

Dated 22nd April

2021

Broadland District Council

- and -

Taylor Patterson Trustees Limited and Kevin Nicolas Francis, Mark Robert Stewart
and John Benjamin Rowe

- and -

North Walsham Road Limited

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

relating to land at Royal Oak, North Walsham Road, Sprowston,
Norwich, NR6 7QQ

THIS DEED is dated 22nd April

2021

PARTIES:

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Rd, Norwich NR7 0DU (referred to as "the Council")
- (2) **TAYLOR PATTERSON TRUSTEES LIMITED** (Co. Regn. No. 02035095) and; **KEVIN NICOLAS FRANCIS, MARK ROBERT STEWART, AND JOHN BENJAMIN ROWE**; together of 1 New Walk Place, Leicester, United Kingdom, LE1 6RU (collectively referred to as "the Owner")
- (3) **NORTH WALSHAM ROAD LIMITED** (Co. Regn. No 07184675) The Cottage, 87 Yarmouth Road, Norwich, Norfolk, England, NR7 0HF (referred to as "the Developer")

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) Mr G Laws, acting as director for the Developer, 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 at the Land Registry under title number NK154712 and held free from encumbrances

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 the demolition of existing buildings and erection of eight new dwellings and garages and allocated reference number 20201650
Plan	the plan attached to this Deed
Site	the land known as Royal Oak, North Walsham Road, Sprowston, Norwich NR6 7QQ and registered at H M Land Registry under title number NK154712 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

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



Site Plan 1 / 200



Design and access statement

Location
The Royal Oak, North Walsham Road Norwich NR67QQ

Existing Site
Former Royal Oak Public House in more recent times used for commercial office purposes. Existing Public House Building used for offices with large Warehouse building to the rear. Large area of car parking to North. Site area of approx 2697 sqm. To the North of the site a modern block of residential flats with existing wall as boundary. To the East of the site residential properties with existing hedging as boundary. To the South of the site existing residential properties with existing hedging as boundary. To the West of the site the main North Walsham Road which is open fronted. Although the site has been used for commercial purposes it is very much in a residential area. The site has been marketed by a local agent for rent without success for a period of time (see attached details)

Proposals
With the marketing of the site being unsuccessful we have been asked to prepare a planning application for suitable alternative uses for the site. The site lies within a predominantly residential area with a mix of housing. We are proposing a small cul-de-sac style development to compliment the surrounding area with a mix of single storey and two storey development. Eight new properties will be provided. The mix will also be 3 and 4 bedrooms. The two storey elements of the scheme are located to the front of the site to compliment the existing two storey nature of the site frontage with mainly single storey development to the rear to avoid overlooking issues of adjoining properties. The materials used in the construction will be a mix of traditional materials of brick and painted render to the walls and a mix of red and black paniles for the roofs.

Access
There is an existing access used for the commercial use of the site. This access will be adjusted for the suitability of residential use but kept in the same location as present. Adequate parking and turning will be provided to each dwelling on site. An existing footway exists outside the frontage linking the site to all the local facilities in the area.

Landscape
A tree report has been submitted with this application indicating only one tree of significance exists. This tree will be retained as shown top the rear of plot 7 garage and protected during construction. Additional soft landscaping in the way of native trees and shrubs will be incorporated in the new layout design including a landscaped area in front of plot 5 which will include provision of a screened bin collection area.

Ecology
The existing site is mainly concrete and the works will not affect ecology. These proposals will give the opportunity of enhancement in this area

Conclusion
We hope that the application can be supported and approved under current planning policies. The proposals offer a more suitable use for this site which has become redundant and underused now for a period of time. The current situation would suggest that this would be the most suitable alternative use for this site.

