

Dated 01 September

2021

Broadland District Council
-and-
Crane & Sons Farms Limited

**DEED OF PLANNING OBLIGATION
UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**
relating to land at
Fengate Farm, 51 Fengate, Marsham NR10 5PT

THIS DEED is dated 01 September

2021

PARTIES:

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Norwich NR7 0DU (referred to as "the Council")
- (2) **CRANE & SONS FARMS LIMITED** (Co. Regn. No. 00581460) of [REDACTED]
[REDACTED]

together referred to as 'the Parties'

INTRODUCTION

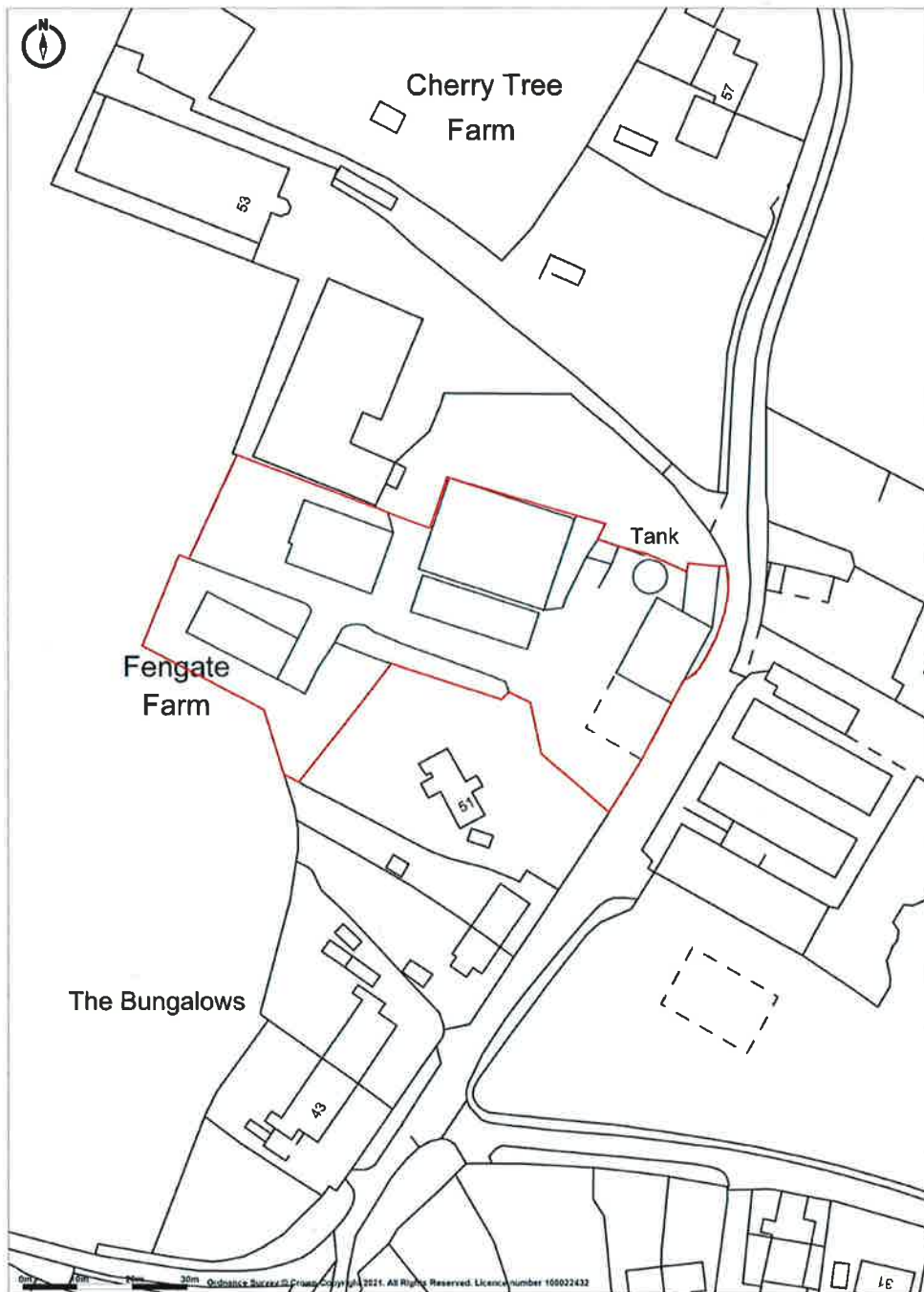
- (A) The Council is a local planning authority for the purposes of this deed for the area within which the Site is located.
- (B) The Owner has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed.
- (C) The Owner owns the freehold of the Site which is registered (among other land) at H M Land Registry under title number NK441300

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 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
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' will be construed accordingly
Permission	The planning permission to be granted by the Council for 5 new dwellings and allocated reference number 20201275
Plan	The plan attached to this Deed
Site	The land known as Fengate Farm, 51 Fengate, Marsham NR10 5PT and registered at H M Land Registry under title number NK441300 shown edged red 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



Promap

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Samie Sutterby
Director of People and Communities

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, under Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011, and all other enabling powers.
- 2.2 The covenants and obligations contained in this Deed create planning obligations for the purposes of section 106 of the Act enforceable by the Council and relate to the Site.
- 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 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 its statutory functions.
- 2.7 Representatives of the Council may enter the Site at any reasonable time to ascertain whether the terms of this Deed are being or have been complied with provided that:
 - 2.7.1 they do not enter any individual Dwelling; and
 - 2.7.2 they adhere to all reasonable health and safety requirements.

