

Dated

7th December

2015

Broadland District Council

-and-

Victoria Kate Wharton

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

relating to land on the south side of The Common, Freethorpe

Victoria McNeill
Practice Director
Nplaw
County Hall
Martineau Lane
Norwich
NR1 2DH

CR/SR - BDC - 47279

THIS DEED is dated

7th December

2015

PARTIES:

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU (referred to as "the Council"); and
- (2) **VICTORIA KATE WHARTON** of Winsford Hall, Filby Road, Stokesby, Great Yarmouth, NR29 3DG (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) Wellington Construction Limited 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

Drawing Key

- T** - Boundary Ownership
- Boundary Line
- New Adopted Footpath
- New Highway Widening



M. Mue

Head of Democratic Services and
Monitoring Officer

Rev	Description
—	—
D	More changes to North-Western Boundary
C	Changes to North-Western Boundary
B	Changes to South Boundary
A	Changes to highway make-up
Project Title:	
The Common, Freethorpe Proposed new scheme	
Drawing Title:	
Conveyance Site Masterplan	
Drawing No:	
CP090-014-D	
Rev:	
D	
Drawn:	
CWP	
Scale:	
1:500@A3	
Approved:	
N/A	
Client:	
Wellington	
Date:	
14.08.15	
Job No:	
CP090	
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Scale - 1:500@A3



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 senior officer of the Council responsible for development management or other officer of the Council notified to the Owner

Inflation Provision the increase (if any) in the Royal Institution 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 Off Site Open Space Contribution/Maintenance Sum and/or Green Infrastructure Contribution is made pursuant to this Deed

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 (full) to be granted by the Council for the erection of 11 dwellings plus associated works and allocated reference number 20142083 or if the Council agrees (in its absolute discretion) in writing another planning permission for the Development granted pursuant to section 73 of the Act or a replacement permission for the Development
Plan	the plan attached to this Deed
Site	the land on the south side of The Common, Freethorpe and registered at H M Land Registry under title number NK374927 shown edged red on the Plan
Trigger	the date of Commencement 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

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 knowingly 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 herself and her successors in title to observe and perform the obligations and stipulations on the part of the Owner contained in the First, Second and Third Schedules in this Deed

3.2 The Council covenants with the Owner to comply with the obligations on the part of the Council contained in the First, Second and Third Schedules 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 she is the owner of the Site 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 on all interests in the Site

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 upon provision of a VAT invoice

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 her interest in all or part of the Site she 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

IN WITNESS whereof the Parties hereto have executed this document as a Deed on the day and year first before written.

FIRST SCHEDULE

Affordable Housing

In this Schedule the following expressions have the following meanings:

"Affordable Housing Scheme"	a scheme securing the provision of 8 Affordable Rented Dwellings on the site which will comprise of: • 3 pairs of semi-detached housing a) 2 x 1 bedroom houses accommodating 2 people; b) 3 x 2 bedroom houses accommodating 4 people; and c) 1 x 3 bedroom house accommodating 5 people. • 1 pair of one bedroom semi-detached bungalows each accommodating 2 people.
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	and specifying: - the identity of the Registered Provider; and - the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings
"Affordable Rented Dwellings"	Dwellings to be let by a Registered Provider with an appropriate agreement with the Homes & Communities Agency for the charging of affordable rents (being rents that are no more than 80 per cent of local market rents including any service charges as approved by the Council) to be let according to Schedule 2 and to remain as affordable rental dwellings in perpetuity
"Approved Affordable Housing Scheme"	the Affordable Housing Scheme as approved by the Council including any amendment, revision or substitution approved by the Council in writing
"Design & Quality Standards"	the Design and Quality Standards (if any) specified by the Homes and Communities Agency or its successor or (if none) 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 Second Schedule and determined in accordance with the Council's housing allocation policy or as otherwise

	approved by the Council
Open Market Dwelling	a Dwelling that is not an Affordable Rented Dwelling
"Practically Complete"	the point at which a Dwelling has been completed to Design & Quality Standards (if an Affordable Rented Dwelling), is capable of occupation and a certificate of practical completion has been issued
"Recycling Obligation"	an obligation to use any monies (other than rent and service charge) paid in relation to the acquisition of any share or interest in an Affordable Rented Dwelling by an Eligible Household towards alternative Affordable Housing provision
"Registered Provider"	as defined in the Housing and Regeneration Act 2008
"Rented Housing"	Affordable Rented Dwellings

The Owner hereby covenants with the Council as follows:

- 1.1 Not to Commence the Development until the Approved Affordable Housing Scheme is in place
- 1.2 Not to construct the Affordable Rented Dwellings otherwise than in accordance with the details of the Approved Affordable Housing Scheme and the Design and Quality Standards
- 1.3 Not to Occupy any Open Market Dwellings until all of the Affordable Rented Dwellings to be provided under the Approved Affordable Housing Scheme are Practically Complete and are owned by a Registered Provider in accordance with and subject to the following terms:

