

Dated 29th July 2015

Broadland District Council
-and-
Badger Building (E. Anglia) Limited

**DEED OF PLANNING OBLIGATION
UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**
relating to land adjacent to 20 Yarmouth Road, Blofield,
Norwich

THIS DEED is dated

29th July

2015

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, NR7 0DU (referred to as "the Council")
- (2) BADGER BUILDING (E. Anglia) Limited Company number 02407008 whose registered office is at Stanley House, Stanley Street, Lowestoft, Suffolk, NR32 2DZ (referred to as "the Owner")

together referred to as 'the Parties'

INTRODUCTION

- (A) The Council is a local planning authority for the area within which the Site is located
- (B) The Owner has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed
- (C) The Owner owns the freehold of the Site

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

Act	The Town and Country Planning Act 1990
Commencement	The date on which a material operation as defined in Section 56(4) of the Act is first carried out, except operations consisting of: site clearance demolition

archaeological investigations
ground surveys
removal of contamination
erection of temporary fences
and 'Commence' and 'Commenced' will be construed accordingly

Development The Development of the Site in accordance with the Permission

Dwelling A dwelling to be built on the Site as part of the Development

Nominated Officer The Council's Head of Planning or other officer of the Council notified to the Owner

Inflation Provision The increase (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service; All Construction TPI: All New Construction. Between January 2015 and the date upon which a payment of the Open Space provision / Maintenance Contribution and Green Infrastructure is made pursuant to this agreement.

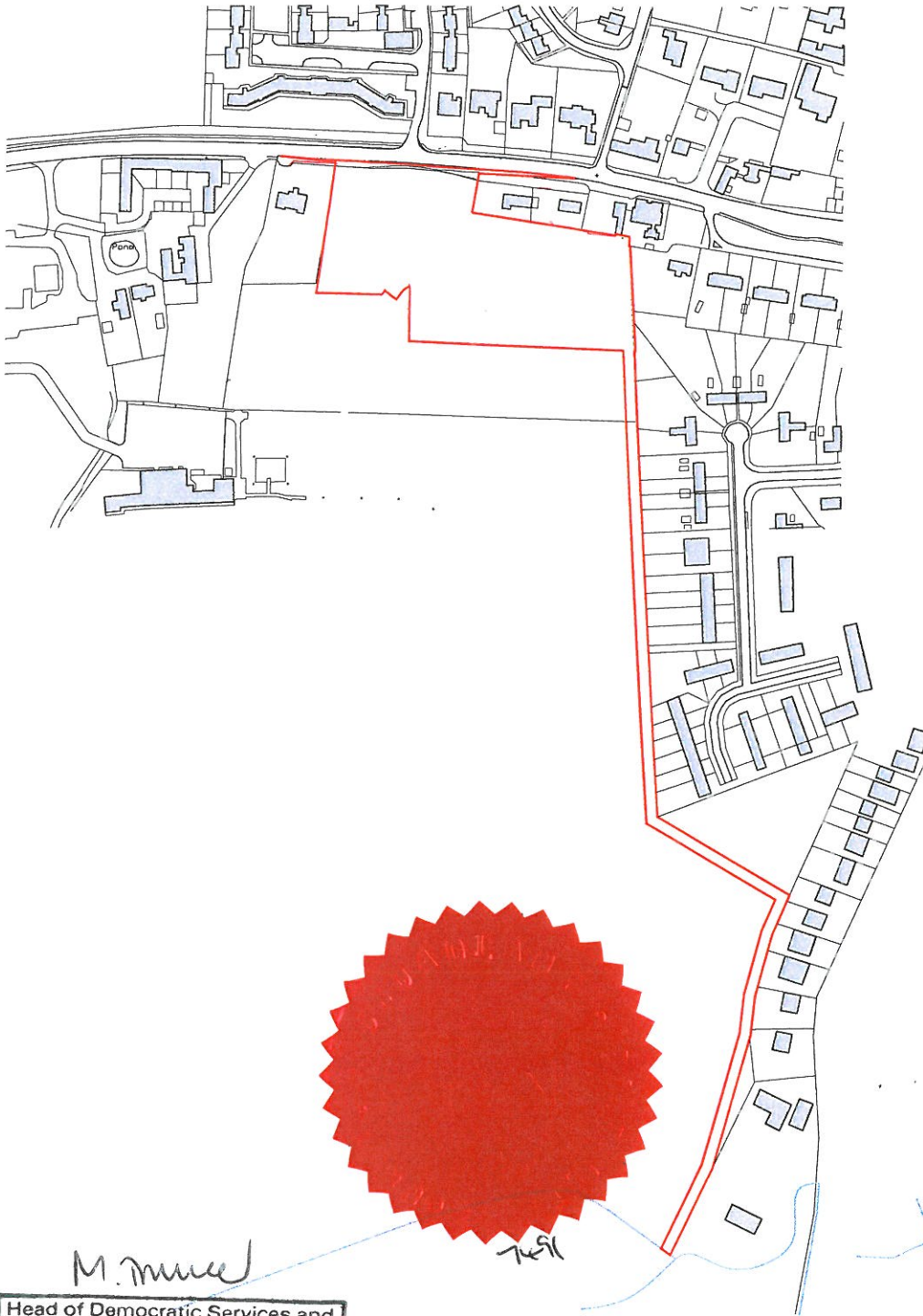
Occupation Occupation of the Site, or any part of it, for any purpose authorised by the Permission, but excluding occupation for the purposes of:
construction
internal and external refurbishment
decoration
fitting-out
marketing
and 'Occupy' and 'Occupied' will be construed