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 5, 6.4, 7, 8, and 9, and any obligation contained in this Deed which must be performed prior to Commencement of the Development which shall come into effect immediately on completion of this Deed.

4. COVENANTS

- 4.1 The Owner covenants with the Council for himself and his successors in title to observe and perform the obligations and stipulations contained in this Deed.
- 4.2 The Council covenant with the Owner to comply with their respective requirements contained in 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 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.
- 5.4 The contributions specified in the Schedules are to be increased in line with the Inflation Provision.
- 5.5 In the event of any delay in paying the contributions specified in the Schedules then from the due date of payment:
 - 5.5.1 the contributions are a debt due to the Council and are recoverable by action by the Council; and
 - 5.5.2 are liable to interest calculated on a daily basis at a rate of 4 percent 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.
- 5.6 All payments under this Deed are exclusive of value added tax (VAT) and any VAT due must also be paid.
- 5.7 Any money from time to time held by the Council in respect of any payment made to the Council by the Owner 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 only if that party:
 - 5.7.1 becomes bankrupt or has a winding-up petition or a petition for an

administration order presented against it, or

5.7.2 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

5.7.3 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 and returned (if necessary) under the terms of this Deed.

5.8 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 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 with an interest in the Site whose consent is necessary to make this Deed binding on all interests in the Site.

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

6.3.1 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.

6.3.2 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.

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

6.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of

Third Parties) Act 1999.

- 6.6 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions.
- 6.7 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.
- 6.8 If the Permission is quashed revoked or expires before Commencement then, save for clause 6.4, this Deed will cease to have effect (insofar only as it has not already been complied with).
- 6.9 Subject to clause 6.10, 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 after the date of this Deed.
- 6.10 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).
- 6.11 This Deed is registrable as a local land charge.
- 6.12 Following the performance and satisfaction of all the obligations contained in this Deed the Council will, upon the written request of the Owner, cancel all relevant entries contained in the Register of Local Land Charges.
- 6.13 An agreement, approval, consent or expression of satisfaction required by the Owner from the Council under the terms of this deed must be given in writing and shall not be unreasonably withheld or delayed.
- 6.14 The provisions of this Deed (other than this clause which takes immediate effect) will be of no effect until this deed has been dated.
- 6.15 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 Owner 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 Owner disposes of their interest in all or part of the Site save for the sale of individual Dwellings 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.

9. JURISDICTION

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

SCHEDULE 1

Open Space

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 (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service All in Tender Price Index between January 2020 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 allocated to the provision and maintenance of green infrastructure as detailed in Part 3 of this Schedule and to be used in line with projects identified in the Council's green infrastructure project plans or such other projects
"Off-Site Open Space Contribution"	A sum in lieu of any deficiency in the amount or type of Open Space being provided 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 3 of this Schedule and increased in line with the Inflation Provision and applied towards; - children's play: to be used in the parish of Marsham - formal recreation: to be used in the parish of Marsham - allotments: to be used in the parish of Marsham
"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 covenant with the Council as follows:

1. OPEN SPACE

- 1.1 Not to Occupy or permit Occupation of any Dwelling until the Off-Site Open Space Contribution (which for the avoidance of doubt includes the Green Infrastructure 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 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 as at January 2020 (Index 334)

Contribution towards purchase of land

Land purchase					
Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£312	£63	£30	£742	£1,147
2 bed	£416	£84	£40	£990	£1,529
3 bed	£520	£105	£49	£1,237	£1,911
4 bed	£623	£126	£59	£1,484	£2,293
5 + bed	£727	£147	£69	£1,732	£2,676

Equipping of Off-Site Open Space

Equipping					
Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£356	£110	£19	£531	£1,016
2 bed	£476	£147	£24	£708	£1,355
3 bed	£595	£183	£30	£884	£1,692
4 bed	£714	£220	£36	£1,061	£2,031
5+ bed	£834	£256	£42	£1,238	£2,370

Maintenance of Off-Site and On-Site Open Space

Maintenance				
Property	Sports	Play	Green infrastructure	Total
1 bed	£375	£37	£313	£725
2 bed	£500	£51	£418	£969
3 bed	£623	£63	£522	£1,209
4 bed	£748	£75	£626	£1,450
5+ bed	£834	£89	£731	£1,695

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 hereto in the presence of:



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Authorised Signatory:

Sarah E. Suttley
Director of People and Communities

and this deed has been duly and properly executed
in accordance with the constitution of Broadland District Council

EXECUTED AS A DEED by
CRANE & SONS FARMS LIMITED
in the presence of:

)
)
)

Director:



Director/Secretary: