55(1) of the Act) or sells any Residential Unit it shall be bound by the Planning Obligations from the date of taking possession PROVIDED THAT any such breach shall continue to be enforceable against any successor in title to the Mortgagee

16. REPAYMENTS

- 16.1 In the event that the Library Contribution has not been committed (by way of a contract or otherwise) towards the provision of additional library facilities within 5 years of final occupation of the Development then the County Council will repay so much of the Library Contribution as shall remain uncommitted together with any interest accrued
- 16.2 In the event that the Educational Contribution has not been committed (by way of contract or otherwise) towards school provision within 5 years of final occupation of the Development then the County Council will repay so much of the Education Contribution as shall remain uncommitted together with any interest accrued
- 16.3 In the event that up to £82,454 of the Off Site Open Space Contribution has not been spent or committed (by way of contract or otherwise) towards the cost of provision of new Open Space and/or the cost of provision of equipment on existing and/or new Open Space in the Parish of Drayton ("the New Provision") within 10 years of receipt of the same by the Council then the Council will repay to the Owner so much of the unexpended balance of the £82,454 as shall remain

16.4 In the event that up to £30,708 of the Off Site Open Space Contribution has not been spent or committed (by way of contract or otherwise) on the maintenance of the New Provision within 20 years of receipt of the same by the Council then the Council will repay to the Owner so much of the unexpended balance of the £30,708 as shall remain

16.5 In the event that the Affordable Housing Contribution has not been committed (by way of contract or otherwise) towards Affordable Housing within 10 years of final occupation of the development then the Council will repay so much of the Affordable Housing Contribution as shall remain uncommitted

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

)
)
)
)

M. Munn

Head of Democratic Services
and Monitoring Officer



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

)
)
)
)

P. R. R. R. R.

authorized to sign
on behalf of:

Head of Law



EXECUTED as a DEED by
THE COMMON SEAL of)
GLADEDALE ESTATES LIMITED)
was hereto affixed in)
the presence of acting by:)

[Signature]

Director

Director/Secretary

[Signature]

EXECUTED as a DEED by)
BANK OF SCOTLAND PLC)
acting by its authorised attorney)
In the presence of:)

[Signature]
SAM SHAH.

Witness *[Signature]*

Full Name *D GREENE*

Address

Occupation *Analyst*

Bank of Scotland
7th Floor
Princess House
1 Suffolk Lane
London
EC4R 0AX

SCHEDULE

Affordable Housing Provision

1. In this Schedule unless the context otherwise requires the following expressions shall have the following meanings:-
 - 1.1 "Base Price" means the sums set out in the table below in relation to the different types of Residential Unit forming part of the Development plus any Relevant Increase relating to that Residential Unit.

1 bed flat	£100,000
2 bed flat	£120,000
3 bed house	£170,000
4 bed house	£220,000
 - 1.2 "Commuted Payment" means 75% of the difference between the Sale Price and the Base Price for each Residential Unit subject to a maximum of £1,002,210.00.
 - 1.3 "Disposal" means the unconditional and completed sale of the freehold interest or any long leasehold interest (being a lease for at least 99 years) for a premium in respect of a Residential Unit.
 - 1.4 "Increased Construction Costs" means any increase in the likely construction costs for the Development between 1 October 2011 and the date the first of the Residential Units is occupied which is either agreed by the Council or determined in accordance with Clause 10.
 - 1.5 "Payment Triggers" mean the Disposal of the 5th, 10th, 15th, 20th, 25th and final Residential Unit.
 - 1.6 "Notice" means a written notice setting out the Sale Price of each Residential Unit in respect of which there has been a Disposal but in respect of which no Commuted Payment has yet been paid.
 - 1.7 "Relevant Increase" means the parts of the Increased Construction Costs that are attributable to each of the different types of Residential Unit forming part of the Development which are either agreed by the Council or determined in accordance with Clause 11.
 - 1.8 "Sale Price" means the total amount of all sales revenue received from a Disposal but including all money received by way of extra items such as carpets, curtains, soft furnishings and white goods.
2. The Owner shall:-

- 2.1 (if it contends that there have been Increased Construction Costs) supply to the Council within 28 days of occupation of the first of the Residential Units sufficient and suitable evidence to support the Increased Construction Costs.
- 2.2 not subject to paragraph 3 dispose of any interest in a Residential Unit unless it is by means of a Disposal which seeks to reasonably maximise the Sale Price for that Residential Unit;
- 2.3 provide a Notice to the Council within 5 days of each Payment Trigger;
- 2.4 pay the Commuted Payment to the Council (relating to the Residential Units listed in a Notice) within 14 days of each Payment Trigger. Until the payment has been made there shall be no further Disposals;
- 2.5 provide the Council with such evidence as it reasonably requires to determine whether the provisions of this Schedule are being complied with.
3. The Council may in its discretion permit a Residential Unit to be disposed of otherwise than by way of a Disposal. If such permission is granted there shall be a deemed Disposal for the purpose of this Schedule and a Sale Price shall be either agreed by the Council or determined in accordance with Clause 10 on the basis that paragraph 2.1 has been complied with.
4. In the event of Increased Construction Costs not having been agreed or determined by the time of any of the Payment Triggers the Commuted Payment made to the Council shall not take into account any Increased Construction Costs. They shall be taken into account when the reconciliation takes place in accordance with paragraph 5.
5. On the Disposal of the final Residential Unit there shall be a reconciliation of the Commuted Payments whereby all the Base Prices and all the Sale Prices shall be aggregated to calculate the difference between the aggregated Sale Prices and the Aggregated Base Prices. The final Commuted Payment shall be 75% of this difference and a balancing payment will if required be paid by either the Council or the Owner as appropriate within 28 days of the Disposal of the final Residential Unit.