

2016.1483 .

DATED

13th February

2020.
~~2019~~

(1) NORFOLK HOMES LIMITED

- and -

(2) BRUNDALL INVESTMENTS LIMITED

- and -

(3) ARTHUR JOHN SLAPP AND BETTY MARIANNE SLAPP

- and -

(4) EASTERN CREDIT LIMITED

- and -

(5) BROADLAND DISTRICT COUNCIL

- and -

(6) LLOYDS BANK PLC

- and -

(7) BRUNDALL PARISH COUNCIL

**DEED OF VARIATION OF PLANNING
OBLIGATION
BY AGREEMENT**

pursuant to Section 106A of the Town and
Country

Planning Act 1990 relating to the land at
Yarmouth Road, Postwick with Witton and
Yarmouth Road/Berryfields, Brundall

THIS DEED OF VARIATION is made on

2019

BETWEEN:

- (1) **NORFOLK HOMES LIMITED** (company registration number 01910791) whose registered office is at 52 Cambridge Road South, London W4 3DA ("**NHL**");
 - (2) **BRUNDALL INVESTMENTS LIMITED** (company registration number 08335186) whose registered office is at Broom Boats Marina, Riverside, Brundall, Norwich, England NR13 5PX ("**BIL**");
 - (3) **ARTHUR JOHN SLAPP and BETTY MARIANNE SLAPP** of The Tollbridge, Bridge Road, Guist, Norfolk NR20 5NU ("**Third Owners**");
 - (4) **EASTERN CREDIT LIMITED** (company registration number 4268426) whose registered office is at Sandbanks 69 Marine Parade, Gorleston, Great Yarmouth, Norfolk NR31 6EZ ("**Bank**"); and
 - (5) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU ("**Council**"); and
 - (6) **BRUNDALL PARISH COUNCIL** of Brundall Memorial Hall, Links Avenue, Brundall NR13 5LL ("**Parish Council**")
 - (7) **LLOYDS BANK PLC** (company registration number 2065) of 25 Gresham Street, London, EC2V 7HN ("**Mortgagee**")
- together the "**Parties**".

BACKGROUND:

- A On 6 March 2018 an agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) was entered into by (1) Michael Steven Manning, (2) Richard Ashley Hickie, Nicholas Colin Gray and Barclay Ronald Lawrence, (3) the Third Owners, (4) BIL, (5) the Bank, and (6) the Council relating to development of the Site ("**Original Deed**").
- B The Council is the Local Planning Authority for the purposes of the Act for the area in which the Site is situated.
- C NHL is the successor in title to Michael Steven Manning, who entered into the Original Deed as the First Owner and NHL now owns part of the Site registered under title number NK480795. The Mortgagee is the chargee of that part of the Site owned by NHL pursuant to a legal charge dated 5 June 2018.
- D NHL is also a successor in title to Richard Ashley Hickie, Nicholas Colin Gray and Barclay Ronald Lawrence, who entered into the Original Deed as the Second Owners and NHL now owns the part of the Site registered at the land registry under title number NK480795.
- E BIL is a successor in title to Michael Steven Manning, who entered into the Original Deed as the First Owner and BIL now owns the part of the Site registered at the land registry under title number NK480898 which now comprises the Formal Recreational Land and which previously formed part of the land registered under title number NK422278.

- F The Third Owners own the part of the Site registered at the land registry under title number NK339147. The Bank holds a registered mortgage charge dated 4 January 2013 over the part of the Site belonging to the Third Owners.
- G NHL, BIL and the Third Owners together are the "**Owners**".
- H Planning permission was granted on the 6th day of March 2018 for permission to develop the Site ("**Outline Permission**").
- I A further planning permission (Ref: 2018/0935) was granted by the Council ("**s73 Permission**") to vary conditions 1, 22, 31, 32 and 36 of the Outline Permission. A Deed of variation to the Original Deed dated 13 February 2019 was made between (1) Norfolk Homes Limited, (2) Brundall Investments Limited, (3) Arthur John Slapp and Betty Marianne Slapp, (4) Eastern Credit Limited, (5) Broadland District Council and (6) Lloyds Bank PLC so that the planning obligations in the Original Deed also apply to the s73 Permission. ("**First Deed of Variation**" together with the Original Deed the "**s106 Agreement**")
- J At the request of the Parish Council, the Parties have agreed to further vary s106 Agreement in respect of the Formal Recreation Land to remove the obligation on the Owners to carry out the Formal Recreational Works.
- K The Parish Council has agreed to be a party to this agreement for the purposes of binding the Parish Council Adjacent Land.

