

Dated 20 May 2020

Broadland District Council

-and-

Astris Homes East Anglia Limited

- and -

Christopher David Varvel and Adrian Philip Hubbard as Trustees of The EPH Ltd
SSAS

**DEED OF PLANNING OBLIGATION
UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**
relating to land at St Michaels Hospital, Cawston Road,
Aylsham, NR11 6NA

THIS DEED is dated

20 May

2020

PARTIES:

- (1) Broadland District Council, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk, NR7 0DU (referred to as "the Council")
- (2) Astris Homes East Anglia Limited, (Company number 09463364) whose registered office is at 5 The Old Church, St. Matthews Road, Norwich, NR1 1SP (referred to as "the First Owner")
- (3) Christopher David Varvel and Adrian Philip Hubbard, 5 The Old Church, St. Matthews Road, Norwich, NR1 1SP as Trustees of The EPH Ltd SSAS (referred to as "the Second Owner")

together referred to as 'the Parties'

INTRODUCTION

- (A) The Owners own that part of the freehold of the Site which is registered at the Land Registry under title number NK465964 and held free from incumbrances other than the matters referred to on the Register
- (B) The First Owner owns that part of the freehold of the Site which is registered at the Land Registry under title number NK494961 and held free from incumbrances other than the matters referred to on the Register.
- (C) The Council is a local planning authority for the purposes of this deed for the area within which the Site is located.
- (D) The Owners have applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed.

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

Act	The Town and Country Planning Act 1990 as amended.
Commencement	The date on which a material operation as defined in Section 56(4) of the Act is first carried out, except (for the purposes of this Deed only) operations consisting of: • site clearance • demolition • archaeological investigations • ground surveys • removal of contamination or other adverse ground conditions • erection of temporary means of enclosure • 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
Index Linked	Index linked from 8 January 2020 until the date any payment referred to in this Deed is made, such index linking being equivalent to any change in the RICS Building Cost Information Service All In Tender Index

(or if such indices cease to be published, another index notified to the Owners by the Nominated Officer acting reasonably)

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 (including use of a Dwelling as a show room or sales office) and 'Occupy' and 'Occupied' will be construed accordingly
Owners	The First Owner and the Second Owner
Permission	The planning permission to be granted by the Council for the demolition of the former care home and erection of 16 dwellings and allocated reference number 20190597 or if the Council (in its absolute discretion) agrees 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

- 2.6 References to any party to this Deed shall include successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.

3. CONDITIONALITY

This Deed is conditional upon:

- 3.1 The grant of the Permission; and
- 3.2 The Commencement of Development.

Save for the provisions of this clause and clauses 6.3, 7 and 9 which shall come into effect immediately on completion of this Deed.

4 COVENANTS

- 4.1 The Owners covenant jointly and severally 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 covenants with the Owners to comply with their respective requirements contained in this Deed.
- 4.3 The Council covenants with the Owners to use its endeavours to issue the Permission within ten days of completion of this Deed

5 USE OF CONTRIBUTIONS INDEXATION AND INTEREST

- 5.1 The improvements referred to in this Deed for which contributions are required may at the Council's absolute discretion be commenced or provided (in whole or in part) at any time after the date of this Deed even if payment of the relevant contribution may not have become due.
- 5.2 If the improvements have been commenced or provided prior to the due date for payment of the relevant contribution then the payment will be regarded as a

reimbursement of the costs incurred in providing the improvement.

5.3 Nothing in this Deed binds the Owners to pay;

5.3.1 any contribution before the date on which it is due under the Schedules, or

5.3.2 any contribution at all if the relevant due date is not reached, or

5.3.3 any greater contribution than provided in the relevant Schedule.

5.4 The Council are entitled to use all interest accrued on each contribution specified in the Schedules from the date of actual payment of the contribution until the date when the contribution is spent.

5.5 The contributions specified in the Schedules are to be Index Linked.

5.6 In the event of any delay in paying the contributions specified in the Schedules then from the due date of payment:

5.6.1 the contributions are a debt due to the Council and are recoverable by action by the Council; and

5.6.2 are liable to interest calculated on a daily basis at a rate of 4 percent per annum over the bank rate as set by the Bank of England in force from time to time from the due date for payment until the actual date of payment.

5.7 All payments under this Deed are exclusive of value added tax (VAT) and, subject to provision of a valid VAT invoice, any VAT due must also be paid.

5.8 Any money from time to time held by the Council in respect of any payment made to the Council by the Owners under the provisions of this Deed will in any event become the absolute property of the Council and will not be subject to return by the Council to the party who made that payment if that party:

5.8.1 becomes bankrupt or has a winding-up petition or a petition for an administration order presented against it, or

5.8.2 passes a winding-up resolution or an administrative receiver or a receiver and manager is appointed in respect of the property (or any

part thereof) belonging to that party, or

5.8.3 enters into any arrangement scheme compromise moratorium or composition with its creditors or any of them but shall continue to be held by the Council under the terms of this Deed.

