

DATED

22nd January

2018

BROADLAND DISTRICT COUNCIL (1)

EDWARD JOSEPH COZENS WILEY (2)

J R COZENS WILEY LIMITED (3)

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

relating to land to the North of Hospital Road (Octagon Business Park),
Little Plumstead, Norwich NR14 5FH

Birketts

THIS DEED is dated

22nd January

2018

PARTIES:

- (1) **BROADLAND DISTRICT COUNCIL**, of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU ("the Council"); and
- (2) **EDWARD JOSEPH COZENS WILEY** of The Manor Cottage, The Green, Little Plumstead, Norwich, NR13 5EL ("the First Owner"); and
- (3) **J R COZENS WILEY LIMITED** (Company Registration number 0775921) whose registered office address is situated at Octagon Office, Manor Farm, Broad Lane, Little Plumstead, Norwich, NR13 5EL ("the Second Owner").

together referred to as "the Parties".

INTRODUCTION

- (A) The Council is the local planning authority for the area within which the Site is situated.
- (B) The First Owner is the freehold owner of part of the Site falling within title number NK463665 and the Second Owner is the freehold owner of part of the Site falling within title number NK463666 ("together the Owners") and the Owners are the freehold owners of part of the Site falling within title number NK336020 (but for the avoidance of doubt the Owners do not own the upper most northern tip of the access way).
- (C) The Owners have applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed.
- (D) The Owners and the Council confirm that the provisions of this Deed comply with Regulation 122 and Regulation 123 of the Community Infrastructure Levy Regulations 2010.

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

Act	The Town and Country Planning Act 1990 as amended;
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Commencement	The date on which a material operation as defined in Section 56(4) of the Act is first carried out, except
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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;

Inflation Provision

The increase (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service All in tender price Index between 1 January 2015 and the date upon which a payment is made pursuant to this Agreement (or if such index ceases to be published such other index as the Council shall reasonably determine);

Nominated Officer

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

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' shall be construed accordingly;

Permission

The planning permission to be granted by the Council for residential development and allocated reference number 2016/2173 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 at Schedule 1;

Site

The land known as Land to the North of Hospital Road, Little Plumstead, Norwich NR13 5FH and registered at H M Land Registry under title numbers NK463665, NK463666 and NK336020 shown edged red on the Plan;

Trigger

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 It is agreed by the Parties that any obligation contained within this Deed which sets out how a planning obligation will be performed will not amount to more than one planning obligation per Schedule for the purposes of Regulation 123 of the Community Infrastructure Levy Regulations 2010, as amended;
- 2.3 Covenants given by more than one party can be enforced against them individually or jointly;
- 2.4 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;

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

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

3. **COVENANTS**

3.1 Conditional on and subject to the grant and issue of the Permission:

3.1.1 The Owners covenant with the Council for themselves and their successors in title to observe and perform the obligations and stipulations contained in this Deed;

3.1.2 The Council covenants with the Owners to comply with their respective requirements 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 Owners confirm that they are 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. This Deed shall be registerable as a local land charge by the Council;

4.4 On completion of this Deed the Owners 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 5 shall 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 Owners dispose of their interest in all or part of the Site they 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.

8. JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England.

9. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

SCHEDULE 1

PLAN



SITE PLAN LAYOUT - FLOOR PLAN
1:500@A1

Annotations Key

- | | |
|----------------------------------|------------------------|
| ① Existing Brick Gate | ⑨ Feature Wall |
| ② Drive to Octagon Business Park | ⑩ Metal Estate Railing |
| ③ Existing Footpath | |
| ④ New Electrical Gate | |
| ⑤ Shared Private Drive | |
| ⑥ Bridge | |
| ⑦ Pond | |
| ⑧ Service Building | |

Symbols Key

- Existing Trees
- New Trees
- Site Boundary

ADDITIONAL PLAN

**BROADLAND
DISTRICT COUNCIL**
17 May 2017
20162173
PLANNING CONTROL

NOTE: See Liz Lake dwgs 1760 02 for landscape details

PLANNING		HUDSONArchitects	
28.02.2016	ISSUE FOR PLANNING	01-12 Pines Road, Norwich, NR1 4JH Tel: 01603 716123 Fax: 01603 716124 www.hudsonarchitects.co.uk	
A	23.03.2017 Issued for comment. Width of track increased to 4.2m; site boundary amended.	Church Field, Octagon Park	
B	29.03.2017 Issued for comment. Additional footpath added.	Hospital Road, Little Plumstead, Norwich, NR13 5FH	
Site Plan Layout - Floor Plan		Scale: 1:500@A1	Drawn: JH/RE/16
OCT	P-002	B	