IT IS AGREED:

1. Unless otherwise defined in this Deed of Variation, words and expressions defined in the s106 Agreement have the same meanings in this Deed of Variation.
2. The Parties agree that subject to and with effect from the date of this Deed of Variation the s106 Agreement shall be amended as follows:
 - 2.1 A new definition is inserted as follows:

"Parish Council Adjacent Land" means the land adjacent to the Formal Recreation Land shown edged red and hatched pink on Plan 3 attached forming part of the Parish Council's land registered at the HM Land Registry under title number NK382980"
 - 2.2 The definition of "Formal Recreation Land" is deleted and replaced with the following:

"means the land within the Site of approximately 1.12 hectares as shown coloured light blue on Plan 2 which, where the Formal Recreation Land is transferred to the Parish Council, is to be used in conjunction with the Parish Council Adjacent Land as a 3G football pitch, associated drainage, flood lighting, perimeter fencing and associated parking and building structures"
 - 2.3 The definitions of "Formal Recreation Works" and "Practical Completion" and "Practical Completion Date" "Certificate of Practical Completion" "Defects" and "Defects Maintenance Period" contained in clause 1.1 of the s106 Agreement shall be deleted.
 - 2.4 "FRL Contribution" contained in clause 1.1 of the s106 Agreement shall be amended so that it reads:

"means a contribution of four hundred and fifty three thousand pounds (£453,000) (as increased by Inflation Provision) as a contribution towards the provision and maintenance of public sports facilities (which for the avoidance of doubt includes parking and any associated building structures) within the Parish of Brundall such contribution being payable in accordance with Paragraph 1.2 of Part 2 of Schedule 1"

- 2.5 The last bullet point in the definition of "Standard Terms" in clause 1.1 starting "in relation to the Formal Recreation Works" and ending "or their assignees or appropriate" shall be deleted
- 2.6 The definition of "FRL Option" contained in clause 1.1 of the Original Deed shall be amended so that the words "together with the Formal Recreation Works" are deleted.

- 2.7 A new definition is inserted as follows:

"Plan 3 means the plan attached to this Deed which is labelled Plan 3 and shows the Parish Council Adjacent Land"

and Plan 3 attached at Annex 1 to this Deed shall be deemed to be incorporated in the s106 Agreement.

- 2.8 Paragraph 1 of Part 2 of Schedule 1 of the s106 Agreement shall be deleted and replaced with the following:

"1. FRL Contribution

- 1.1 In the event that the Council receives written notification from the Parish Council within the FRL Option Period that the Parish Council wishes to exercise the FRL Option, or should the Parish Council not provide written notice within the first 3 years and 6 months of the FRL Option Period and following which if the Council wishes to exercise the FRL Option during the remainder of the FRL Option Period, it will serve the FRL Option Notice on the Owners in accordance with clause 8 of this deed.

- 1.2 On the date falling 12 months after the date of service of the FRL Option Notice or, if earlier, within 28 days of the later of:

(a) completion of the removal or undergrounding or relocation of the overhead cables which cross the Formal Recreational Land; and

(b) the date of service of the FRL Option Notice,

BIL shall:

- 1.2.1. transfer the Formal Recreation Land to the Council or (if the Council so requests within the FRL Option Notice to the Parish Council) as bare land and in accordance with the Standard Terms; and

- 1.2.2 pay the FRL Contribution to the Council by direct transfer."

- 1.3 BIL covenants not to use the Formal Recreation Land for any purpose other than for sport and recreation during the FRL Option Period.

- 1.4 Where the Formal Recreation Land is transferred to the Parish Council, the Parish Council covenants that from the date of completion of the transfer of the Formal Recreation Land the Parish Council shall not use the Parish Council Adjacent Land for any purpose other than for sports and recreation.
- 2.9 Paragraph 1.5 of Part 1 of Schedule 2 to the s106 Agreement shall be deleted and replaced with the following:
- "1.5 to repay the FRL Contribution (or any part thereof) which has not been spent by either the Council or the Parish Council in accordance with the terms of this Agreement within five years of receipt by the Council to the party that made the original payment to the Council under the terms of this Agreement; and
- 2.10 A new paragraph 1.6 of Part 1 of Schedule 2 to the s106 Agreement shall be added as follows:
- 1.6 where the Parish Council has notified the Council that it wishes to take the transfer of the Formal Recreational Land, to pay the FRL Contribution in full in cleared funds to the Parish Council within 28 days of receipt on conditions that:
- (a) the FRL Contribution is to be spent only on the delivery and continued maintenance of a football pitch (or part thereof), ancillary structures and parking on the Formal Recreation Land;
- (b) any part of the FRL Contribution which is not spent or committed to be spent by the Parish Council in accordance with paragraph 1.6(a) shall be repaid by the Parish Council to the Council on the date falling 5 years after the date of receipt by the Council of the FRL Contribution."
- 2.11 Annex 1 to the s106 Agreement shall be deleted.
3. The Parties agree that the provisions of the s106 Agreement not amended by this Deed of Variation shall remain in force and effect.
4. The Mortgagee acknowledges and declares that this Deed of Variation has been entered into by NHL with its consent and that the Site shall be bound by the obligations contained in the s106 Agreement as amended by this Deed of Variation and that its security over part of the Site belonging to NHL under title number NK480795 shall take effect subject to the s106 Agreement as amended by this Deed of Variation, provided that the Mortgagee shall otherwise have no liability under the s106 Agreement as amended by this Deed of Variation, unless and until it takes possession of the Site over which it has a charge as a mortgagee in possession (and hence as a successor in title to NHL) by operation of that same charge and only if it shall itself commit that breach.

IN WITNESS whereof the parties hereto have executed this document as a deed the day and year first before written

Executed as a deed, but not delivered until the)
first date specified on page 1, by **NORFOLK**)
HOMES LIMITED by a director in the presence)
of a witness:)

Signature



Name (block capitals)

P.J. MAKEPEACE

Director

Witness signature

KWITE-ROBINSON

Witness name
(block capitals)

KWITE-ROBINSON

Witness address

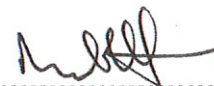
9 BECK CLOSE

WEYBOURNE

NORFOLK NR25 7HL

Executed as a deed, but not delivered until the)
first date specified on page 1, by **BRUNDALL**)
INVESTMENTS LIMITED by a director in the)
presence of a witness:)

Signature



Name (block capitals)

MARTIN SCOTT

Director

Witness signature



Witness name
(block capitals)

SHEILA SMALL

Witness address

M Scott Properties Ltd
Suite 5, Oyster House
Severalls Lane
Colchester
Essex, CO4 9PD
Reg. No. 06640042

Signed as a deed, but not delivered until the
first date specified on page 1, by **ARTHUR**
JOHN SLAPP in the presence of a witness:

Signature



Witness signature



Witness name
(block capitals)

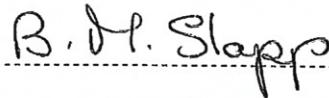
MICHELLE PARTLOW

Witness address

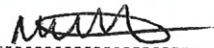
SHELDON HOUSE, CHAPEL RD
EAST FOXLEY, DEREHAM
NORFOLK, NR20 4QS

Signed as a deed, but not delivered until the
first date specified on page 1, by **BETTY**
MARIANNE SLAPP in the presence of a
witness:

Signature



Witness signature



Witness name
(block capitals)

MICHELLE PARTLOW

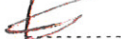
Witness address

SHELDON HOUSE, CHAPEL
RD, FOXLEY EAST, DEREHAM
NORFOLK, NR20 4QS

Executed as a deed, but not delivered until the)
first date specified on page 1, by **EASTERN**)
CREDIT LIMITED by a director in the presence)
of a witness:)

Signature 

Name (block capitals) Paul Needham
Director

Witness signature 

Witness name KIM MOY
(block capitals)

Witness address Beacon Innovation
Centre, Beacon Park
Coneston, NE31 7RA

EXECUTED AS A DEED BY

The common seal of **LLOYDS BANK PLC** was)
hereunto authenticated in the presence of:)
)
)

Signature 

Name (block capitals) RICHARD JAMES ROBINSON
Associate Director

Signature 

Name (block capitals) SHENA CHRISTINE EWEN
Secretary/Director WITNESS
LLOYDS BANKING GROUP
NEW UBELOL HOUSE
EDINBURGH EH3 9BN

The common seal of **BROADLAND DISTRICT**)
COUNCIL was hereunto authenticated in the)
presence of:)
)



Signature *[Signature]*

Name (block capitals) Monitoring officer

8008

Executed by *by two councillors in the*
The common seal of **BRUNDALL PARISH** *[Signature]*
COUNCIL was hereunto authenticated in the *[Signature]*
presence of:

