

DATED

21 March

2005

TESCO STORES LIMITED

TO:

BROADLAND DISTRICT COUNCIL

AND TO:

NORFOLK COUNTY COUNCIL

**PLANNING OBLIGATION BY WAY OF UNDERTAKING PURSUANT TO
SECTION 106
OF THE
TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO
DEVELOPMENT AT BLUE BOAR LANE, NORWICH
(REVISED SCHEME)**

THIS DEED is made the 21 day of March 2005

BETWEEN:

TESCO STORES LIMITED (company number 519500) whose registered office is at Tesco House Delamare Road Cheshunt Waltham Cross Hertfordshire ("the Developer")

TO:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St. Andrew Norwich NR7 0DU ("the Council")

AND TO:

NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich NR1 2SG ("the County Council")

RECITALS

- A Words and Phrases used in this Deed are defined in Clause 2.1
- B The Developer is the freehold owner of the Site free from charges of a financial nature
- C The Council is a local planning authority for the purposes of Section 106 of the Act for the area within which the Site is situated
- D The County Council is the highway authority (within the meaning of the Highways Act 1980) and is also a local planning authority for the area within which the Site is situated
- E The Developer has submitted the Application to the Council for the Permission
- F On 13 February 2003 the Developer (being then the leasehold owner of the Site) and Tesco Property Holdings Limited (being then the freehold owner of the Site) entered into the Original Undertaking and the Original Permission was granted by the Secretary of State on 26 February 2004
- G The Developer has since acquired the freehold of the Site outright and Tesco Property Holdings Limited no longer has an interest in the Site
- H The Developer has agreed to enter into this Deed so as to ensure that the same planning obligations as are found in the Original Undertaking are binding on the Site

in the event that the Permission is granted and Implemented instead of the Original Permission

1 **OPERATIVE PART**

1.1 This Deed is made pursuant to Section 106 of the Act and is a planning obligation for the purposes of that section of the Act

1.2 The Obligations shall be enforceable by:

1.2.1 the Council in respect of the obligations in paragraphs 1 and 3 of the Schedule; and

1.2.2 the County Council in respect of the obligation in paragraph 2 of the Schedule

in each case as local planning authority against the Developer as owner of the Site

2 **INTERPRETATION**

2.1 In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

"the Act"

the Town & Country Planning Act 1990 (as amended)

"the Application"

the application submitted by the Developer to the Council registered by the Council under reference number 20042033 for the Development

"Commuted Payment"

the sum of ONE HUNDRED AND TWENTY THOUSAND AND NINE HUNDRED POUNDS (£120,900.00)

"the Conditions Precedent"

the conditions precedent set out in Clause 3 of this Deed

"the Development"

variation to planning permission reference no. 000378 (granted by First Secretary of State 20/02/04) to Allow Variations to Store, Car Park, Petrol Filling Station, Service Yard & Associated Changes (Without Complying with Condition 2 of Planning Permission reference no. 000378)

"the Effective Date"

the date of this Deed

"the Existing Retail Store"

the existing Class A1 retail store comprising gross floor area of 7,360 m² currently erected on the Existing Retail Store Property as at the Effective Date

"the Existing Retail Store Property"

the freehold land owned by the Developer at Blue Boar Lane, Norwich, registered with title absolute at HM Land Registry under title number NK103330 shown for identification purposes only edged red on the Plan

"the Extension"

the extension to the Existing Retail Store to be constructed in accordance with the Permission

"Implementation"

commencement of the Development by the carrying out of a "material operation" as defined in Section 56(4) of the Act save that this definition shall not include works of demolition; works of site clearance; ground investigations; site survey works; laying of services and service media; construction of boundary fencing or hoardings; construction of temporary accesses; archaeological investigation; landscaping works; noise attenuation works; and any works necessary to comply with any notice which may be served under the Environmental Protection Act 1990 the Water Industry Act 1991 the Water Resources Act 1991 or any other legislation or regulation concerned with the protection of the environment or the removal of all demountable or portable buildings on the Site (and "Implement" and "Implemented" shall be construed accordingly)

"New Bus Service"

the new bus service to be procured by the Developer in accordance with paragraph 1 of the Schedule

"the Obligations"

the covenants on the part of the Developer set out in clause 4 and the Schedule

"Opening"

the opening of the Extension for trade to the public (and "Opened" shall be construed accordingly)

"the Original Permission"

planning permission granted by the Secretary of State on 26 February 2004 pursuant to application reference 000378

"the Original Undertaking"

the planning obligation by way of unilateral undertaking entered into by the Developer and Tesco Property Holdings Limited for the benefit of the Council and the County Council on 13 February 2003 in conjunction with the Original Permission

"the Permission"

any planning permission for the Development granted by the Council pursuant to the Application

"the Plan"

the plan annexed to this Deed marked "the Plan"

"the Secretary of State"

the Deputy Prime Minister or such Minister as shall succeed to his statutory obligations

"the Site"

the land comprising the Existing Retail Store and the Extension

"Unit Shops"

the small parade of shops to be built as part of the Permission

"Working Days"

Mondays to Fridays (excluding days which in England are public holidays) inclusive