- a) free from all financial charges, adverse rights, restrictions or other encumbrances which would interfere with the use of the Affordable Rented Dwellings as Affordable Housing;
 - b) with the benefit of all necessary easements, rights and utilities; and
 - c) any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme
- 1.4 Not to use the Affordable Rented Dwellings for any purpose other than affordable housing in accordance with the Approved Affordable Housing Scheme PROVIDED that the provisions of this paragraph shall not bind any of the following:
- 1.4.1 a person acquiring an interest in an Affordable Rented Dwelling under a statutory right to buy or acquire;
 - 1.4.2 a mortgagee exercising its power of sale in respect of any Affordable Rented Dwelling or any receiver or manager (including an administrative receiver) of that mortgagee PROVIDED FURTHER THAT :
 - 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 have been complied with and copies of all notices served and any proposals received together with updates as to progress have been supplied to the Council
 - b) (where no proposals are agreed under a) above or where the provisions do not apply or have lapsed) the Council has first been given the option to purchase the relevant Affordable Rented Dwellings, or nominate another Registered Provider or Eligible Household to purchase the relevant Affordable Rented 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"). If the Council (or its nominated Registered Provider or Eligible Household) elects to acquire the relevant Affordable Rented Dwellings to allow one calendar month following expiry of the Mortgagee Notice Period to complete the purchase PROVIDED THAT a mortgagee shall not be required to act in a way which is detrimental to its security or contrary to the terms of any charge

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

1.4.3 any successor in title to any of the persons or bodies referred to in paragraphs 1.4.1 and 1.4.2 above and all persons deriving title under any of them respectively

- 1.5 Not to Occupy the Affordable Rented Dwellings other than in accordance with the provisions of the Second Schedule.

SECOND SCHEDULE

Affordable Housing Allocation

Local Lettings Cascade - The Common, Freethorpe

1. Nomination Rights Policy

- 1.1 The Policy will apply to all categories of properties on the basis of 100% of all lettings in perpetuity.

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 Freethorpe who have lived in the Parish for a total of at least 3 of the last 10 years.

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

2.3 Households who need to move to the parish of Freethorpe to give/receive support from family/relatives.

2.4 Residents of the adjacent parishes of Halvergate, Beighton, Cantley, and Reedham who have lived in these parishes for the last three years.

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

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

2.7 Residents of the adjacent parishes of Halvergate, Beighton, Cantley, and Reedham who have lived in these parishes for less than 3 years.

2.8 Residents of the adjacent parishes of Acle, Strumpshaw, Lingwood and Burlingham, who have lived in these parishes for the last three years.

2.9 Residents of the parishes of Acle, Strumpshaw, Lingwood and Burlingham, 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 Council's Housing Allocations Policy as amended from time to time or in accordance with alternative procedures as the Council and the Registered Provider shall agree between them.

THIRD SCHEDULE

Open Space and Green Infrastructure

In this Schedule the following expressions have the following meanings:

Green Infrastructure Contribution Number 1	the sum of £13,675.84 (as increased by the Inflation Provision) to be used towards green infrastructure / informal open space to be provided in accordance with the Council's planning policies at the date of this Deed.
Green Infrastructure Contribution Number 2	the sum of £5,128.44 (as increased by the Inflation Provision) to be used towards green infrastructure / informal open space to be provided in accordance with the Council's planning policies at the date of this Deed.
Off-site Formal Recreational Open Space Contribution Number 1	the sum of £7,357.48 (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.

Off-site Formal Recreational Open Space Contribution Number 2	the sum of £2,759.07 (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.

1. Open Space Contributions

- 1.1 The Owner covenants with the Council not to occupy any Affordable Rented Dwellings (as defined in the Second Schedule) on the Site unless the Off-site Formal Recreational Open Space Contribution Number 1 and the Green Infrastructure Contribution Number 1 have been paid to the Council
- 1.2 The Owner covenants with the Council not to occupy any Open Market Dwelling (as defined in the Second Schedule) on the Site unless the Off-site Formal Recreational Open Space Contribution Number 2 and the Green Infrastructure Contribution Number 2 have been paid to the Council.

2. The Council's Covenants

The Council covenants with the Owner as follows:

- 2.1 To use any sums paid to it under this Deed for the purpose for which they were paid.
- 2.2 Any balance of the sums paid to the Council that are outstanding and not committed for payment (5 years in respect of Off-Site Formal Recreational Open Space Contribution Number 1 and Off-Site Formal Recreational Open Space Contribution Number 2 and 10 years in respect

of Green Infrastructure Contribution Number 1 and Green Infrastructure Contribution Number 2) after completion of the Development must be repaid to the person who paid them.

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



Authorised Signatory: *M. Mue*

Head of Democratic Services and
Monitoring Officer

EXECUTED as a Deed by)
VICTORIA KATE WHARTON)
in the presence of:)

V.K. Wharton

BRIAN FOLKARD
17 BRICKS ROAD
UPPER STICK
NORWICH NR14 8NH

Bell

(NFM FINANCIAL ADVISOR)