

Dated 6th November 2017

BROADLAND DISTRICT COUNCIL

-and-

ALAN SMITH

- and -

ALAN LAPPIN

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

relating to land
adj former Railway Line, Rectory Road, Coltishall, NR12 7HR

THIS DEED is dated 6th November 2017

PARTIES:

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Norwich, NR7 0DU (referred to as "the Council")
- (2) **ALAN SMITH** of Crossways, Swanton Abbot Road, Skepton, Norwich, Norfolk NR10 5AU (referred to as "Owner 1")
- (3) **ALAN LAPPIN** of White House, Mattishall Road, Garvestone, Norfolk NR9 4QN (referred to as "Owner 2")

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 Owners have applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed
- (C) The Owners own 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
Application	The outline planning application submitted to the Council and allocated reference 20170075
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; temporary display of site notices; and/or advertisements 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 and "Dwellings" will be construed accordingly

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 2017 and the date upon which a payment of the Off-Site Open Space Contribution is made pursuant to this Deed

Nominated Officer The senior officer of the Council responsible for development management or other officer of the Council notified to the Owners

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; security operations and 'Occupy' and 'Occupied' will be construed accordingly

Owners Owner 1 and Owner 2 together

Permission The planning permission to be granted by the Council pursuant to the Application or:

(a) 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

(b) in the event the Owners and the Council both agree in writing a replacement permission for the Development

Plan The plan attached to this Deed

Site The land on the east side of Rectory Road, Coltishall, Norwich and which is part of the land registered at H M Land Registry under title number NK390210 and is shown edged red for identification purposes only 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 to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations given by the Owners 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
- 2.7 References to any party to this Deed shall include successors in title to that party and any person deriving title through or under that party and in the case of the Council the successors to its statutory functions

3. CONDITIONALITY

- 3.1 The covenants and the planning obligations in this Deed shall only come into effect upon the grant of the Permission and once Development has Commenced save for this clause and Clauses 5.2, 5.4, 5.6, 5.11, 9 and 10.

4. COVENANTS

4.1 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

4.2 The Council covenant with the Owners to comply with their respective requirements contained in this Deed

5. OTHER PROVISIONS

5.1 No person will be liable for any breach of any of the planning obligations or other provisions of this Deed if he no longer has an interest in the Site (or that part of the Site in respect of which such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest AND FOR THE AVOIDANCE OF DOUBT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or any part or parts of the Site) shall constitute an interest for the purposes of this Clause.

5.2 The Owners confirm that they are the owners 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

5.3 Save for the obligations contained in Schedule 2 (which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable Dwellings subject to the provisions contained in Schedule 2 of this Deed) the covenants, restrictions and requirements contained in this Deed shall not be enforceable against:

5.3.1 individual purchasers or lessees of Dwellings constructed on the Site pursuant to the Permission or their mortgagees where (in relation to a breach) that breach occurs after that individual

purchaser or lessee has completed the purchase or lease of the Dwelling or has entered into a binding contract for such purchase or lease; or

5.3.2 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site.

- 5.4 On completion the Owners will pay the Council's reasonable legal costs in connection with this Deed
- 5.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 5.6 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions which shall remain in full force and effect
- 5.7 No waiver, express or implied, by the Council or the Owners of any breach or default in performing or observing any of the covenants terms or conditions on this Deed shall constitute a continuing waiver and no such waiver shall, nor prevents the Council or the Owners (as appropriate) from enforcing any of the relevant provisions in this Deed or for acting upon any subsequent breach or default
- 5.8 This Deed shall be registrable as a local land charge by the Council
- 5.9 Following the performance of all of the obligations contained in the Deed (or should this Deed cease to have effect) the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

- 5.10 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Permission is quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires before the Commencement of Development
- 5.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed
- 5.12 Where an agreement or approval consent or expression of satisfaction or a subsequent deed is required or sought by the Owners from the Council under the terms of this Deed such agreement or approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed

6. DISPUTES

- 6.1 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 with the costs of such determination to be borne by the Parties in equal shares unless otherwise directed by the expert
- 6.2 Nothing in this Clause will apply to the recovery of liquidated sums or prevent the Parties from commencing or continuing court proceedings

7. INTEREST AND VAT

- 7.1 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

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

8. NOTIFICATIONS

- 8.1 Any notice or written communication given under this Deed is validly given if hand delivered or sent by first class post or recorded delivery post to the address set out at the beginning of this Deed, unless written notification of another address has been provided that the Owners hereby give notice pursuant to this Clause that its address for service of notices is Howes Percival LLP, 1 Bedding Lane, Norwich, NR3 1RG (Ref: JZC/ 225985.0001)

- 8.2 The Owners will notify the Nominated Officer in writing of the relevant:

8.2.1 anticipated Triggers seven days in advance of each anticipated date

8.2.2 actual Triggers within seven days of each actual date

- 8.3 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 PROVIDED THAT the Owners shall not be required to give such notice when disposing of any of the Dwellings constructed pursuant to the Permission

9. JURISDICTION

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

10. 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

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

SCHEDULE 1

Plan



A R I

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M Mue

TTT8

Head of Democratic Services and
Monitoring Officer

**BROADLAND
DISTRICT COUNCIL**

16 Jan 2017

20170075

PLANNING CONTROL

REV	DATE	DESCRIPTION	DRAWN	CHECKED BY
Revisions				



Architects, Engineers, Quantity Surveyors

PLANNING

Chaplin Farrant Limited

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Mr A Smith

CLIENT

Rectory Rd Coltishall
Residential Development

PROJECT

Location Plan

DRAWING

4402

PROJECT REF

50

DRAWING NO.

REVISION

16.08.16

DATE

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SCALE

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SCHEDULE 2

Affordable Housing

Part 1

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 on the Site as Affordable Housing and "Affordable Dwelling" shall be construed accordingly
"Affordable Housing"	the Intermediate Housing and Rented Housing to be provided to Eligible Households whose needs are not met by the market
"Affordable Housing Mix"	80% Rented Housing and 20% Intermediate Housing (or as otherwise agreed by the Council in its absolute discretion)
"Affordable Housing Provision"	the construction and provision of Affordable Dwellings on the Site equating to 33% 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 Housing Scheme"	A scheme securing the Affordable Housing Provision and specifying: - 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; - 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 Rented Dwellings"	Dwellings to be let by a Registered Provider with an appropriate agreement with the HCA 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 and shall not exceed the local housing allowance for that area and subject to nominations by the Council in accordance with Part 2 of this Schedule or as otherwise agreed with the Council in writing
"Approved Affordable Housing Scheme"	the Affordable Housing Scheme approved by the Council in accordance with paragraph 1.1 of this Schedule including any amendment, revision or substitution approved by the Council in writing
"Complete"	a stage of construction such that a Dwelling has a complete roof and all windows and external doors installed and where further works do not ordinarily amount to "development" for the purposes of section 55(1) of the Act and "Complete" and "Completed" shall be construed accordingly.
"Eligible Household"	A person or persons in need of accommodation who are unable to rent or buy on the local open market nominated by the Council in accordance with Part 2 of this Schedule and determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council in writing
"HCA"	the Homes & Communities Agency or its successor body or other appropriate body as the Council may nominate
"Intermediate Dwellings"	Dwellings for sale at prices below local 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, shared equity and equity loan products as approved by the Council
"Intermediate Housing"	one or more of Intermediate Dwellings, Shared Ownership Dwellings and Shared Equity Dwellings as agreed by the Council

