

Dated 26th September 2019

BROADLAND DISTRICT COUNCIL

-and-

JANE JONES

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

relating to land at Beighton Road Farm, Beighton Road, Acle, Norfolk

THIS DEED is dated

26th September

2019

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL, Thorpe Lodge, 1 Yarmouth Road, Norwich, Norfolk, NR7 0DU (referred to as "the Council")
- (2) JANE JONES, Hall Farm, Middle Road, Great Plumstead, Norwich, Norfolk, NR13 5EF (referred to as "the 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 Owner has applied for the Permission and the Council has resolved to grant the Permission subject to the Parties entering 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 temporary display of site notices and/or advertisements

Development	The Development of the Site as 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
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
Permission	The planning permission to be granted by the Council for residential development and allocated reference number 20190256 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 known as land at Beighton Road Farm, Beighton Road, Acle, NR13 3DD and registered at H M Land Registry under title number NK492385 shown edged red on the Plan
Trigger	means 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 It is agreed by the Parties that any obligation contained within this Deed which sets out how a planning obligation will be performed in parts or stages will not amount to more than one planning obligation 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 For the avoidance of doubt it is agreed between the parties that in the event of an application under Section 73 of the Act or any application for a replacement permission for the Development the obligations contained in this Deed will be reviewed and amended where appropriate

3. COVENANTS

3.1 The Owner covenants with the Council so as to bind 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 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 or that part of the Site in respect of which such breach occurs (unless the breach occurred before he disposed of his interest)

4.2 The Owner confirms that he is the owner of the Site with full power to enter into this Deed and that there is no person or body whose consent is necessary to make this Deed binding on all interests in the Site

4.3 The covenants, restrictions and requirements contained in this Deed shall not be enforceable against:

4.3.1 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

4.3.2 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 highways or any other services in connection with the Development of the Site.

- 4.4 On completion of this Deed 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 anticipated Triggers seven days in advance of each anticipated date and the 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 PROVIDED THAT the Owners shall not be required to give such notice when disposing of individual Dwellings constructed pursuant to the Permission

8. CONDITIONALITY

The covenants and the planning obligations in this Deed shall only come into effect upon the grant of the Permission and once the Development has commenced unless otherwise specifically indicated in this Deed or to construe otherwise would be inconsistent with the requirements of any clause covenant or obligation

SCHEDULE 1

Open Space Contribution

Part 1 Owner Obligations

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

"Inflation Provision"	The increase or decrease (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service All in Tender Price Index between January 2015 and the date upon which payment is made pursuant to this Agreement (or if such index ceases to be published such other index as the Council shall reasonably determine)
"Green Infrastructure Contribution"	Means that part of the Off-Site Open Space Contribution to be used in line with projects identified in the Councils Green Infrastructure project plans that meet the aims of policy EN3 at the date of this Deed such sum to be calculated in accordance with Part 3 of this Schedule
"Off-Site Open Space Contribution"	A sum towards the provision of Open Space in accordance with the Councils current Open Space Policies at the date of this Deed such sum to be calculated in accordance with Part 3 of this Schedule and increased in line with the Inflation Provision and applied towards the following: - Sports contributions to be used at War Memorial Recreation Ground, Acle - Play contributions to be used at the play space off Beighton Road - Allotments contributions to be used at Boat Dyke Lane, Acle
"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. OPEN SPACE CONTRIBUTION

- 1.1 Not to Occupy any Dwelling until the Off-Site Open Space Contribution has been paid to the Council

Part 2

Council Obligations

The Council covenants with the Owner as follows:

- 2.1 to hold any contribution received under this Schedule in an interest bearing account and apply the same (together with any interest accrued) towards the purposes for which they were paid 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

Part 3

Extract from Open Space Policies detailing the cost per dwelling for the Provision and Maintenance of Open Space

Purchase of Off Site Open Space

Land purchase					
Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£252	£51	£24	£600	£927
2 bed	£336	£68	£32	£800	£1,236
3 bed	£420	£85	£40	£1,000	£1,545
4 bed	£504	£102	£48	£1,200	£1,854
5 + bed	£588	£119	£56	£1,400	£2,163

Equipping of Off Site Open Space

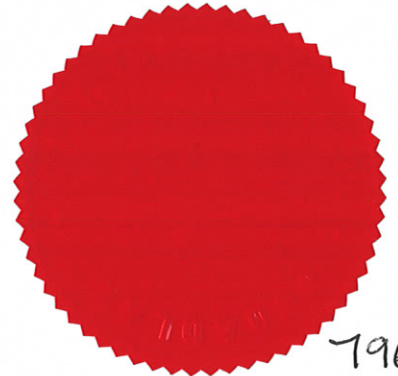
Equipping					
Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£288	£89	£15	£429	£821
2 bed	£385	£119	£19	£572	£1,095
3 bed	£481	£148	£24	£715	£1,368
4 bed	£577	£178	£29	£858	£1,642
5+ bed	£674	£207	£34	£1,001	£1,916

Maintenance of Off-Site and On-Site Open Space

Maintenance				
Property	Sports	Play	Green infrastructure	Total
1 bed	£303	£30	£253	£586
2 bed	£404	£41	£338	£783
3 bed	£504	£51	£422	£977
4 bed	£605	£61	£506	£1,172
5+ bed	£707	£72	£591	£1,370

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:)



Authorised Signatory:

[Signature]
Senior Committee Officer

7969

EXECUTED AS A DEED by Jane Jones
in the presence of:

) *[Signature]*
)

Witness:

L. CARMY,
OLD SCHOOL HSE
CHURCH RD
QT PLUM STRAD
NR13 5AB.

[Signature]