accordingly

Permission	The planning permission to be granted by the Council for the erection of 30 Dwellings (20 Open Market and 10 Affordable) plus Associated Works and allocated reference number 20141710 or another planning permission for the Development granted pursuant to section 73 or 96A of the Act as the Council agrees (in its absolute discretion) in writing
Plan	The plan attached to this Deed
Site	The land adjacent to 20 Yarmouth Road, Blofield, Norwich and in part registered at H M Land Registry under title number NK436916 shown edged red on the Plan
Trigger	means the Commencement date and any trigger or threshold in this Deed linked to the taking of specified steps, payment of money, or linked to the prohibition of a specified action

2. LEGAL BASIS

- 2.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Council
- 2.2 Covenants given by more than one party can be enforced against them individually or jointly
- 2.3 A reference to an act of Parliament includes any later modification or re-enactment, including any statutory instruments made under that act, and



M. Muel

Head of Democratic Services and
Monitoring Officer

**AMENDED
PLAN**

**BROADLAND
DISTRICT COUNCIL**
18 Feb 2015
20241710
PLANNING CONTROL

REV	DATE	DESCRIPTION	DRAWN	CHECKED BY
B	17 02 15	Red line amended to include new drainage strategy	GC	NM
A	07 11 14	Red line amended to include drainage	DG	NM

PLANNING

Chaplin Farrant Limited
51 Yarmouth Road
Norwich
NR7 0ET
Tel: 01603 700000
Fax: 01603 700001
office@chaplinfarrant.com
www.chaplinfarrant.com

Badger Builders
Residential Development
Yarmouth Road
Blofield

Site Location Plan

4754

050 **B**

07/10/14 **1:1250**

DG **NM**



reference to a gender or person includes all genders or classes of person

2.4 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done

2.5 This Deed is governed by and interpreted in accordance with the law of England

3. COVENANTS

3.1 The Owner covenants with the Council for himself and his successors in title to observe and perform the obligations and stipulations contained in this Deed

3.2 The Council covenant with the Owner to comply with their respective obligations contained in this Deed

4. OTHER PROVISIONS

4.1 No person will be liable for any breach of this Deed if he no longer has an interest in the Site (unless the breach occurred before he disposed of his interest)

4.2 The Owner confirms that he is the owner of the majority of the Site under title NK 436916 with full power to enter into this Deed and that there is no person or body with an interest in the Site whose consent is necessary to make this Deed binding

4.3 This Deed will not bind anyone who acquires an interest in part of the Site for the purpose of the supply of utility services

4.4 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed

4.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of

Third Parties) Act 1999

4.6 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions

4.7 No waiver, express or implied, by the Council constitutes a continuing waiver, nor prevents the Council from enforcing any of the provisions in this Deed