C Dec 2020 Bin store revised
B Dec 2020 Bin storage areas shown
A Nov 2020 Planning Revisions

PETER CODLING ARCHITECTS
7 THE OLD CHURCH ST. MATTHEWS ROAD, NORWICH, NR1 1EP Tel: 01603 660406 Email: office@petercodlingarchitects.co.uk

Royal Oak Site
North Walsham Road
Norwich

Proposed Plans
Site and Location Plans

SCALE	1 / 200	1 / 1250	A1
JOB NO	6162	01	C
DATE	Aug 2020		DRAWN BY

THIS DESIGN IS THE COPYRIGHT OF PETER CODLING ARCHITECTS AND MAY NOT BE ALTERED, PHOTOGRAPHED, COPIED OR REPRODUCED WITHOUT WRITTEN CONSENT.
ALL DIMENSIONS ARE TO BE CHECKED BY THE GENERAL CONTRACTOR ON SITE AND ANY DISCREPANCY CLARIFIED BY THE ARCHITECT BEFORE THE WORK PROCEEDS.

Deputy Monitoring Officer



Handwritten signatures and initials:
A. S. T.
P. S. Anderson
Deputy Monitoring Officer

and to any person deriving title through or under that party and in the case of the Council the successors to its respective 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 4, 6, 7, 8, 9 and any other 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 and Developer 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 Owner and Developer to comply with its respective requirements contained in this Deed.

4.3 The Council covenant with the Developer to use its reasonable 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 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 or Developer 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:
 - 5.7.1 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 under the terms of this Deed.
- 5.8 The Council may spend part of each contribution specified in the Schedule 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 of this Deed the Owner and Developer 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 reasonable 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 and Developer 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 his interest in all or part of the Site he will notify the Nominated Officer within 14 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 and Developer 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
"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 Provisions 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: - Children's play to be used in Sprowston - Formal recreation to be used in Sprowston - Allotments contributions to be used in Sprowston - Green Infrastructure Contribution to be used in line with the projects identified in the Council's Green Infrastructure Project Plan or other such projects that meet the aims of policy EN3
"Open Space"	Land to be provided 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 Provisions
"Open Space Provisions"	Means: a) 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 relating to the provision of open space, recreation, sport, allotments, green

infrastructure and other similar types of amenity land and facilities;
b) the Council's Recreational Provision in Residential Development Supplementary Planning Document (including its Technical Appendix); and
c) such amendments or revisions to, or replacements of, the above policies and documents as the Council may specify

The Owner and Developer 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 and Developer 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 Provisions 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:

Authorised Signatory:


C. M. Moore
Deputy Monitoring Officer



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

EXECUTED AS A DEED by
TAYLOR PATTERSON TRUSTEES LIMITED
in the presence of:

Director:




Director/Secretary:

SIGNED AS A DEED by
KEVIN NICOLAS FRANCIS
in the presence of:

Witness signature:

Witness name:

Witness address:

Witness occupation:


ROBERT SIBLEY

74 THE CLOSE
NORWICH NR1 4DR

Solicitor

SIGNED AS A DEED by
MARK ROBERT STEWART
in the presence of:

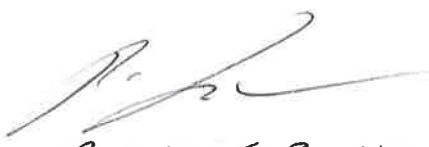
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17.5.17

Witness signature:

Witness name:

Witness address:

Witness occupation:


ROBERT SIBLEY
74 THE CLOSE
NORWICH NR1 4DR
SOLICITOR

SIGNED AS A DEED by
JOHN BENJAMIN ROWE
in the presence of:

)
)
) 

Witness signature:

Witness name:

Witness address:

Witness occupation:


ROBERT SIBLEY
74 THE CLOSE
NORWICH NR1 4DR
SOLICITOR

EXECUTED AS A DEED by
NORTH WALSHAM ROAD LIMITED
in the presence of:

)
) 
)
Director

Witness signature:

Witness name: JEAN HERRING

Witness address: C10 FLINT BUILDINGS
1 BEPPING LANE
NORWICH NR3 1RG

Witness occupation:

CHARTERED LEGAL EXECUTIVE