"Open Market Dwelling"	Any Dwelling constructed as part of the Development which is not an Affordable Dwelling
"Practically Complete"	Means completion of the construction of the Affordable Dwellings in accordance with this Deed subject only to the existence of minor defects and / or omissions at the time of inspection which are capable of being made good without materially interfering with the beneficial use and enjoyment of the Affordable Dwellings and which it would be reasonable to include in a schedule of minor snagging items and "Practically Completed" shall be construed accordingly
"Provider"	either: (i) a Registered Provider; or (ii) another organisation that has been approved in writing by the Council
"Public Subsidy"	funding provided by the Council, the HCA 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 and Social Rented Dwellings as agreed with the Council
"Shared Equity Dwellings"	Dwellings purchased on a shared equity basis whereby not more than 75% of the equity is sold to the purchaser with power to increase their percentage of ownership up to 100% after five years of acquisition of the initial share and upon a payment equating to the additional equity being purchased payable to the Council or the Provider as the case may be (or such other body as the Council may elect). Such payment to be based on the actual market value as at the date of acquisition of the additional equity such scheme to be secured by a mechanism and in a form agreed with and approved by the Council (or such other body as the Council may elect)
"Shared Ownership"	Dwellings purchased on a Shared Ownership Lease

Dwellings"	
"Shared Ownership Lease"	a lease in a form approved by the HCA or where there is no such form in a form approved by the Council such lease to provide for the following: - not more than 75% 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) plus 0.5% or such other rent as complies with the requirements from time to time of the HCA
"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 HCA or any subsequent replacement or where there is no such replacement at a rent determined by the Council

The Owners hereby covenant with the Council as follows:

- 1.1 Not to Commence the Development until the Affordable Housing Scheme has been submitted to and approved by the Council in writing PROVIDED THAT a revised Affordable Housing Scheme may be submitted to and approved by the Council (in its absolute discretion) following the Commencement of Development
- 1.2 Not to Occupy the first Open Market Dwelling until an exchanged unconditional contract or contracts for the sale of the Affordable Dwellings to a Provider has been supplied to the Council SAVE THAT where the Council agrees that the Affordable Dwellings are not to be transferred this obligation shall not apply
- 1.3 Not to construct the Affordable Dwellings otherwise than in accordance with the Approved Affordable Housing Scheme and the timescales and details set out therein

- 1.4 Not to offer for sale any Intermediate Dwelling (other than a Shared Ownership Dwelling) without the prior written consent of the Council to the maximum selling price of those Intermediate Dwellings
- 1.5 Not to Occupy more than 50% of the Open Market Dwellings 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 (or where no transfer is required their ongoing provision has been secured) in accordance with and subject to the following terms:
- a) for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed;
 - b) free from all financial charges, adverse rights, restrictions or other encumbrances which would interfere with the use of the Affordable Dwellings as Affordable Housing;
 - c) with the benefit of all necessary easements, rights and utilities; and
 - d) any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme
- 1.6 Not to use the Affordable Dwellings for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme PROVIDED THAT the obligations contained in this Schedule 2 shall not be binding upon:
- 1.6.1 a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire or a voluntary right to buy scheme under the Housing and Planning Act 2016;
 - 1.6.2 an occupier of an Affordable Dwelling who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest or by a person who has acquired 100% of a Shared Equity Dwelling
 - 1.6.3 a mortgagee or chargee (or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a "Receiver") of the whole or any part of the Affordable Dwelling or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT it has first complied with the following:
 - a) such mortgagee or chargee or Receiver shall first give notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three

months from the date of the written notice to complete a disposal of the Affordable Dwellings to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses; and

- b) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the obligations contained in this Schedule which provisions shall determine absolutely in relation to the affected Affordable Dwellings

Part 2

Local Letting Policy: Local Connection Eligibility Criteria

1. Up to one third (or such other amount as the Council shall reasonably require) 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 Coltishall.
 - 1.2 If there is no suitable person in paragraph 1.1 allocations will be made to people who work in the Parish of Coltishall; 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 Coltishall 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 allocations.