5. DISPUTES

5.1 If any dispute is not resolved between the Parties, any of the Parties may refer it for determination by an expert. The expert will be appointed by agreement between the parties or, in default of agreement, by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's decision shall be final and binding

5.2 Nothing in this Clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

6. INTEREST AND VAT

6.1 If any payment due to the Council is paid late interest will be added from the date payment is due to the date of payment at the rate of 4% above the base lending rate of the Bank of England from time to time

6.2 All payments under this Deed are exclusive of value added tax (VAT) and any VAT due must also be paid

7. NOTIFICATIONS

7.1 Any notice or written communication given under this Deed is validly given if hand delivered or sent by recorded delivery post to the address set out at the beginning of this Deed, unless written notification of another address has been

received

7.2 The Owner will notify the Nominated Officer in writing of the relevant

7.2.1 anticipated Triggers seven days in advance of each anticipated date

7.2.2 actual Triggers within seven days of each actual date

7.3 If the Owner disposes of his interest in all or part of the Site he will notify the Nominated Officer within 7 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site

Schedule 1
Affordable Housing

In this Schedule (and elsewhere in this Deed where the context permits) the following words and expressions shall have the following meanings:

- | | | |
|--------------------------|---------|--|
| “Affordable Dwellings” | | the Dwellings to be constructed to Design & Quality Standards on the Site as Affordable Housing and “Affordable Dwelling” shall be construed accordingly |
| “Affordable Housing” | | means the Intermediate Housing and Rented Housing to be provided to Eligible Households whose needs are not met by the market |
| “Affordable Housing Mix” | | Means 60 per cent Affordable Rented Dwellings / Intermediate Rented Dwellings including 2 x 1-bed bungalows (built to lifetime homes standards) and 4 x 1-bed houses and 40 per cent Shared Ownership Dwellings (4 x 3-bed houses) (or as otherwise agreed by the Council in it’s absolute discretion) |
| “Affordable Provision” | Housing | the construction and provision of Affordable Dwellings on the Site equating to 33 per cent of the total number of Dwellings (or such other percentage as the Council may agree in its absolute discretion) in accordance with the Affordable Housing Mix |
| “Affordable Scheme” | Housing | <p>A scheme securing the Affordable Housing Provision and specifying:</p> <ul style="list-style-type: none">- The timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings;- The identity of the Provider [or such details as the Council requires to satisfy itself that the Affordable Dwellings will be secured as Affordable Housing in perpetuity]; <p>AND, where the parties agree any amendment or alteration to the Affordable Housing Mix or the Affordable Housing Provision:</p> <ul style="list-style-type: none">- The number, location, type and size of Affordable Dwellings to be constructed on the Site;- full details of the Affordable Housing Mix (such proposal to reflect the Council’s up to date strategic housing market assessment and specific local needs |

as determined and agreed by the Council)] including the types of Intermediate Housing and Rented Housing;

- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme

"Affordable Dwellings"	Rented	Dwellings to be let by a Registered Provider with an appropriate agreement with the Homes & Communities Agency for the provision of affordable rents being controls that limit the rent to no more than 80 per cent of local market rents including any service charges as approved by the Council
"Approved Housing Scheme"	Affordable	the Affordable Housing Scheme as approved by the Council including any amendment, revision or substitution approved by the Council in writing
"Design & Standards"	Quality	the Design and Quality Standards as specified by the Homes and Communities Agency or its successor or such other construction standards as the Council may specify
"Eligible Household"		A person or persons in need of accommodation who are unable to rent or buy on the open market nominated by the Council in accordance with the Third Schedule and determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council
"Intermediate Dwellings"		Dwellings for sale at prices below market price that Eligible Households can afford as determined by the Council acting reasonably including low cost homes (but not including low cost market housing), shared ownership and equity loan products as approved by the Council
"Intermediate Housing"		one or more of Intermediate Dwellings Shared Ownership Dwellings and Intermediate Rented Dwellings as agreed by the Council
"Intermediate Dwellings"	Rented	Dwellings at rents above those of Social Rented Dwellings but below market rents that Eligible Households can afford (which shall be no more than 80 per cent of local market rents including any service charges [and shall not exceed the local housing allowance for that area]) as determined by the Council