SCHEDULE 2

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 Housing"	Means intermediate housing and rented housing to be provided to eligible householders whose needs are not met by the open market;
"Affordable Housing Sum"	Means the sum of £128,000 (one hundred and twenty eight thousand pounds) and increased in line with the Inflation Provision to be paid by the Owners to the Council to be used towards the provision of Affordable Housing in the District of Broadland.

The Owners hereby covenant with the Council as follows:

1. Not to Occupy or allow Occupation of more than 5 (five) of the Dwellings until the Affordable Housing Sum has been paid to the Council.

SCHEDULE 3

Open Space

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

"Green Infrastructure Contribution"	Means that part of the Off-Site Open Space Contribution allocated to the provision and maintenance of green infrastructure;
"Off-Site Open Space Contribution"	A sum in lieu of any deficiency in the amount or type of Open Space being provided (and increased in line with the Inflation Provision) compared to that required in accordance with the Councils current Open Space Policies at the date of this Deed such sums to be as follows: - £13,098.25 (the off-site formal recreation figure) to be applied towards sports, play and allotment provisions contributions at Great Plumstead Recreation Ground - £18,376.91 (the Green Infrastructure Contributions) to be used towards projects identified in the East Broadland Green Infrastructure Project Plan;
"Open Space"	Land to be set aside and used as public open space which may include areas for sports, play, allotments, green infrastructure and other recreational facilities in line with Open Space Policies;
"Open Space Policies"	Means the policies contained in the Council's Development Management Development Plan Document including policy EN1 biodiversity & habitats, EN3 green infrastructure & RL1 provision of formal recreation space or such replacement policies or documents as the Council may specify (or any amendment or revision therefore) relating to the provision of open space, recreation, sport, allotments, green infrastructure and other similar types of amenity land and facilities;

The Owner hereby covenants with the Council as follows:

1. Not to Occupy or allow Occupation of more than 5 (five) of the Dwellings until the Open Space Contribution has been paid to the Council.

SCHEDULE 4

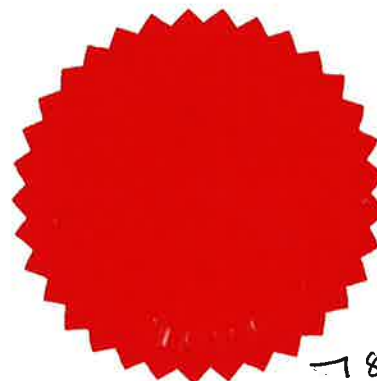
COUNCIL COVENANTS

The Council covenants with the Owners as follows:

1. The Council covenants that any money paid to it under the provisions of this Deed will be used for the purpose for which it was paid ("the Approved Purpose")
2. The Council covenants with the Owner to hold any contribution received under this Deed in an interest bearing account and apply the same (together with any interest accrued) towards the Approved Purpose and in the event that the contributions have not been committed (by way of contract or expenditure of the monies) within 5 years of receipt of the total amount of the relevant contribution (or in the case of the Green Infrastructure Contribution within 10 years of receipt) to repay the unspent balance to the payer together with any interest accrued.

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

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



1808

Authorised Signatory:

M. Munn

Head of Democratic Services and
Monitoring Officer

EXECUTED AS A DEED by
EDWARD JOSEPH COZENS WILEY
in the presence of:

[Signature])
[Signature])
[Signature])

Witness signature:

Witness name: *DARREN HUNTER ROWE*

Witness Address: *41 EVERSLEY ROAD*

NORWICH NR66TA

EXECUTED AS A DEED by
J R COZENS WILEY LIMITED
in the presence of:

Director

[Signature]

Director/ Secretary

[Signature]

Witness signature:

Witness name: *DARREN HUNTER ROWE*

Witness Address: *41 EVERSLEY ROAD*

NORWICH NR66TA