Administrative Procedure for Nominations

- 1 To grant to the Council nomination rights to 100% of the Affordable Rented Dwellings unless otherwise agreed in writing.
- 2 The administrative procedure for nominations shall be in accordance with the Council's Housing (Options) Allocations Policy as amended from time to time, or in accordance with alternative procedures as the Council and the Owners shall agree between them

SCHEDULE 3

Open Space & Green Infrastructure

Part 1

In this Part 1 Schedule 3 (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 as detailed in Part 2 of this Schedule
"Off-Site Open Space Contribution"	A sum in lieu of any deficiency in the amount or type of Open Space being provided on the Site compared to that required in accordance with the Council's current Open Space Policies at the date of this Deed such sum to be calculated in accordance with Part 2 of this Schedule for the provision of land, equipment and maintenance and increased in line with the Inflation Provision towards the provision of Open Space serving the Development towards Rectory Road Recreation Ground/Sports Ground (sports and play element as set out in Part 2 of this Schedule) and the Rectory Road Allotment Site (allotments element as set out in Part 2 of this Schedule)
"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 Part 3 of this Schedule and Open Space Policies
"Open Space Policies"	Means the policies contained in the Council's Recreational Provision in Residential Development Supplementary Planning Document adopted April 2016 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 Owners hereby covenant with the Council as follows:

1. Not to Occupy or allow Occupation of more than 50% of the Dwellings on Site unless or until the Off-Site Open Space Contribution has been paid to the Council

Part 2

Cost per Dwelling for Provision and Maintenance of Open Space

Purchase of Off Site Open Space

A. Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£266	£54	£25	£633	£978
2 bed	£355	£72	£34	£844	£1,305
3 bed	£443	£90	£42	£1,056	£1,631
4 bed	£532	£108	£51	£1,267	£1,958
5 bed +	£621	£126	£59	£1,478	£2,284

Equipping of Off Site Open Space

B. Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£304	£94	£16	£453	£867
2 bed	£406	£126	£20	£604	£1,156
3 bed	£508	£156	£25	£755	£1,444
4 bed	£609	£188	£31	£906	£1,734
5 bed +	£711	£218	£36	£1,066	£2,031

Maintenance of Off Site and On Site Open Space

C. Property	Sports	Play		Green infrastructure	Total
1 bed	£320	£32		£267	£619
2 bed	£426	£43		£357	£826
3 bed	£532	£54		£445	£1,031
4 bed	£639	£64		£534	£1,237
5 bed +	£746	£76		£624	£1,446

Part 3

Open Space requirement per Dwelling

Number of bedrooms	Children's play spaces m²	Sports facilities m²	Allotments m²	Green Infrastructure m²
1 bed	5.1	25.2	2.4	60
2 bed	6.8	33.6	3.2	80
3 bed	8.5	42.0	4	100
4 bed	10.2	50.4	4.8	120
5 bed +	11.9	58.8	5.6	140

SCHEDULE 4

The Council's Covenants

1. The Council hereby covenants with the Owners that it will deposit any Off-Site Open Space Contribution received 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 in accordance with the requirements of this Deed
2. In the event that any Off-Site Open Space Contribution has not been committed (by way of contract or expenditure of monies) within 5 years of receipt of payment to refund any unspent balance of the contribution to the payer together with any interest accrued.
3. With regard to the Green Infrastructure Contribution if it has not been committed (by way of contract or expenditure of monies) within 10 years of receipt of payment to refund any unspent balance of the contribution to the payer together with any interest accrued
4. The Council shall within 28 days of written request provide to the Owners details of the expenditure of any the Off-Site Open Space Contribution and/or Green Infrastructure Contribution
5. At the written request of the Owners the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed

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

)
)
)



M. Murre
Authorised Signatory:

)

Head of Democratic Services and
Monitoring Officer

EXECUTED AS A DEED by
ALAN SMITH in the presence of:

)
)

A. Smith

Alan Smith

Witness Name: JAMIE CHILDS

Witness Address: FLINT BUILDINGS

1 BEDDING LANE

NORWICH, NR3 1RG

Witness Signature: [Signature]

Date: 4 OCTOBER 2017

EXECUTED AS A DEED by
ALAN LAPPIN in the presence of:

)
)

A. Lappin

Alan Lappin

Witness Name: JAMIE CHILDS

Witness Address: FLINT BUILDINGS

1 BEDDING LANE

NORWICH, NR3 1RG

Witness Signature: [Signature]

Date: 4 OCTOBER 2017