“Practically Complete”	the point at which a Dwelling has been completed to Design & Quality Standards (if an Affordable Dwelling), is capable of occupation and a certificate of practical completion has been issued.
“Provider”	<p>either:</p> <p>(i) a Registered Provider; or</p> <p>(ii) another organisation that owns the Affordable Dwellings and has been approved in writing by the Council</p>
“Public Subsidy”	funding provided by the Council, the Homes and Communities Agency or any other public body or successor body towards the provision of Affordable Housing
“Registered Provider”	Is as defined in the Housing and Regeneration Act 2008
“Rented Housing”	one or more of Affordable Rented Dwellings
“Shared Ownership Dwellings”	Dwellings purchased on a Shared Ownership Lease
“Shared Lease”	<p>Ownership a lease in a form approved by the Homes and Communities Agency or where there is no such form in a form approved by the Council such lease to provide for the following:</p> <ul style="list-style-type: none"> - not more than 50% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Provider - power to the purchaser to increase their ownership up to 100% if they so wish - an initial rent not exceeding 2.75% of the value of the equity retained by the Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine)
“Social Rented Dwellings”	Dwellings owned or managed by a Provider let at rents not exceeding the Target Rent

"Target Rent"

The rent for Social Rented Dwellings as determined by the national rent regime published by the Homes and Communities Agency or any subsequent replacement or where there is no such replacement at a rent determined by the Council

- 1 The Owner hereby covenants with the Council as follows:
 - 1.1 Not to Commence the Development until the Affordable Housing Scheme has been submitted to and has been approved by the Council in writing.
 - 1.2 Not to construct the Affordable Dwellings otherwise than in accordance with the Approved Affordable Housing Scheme and the timescales set out therein.
 - 1.3 Not to Occupy more than 75% of the Open Market Dwellings unless and until all of the Affordable Dwellings to be provided under the Approved Affordable Housing Scheme are Practically Complete and have been transferred to the approved Provider in accordance with and subject to the following:
 - 1.3.1 any transfer shall be for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed or to enable (where appropriate) Affordable Rented Dwellings to be let or Intermediate Dwellings to be let or sold at a cost low enough for Eligible Households to afford.
 - 1.3.2 the transfer shall contain terms to secure any conditions and requirements of the Approved Affordable Housing Scheme.
 - 1.3.3 to ensure that up to 33% of the Affordable Rented Dwellings are let in accordance with the local lettings policy set out in the Third Schedule.

1.4 Not to use or allow the Affordable Dwellings to be used for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme other than:

1.4.1 by a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire or any mortgagee or chargee of such person or any person deriving title from such person or any successor thereto and their respective mortgagees and chargees;

1.4.2 by an Eligible Household who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold interest or any mortgagee or chargee of such person or any person deriving title from such person or any successor thereto and their respective mortgagees and chargees

1.4.3 By any Mortgagee of a Shared Ownership Dwelling lawfully exercising any mortgagee protection provisions within the Shared Ownership Lease or any person deriving title from that person or any successor thereto and their respective mortgagees and chargees

1.4.4 by a mortgagee exercising its power of sale in respect of any Affordable Dwelling or any receiver or administrator of that mortgagee PROVIDED THAT it has first complied with the following:

- a) in relation to a mortgagee of Registered Provider owned land, the restrictions and obligations contained in Sections 144 to 159 of the Housing and Regeneration Act 2008 and provided copies of all notices served and any proposals received together with updates as to progress to the Council
- b) where no proposals are agreed under a) above or where the provisions do not apply or have lapsed to give the Council the option to purchase the relevant Affordable Dwellings, or nominate another Provider or Eligible Household to purchase the relevant

Affordable Dwelling or Dwellings exercisable within a period of two calendar months commencing on the date upon which the option is first communicated to the Council in writing ("Mortgagee Notice Period") and if the Council (or it's nominated Provider or Eligible Household) elects to acquire the relevant Affordable Dwellings to allow one calendar month following expiry of the Mortgage Notice Period to complete the purchase PROVIDED THAT a mortgagee shall not be required to act in a way which is detrimental to it's security or contrary to the terms of any charge