Signature *[Signature]*

Name (block capitals) SHARON SMYTH

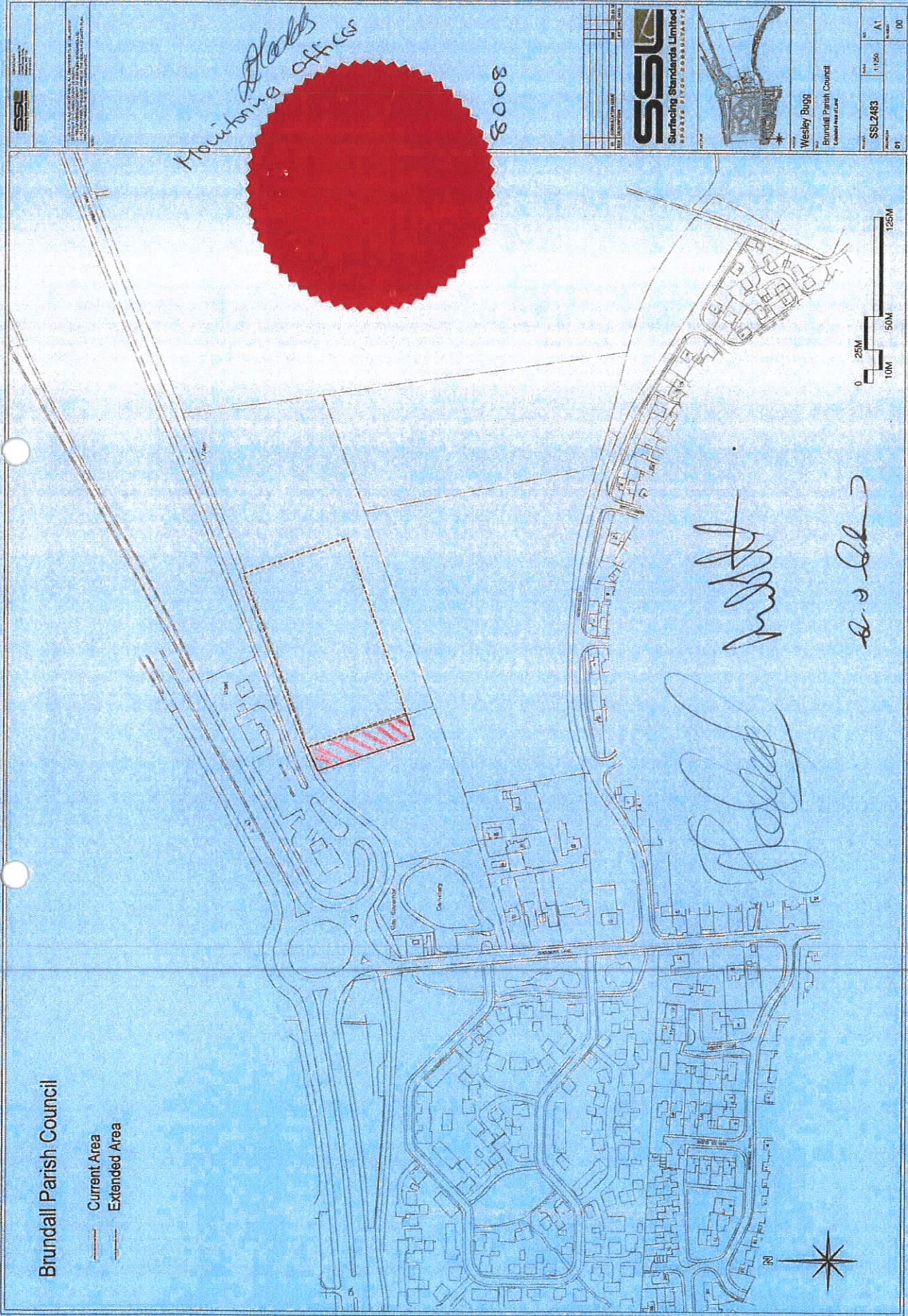
Brundall Memorial Hall
Links Avenue
Brundall
NR13 5LL

Clerk to Brundall Parish Council.

ANNEX 1 - PLAN 3

Brundall Parish Council

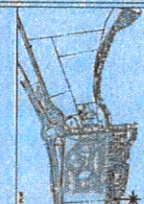
- Current Area
- Extended Area



Monitoring Officer

6008

SSU
Surfacing Standards Limited
BRASSS HIGH CONSULTANTS



Wesley Bugg
Brundall Parish Council
Extended Area of Land

SSU2483	11/96	A1	00
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