5.9 The Council may spend part of each contribution specified in the Schedules on reasonable legal costs and disbursements which are supplemental to or incurred in connection with the spending of the said contribution in accordance with the relevant Schedule.

6. OTHER PROVISIONS

6.1 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).

6.2 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.

6.3 On completion the Owners will pay the Council's reasonable legal costs in connection with this Deed.

6.4 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.5 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions.

6.6 No waiver, express or implied, by the Council of any breach or failure to perform or observe any of the covenants, terms or conditions of this Deed constitutes a continuing waiver, nor prevents the Council from enforcing any of the provisions in this Deed.

- 6.7 If the Permission is quashed revoked or expires before Commencement then, save for clause 6.3 , this Deed will cease to have effect (insofar only as it has not already been complied with).
- 6.8 Subject to clause 6.9, nothing in this deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted before or after the date of this Deed.
- 6.9 If the Permission is subject to an application under Section 73 of the Act for the removal or amendment of any condition attached to the Permission then the obligations in this deed shall also apply to the new planning permission resulting from such application if so agreed by the Council (acting in its absolute discretion).
- 6.10 This Deed is registrable as a local land charge.
- 6.11 Following the performance and satisfaction of all the obligations contained in this Deed the Council will, upon the written request of the Owners, cancel all relevant entries contained in the Register of Local Land Charges.
- 6.12 An agreement, approval, consent or expression of satisfaction required by the Owners from the Council under the terms of this deed must be given in writing and shall not be unreasonably withheld or delayed.
- 6.13 The provisions of this Deed (other than this clause which takes immediate effect) will be of no effect until this deed has been dated.
- 6.14 Nothing contained or implied in this Deed will fetter, prejudice or affect the rights, discretions, powers, duties and obligations of the Council in the exercise of any of its functions as local authority.

7. DISPUTES

- 7.1 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.
- 7.2 The expert is to be replaced by a fresh appointee in the event that he becomes at any time unable or unwilling for any reason to proceed to discharge his functions. The fresh appointee is to be appointed in the manner prescribed in this clause.
- 7.3 The expert is to make his decision within 6 weeks of being appointed.
- 7.4 The costs of appointing the expert are to be shared equally by the parties to the dispute except where the expert takes the view that one party has acted unreasonably. In that case the expert has binding discretion as to apportionment of the costs.
- 7.5 Nothing in this clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings.

8. NOTIFICATIONS

- 8.1 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.
- 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 this provision shall not apply to the transfer of or the grant of a leasehold interest in an individual Dwelling.

9. JURISDICTION

This deed is governed by and interpreted in accordance with the law of England and Wales.

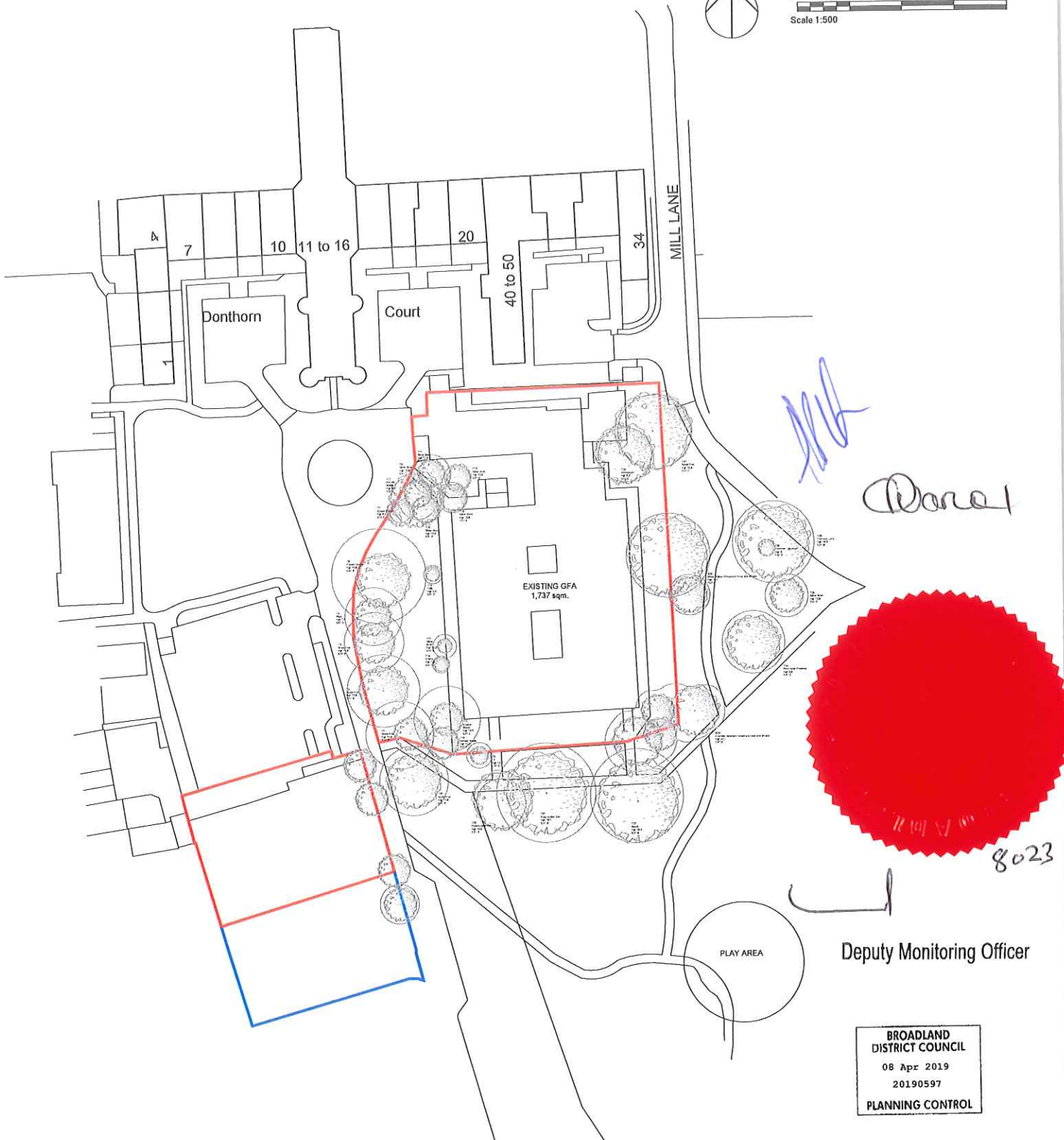
10. TRUSTEE STATEMENT

The liability of Christopher David Varvel and Adrian Philip Hubbard under this Deed shall not be personal and shall be limited to the value of the assets from time to time of The EPH Ltd SSAS of which they are Trustees.

Schedule 1
The Plan



0m 10m 20m 30m 40m
Scale 1:500



Notes:

-  = Root Protection Area
-  = Existing Tree

P3	28.03.19	Boundary amended	AF	-
P2	21.03.19	Existing trees added	AF	-
P1	28.02.19	First draft	AF	-
Rev.	Date:	Description:	Chk:	App:


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All dimensions to be verified on site by Main Contractor before the start of any shop drawings or work whatsoever either on their own behalf or that of sub-contractors. Report any discrepancies to the Contract Administrator at once. This drawing is to be read with all relevant Architect's and Engineer's drawings and other relevant information.

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Do Not Scale

Project:
**Former Health Centre
St. Michaels Hospital
Aylsham, NR11 6NA**

Drawing Title:
Site Plan - Existing

Client:
Chris Varvel - Astris Homes

Scale:
1:500 @A2

Date:
28.02.19

Project Number: Drawing Number: Revision:

10420 - 0101

P3

Planning

Schedule 2

Open Space

Part 1 Owners Obligations



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"	A sum of £38,596.78 allocated to the provision and maintenance of green infrastructure and to be used in line with projects identified in the Council's Green Infrastructure Project Plan (or any replacement supplementary document adopted by the Council) or such other projects as the Council may reasonably identify
"Off-Site Open Space Contribution"	A sum of £31,675.13 in lieu of the deficiency in the amount or type of Open Space being provided in the Development compared to that required in accordance with the Council's current Open Space Policies at the date of this Deed and Index Linked and applied towards the following: - Children's Play contributions to be used for equipping and maintenance within Aylsham - Formal Recreation contributions to be used within Aylsham
"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 Owners hereby covenant with the Council as follows:



1. OPEN SPACE

1.1 To pay the Off-Site Open Space Contribution on or prior to first Occupation of any Dwelling

1.2 To pay the Green Infrastructure Contribution on or prior to first Occupation of any Dwelling 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 to the Owners or the relevant successor in title who made the original payment to the Council

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:

Deputy Monitoring Officer

EXECUTED AS A DEED by Astris Homes East Anglia Limited)
acting by Adrian Philip Hubbard, a director, in the presence of:)

Signature of Adrian Philip Hubbard

Signature of Witness

Name: S. Brock

Address: PENTACO CONSTRUCTION LTD

Occupation: CONSTRUCTION DIRECTOR

EXECUTED AS A DEED by Adrian Philip Hubbard
in the presence of:

)
)

Signature of Adrian Philip Hubbard

Signature of Witness

Name: S. Brock

Address: PENTACO CONSTRUCTION LTD

Occupation: CONSTRUCTION DIRECTOR

EXECUTED AS A DEED by Christopher David Varvel
in the presence of:

)
) *Carol*

Signature of Christopher David Varvel

Signature of Witness
Name:

Chris Hoxley
CHRIS HOXLEY

Address:

1 Old Post Office Street,

Occupation

Falkenberg NR21 9BL

Suburban