- c) if, having used best endeavours, the relevant Affordable Dwellings are not transferred in accordance with b) above then the Affordable Housing Mortgagee shall be entitled to dispose of the Affordable Dwellings free of the restrictions set out in this Deed PROVIDED THAT the parties may agree to extend the period for transfer in writing

SECOND SCHEDULE

Affordable Housing

Local Letting Policy: Local Connection Eligibility Criteria

1. Unless otherwise agreed in writing up to one third of the Affordable Rented Dwellings (as chosen by the Council) shall be let on first occupation in accordance with the local lettings policy set out below:
 - 1.1 first allocations shall be made to people living in the Parish of Blofield.
 - 1.2 if there is no suitable person in paragraph 1.1 allocations will be made to people who work in the Parish of Blofield.; and
 - 1.3 if there are no suitable persons in paragraphs 1.1 and 1.2 allocations will be made to people who need to move to the Parish of Blofield to give/receive support to/from close family.
 - 1.4 If there are no suitable persons in paragraph 1.1 and/or 1.2 and/or 1.3 above, allocations will be made to households living in the Broadland District in accordance with the Council's policies relating to housing allocation or where no such persons are available to an Eligible Household as approved by the Council
- 2 Administrative Procedure for Nominations
 - 2.1 To grant to the Council nomination rights to 100% of the Affordable Housing Rental Units unless otherwise agreed in writing.
 - 2.2 The administrative procedure for nominations shall be in accordance with the Council's housing allocations policy as amended from time to time or in accordance with alternative procedures as the Council and the Owner shall agree between them.

THIRD SCHEDULE

Recreation and Open Space

In this Schedule the following expressions have the following meanings:

Off-Site Formal Recreational Open Space Contribution	The sum of £22,500 (as increased by the Inflation Provision) which is in lieu of and equivalent to the deficiency in the amount of recreational space being provided on Site in accordance with the Council's planning policies at the date of this Deed.
Green Infrastructure Contribution	The sum of £27,500 (as increased by the Inflation Provision) to be used towards green infrastructure / informal open space to be provided in accordance with the Council's standard charges at the date of payment.

1. The Owner covenants with the Council as follows:

- 1.1 Not to Occupy or allow Occupation of any of the Dwellings until the Off-Site Formal Recreational Open Space Contribution and Green Infrastructure Contribution has been paid to the Council

2. The Council covenants with the Owner as follows:

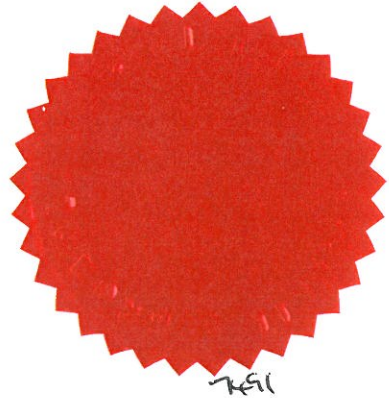
- 2.1 The Council hereby covenants with the Owner that it will deposit the Off-Site Formal Recreational Open Space Contribution into an interest bearing account and will apply the capital and any interest accrued wholly and exclusively towards the provision and maintenance of open space within the parish of Blofield.
- 2.2 In the event that the Off-Site Formal Recreational Open Space Contribution has not been committed (by way of contract or expenditure of the monies) within five years of receipt of payment to refund any unspent balance of the Off-Site Formal Recreational Open Space Contribution to the payer together with any interest accrued.
- 2.3 The Council hereby covenants with the Owner that it will deposit the Green Infrastructure Contribution into an interest bearing account and will apply the capital and any interest accrued wholly and exclusively towards the provision Green Infrastructure and informal open space.

- 2.4 In the event that the Green Infrastructure Contribution has not been committed (by way of contract or expenditure of the monies) within ten years of receipt of payment to refund any unspent balance of the Green Infrastructure Contribution to the payer together with any interest accrued.

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

EXECUTED as a deed by affixing the
Common Seal of
BROADLAND DISTRICT COUNCIL
in the presence of:

)



Authorised Signatory: *M. Murre*

Head of Democratic Services and
Monitoring Officer

Executed as a DEED by
BADGER BUILDING (E. Anglia) Limited
was in the presence of:

)
)

Director:

[Signature]

Director / Secretary:

[Signature]