- 2.2 Words of the masculine gender include the feminine gender and vice versa
- 2.3 Words importing the singular meaning, unless the context otherwise requires, include the plural meaning, and vice versa
- 2.4 References to a clause paragraph and schedule are, unless the context otherwise requires, references to a clause paragraph and schedule of this Deed
- 2.5 Where reference is made in this Deed to:
 - 2.5.1 the Developer it shall (unless the context otherwise requires) include its successors in title and assigns;
 - 2.5.2 the Council it shall include any successor as local planning;
 - 2.5.3 the County Council it shall include any successor as local planning or highway authority (as appropriate)
- 2.6 References in this Deed to a statute or statutory instrument shall mean and include any statutory amendment or re-enactment thereof
- 2.7 The clause headings are for the convenience of the parties only and do not form part of this Deed and shall not be taken into account in its construction or interpretation
- 2.8 For the avoidance of doubt the obligations in this Deed are offered only in the event that the Permission is both:
 - 2.8.1 granted; and
 - 2.8.2 Implemented instead of the Original Permission

and nothing in this Deed shall require the Developer to observe and perform the obligations in both this Deed and the Original Undertaking

3 **CONDITIONALITY**

The Obligations in this Deed are subject to and are conditional upon:

- 3.1 the grant of the Permission; and
- 3.2 service of notice on the Council by the Developer that it intends to Implement the Permission or (if earlier) the Implementation of the Permission by or on behalf of the Developer

4 **THE DEVELOPER'S COVENANTS**

- 4.1 Subject to satisfaction of the last of the Conditions Precedent the Developer HEREBY COVENANTS with the Council to comply with the Developer's obligations set out paragraphs 1 and 3 in the Schedule
- 4.2 Subject to satisfaction of the last of the Conditions Precedent the Developer HEREBY COVENANTS with the County Council to comply with the Developer's obligations set out paragraph 2 in the Schedule

5 **RELEASE AND WAIVER**

- 5.1 The Developer shall on parting with the whole of its interests in the Site be released from all liability under the terms of this Deed (save in respect of antecedent breaches)
- 5.2 This Deed shall be deemed to have been revoked and be of no effect (without any further act or deed on the part of the Developer the Council or the County Council) if:
 - 5.2.1 the Permission having been granted shall lapse without first having been Implemented;
 - 5.2.2 the Permission shall be varied or revoked other than at the request of the Developer; or
 - 5.2.3 the Permission having been granted is quashed following a successful legal challenge.

6 GENERAL ADMINISTRATIVE PROVISIONS

Local Land Charge

- 6.1 This Deed is a local land charge and shall be capable of registration as such by the Council

Severability

- 6.2 If any provision of this Deed shall become or shall be declared by any Court of competent jurisdiction to be unlawful invalid or unenforceable in any way then the clause or clauses which become or are declared to be invalid or unenforceable shall (to the extent possible) be severed from the remainder of this Deed (which shall continue in full force and effect)

Contracts (Rights of Third Parties) Act 1999

- 6.3 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and for the avoidance of doubt the terms of the Deed may be varied by agreement between the parties without the consent of any such third party

Notification

- 6.4 Any notice or written request required to be served or given by one party upon another under the terms of this Deed shall be in writing and be deemed to be validly served or given if transmitted by facsimile (and confirmed by transmission confirmation slip) delivered by hand or sent by registered or recorded delivery post to the party on whom it is to be served or to whom it is to be given and (unless otherwise specified in writing by either party) the address for any such notice shall be:

- 6.4.1 in relation to the Council be given or served at the address given in this Deed marked "For the attention of the Chief Planning Officer" and bearing the reference "Tesco Stores Limited, Blue Boar Lane, Norwich"
- 6.4.2 in relation to the County Council be given or served at the address given in this Deed marked "For the attention of the Legal Officer"
- 6.4.3 in relation to Developer be given or served at the address given in this Deed (or such other address as may be notified to the Council

from time to time) marked "For the attention of the Company Secretary" and bearing the reference "Norwich – Blue Boar Lane Unilateral Undertaking"

6.5 Any notice or written request shall:

6.5.1 if delivered by hand during normal business hours to the person apparently in charge of the premises selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery;

6.5.2 if sent by registered or recorded delivery post be deemed to have been received two days after posting; and

6.5.3 if sent by facsimile transmission be deemed to have been received on the first business day following the date of transmission

EXECUTED AS A DEED AND DELIVERED by the parties hereto on the date written above

SCHEDULE

Developer's Obligations

1 The Unit Shops

1.1 Subject to the provisions of this paragraph, the Developer **HEREBY COVENANTS** with the Council that it will:

1.1.1 lay out the Development in such a way as to enable the Unit Shops to be open when the Extension is open to the public;

1.1.2 use all reasonable commercial endeavours to ensure that the Unit Shops are occupied and operated for an appropriate use independently of the Development by the date of Opening of the Extension or as soon as reasonably practicable thereafter and for the purposes of this paragraph 1.1.2 "appropriate use" shall mean (subject to obtaining any necessary planning permission) classes A1 A2 A3 and/or D1 of the Town and Country Planning (Use Classes) Order 1987

1.2 Without prejudice to generality the covenant on the part of the Developer in this paragraph 1:

1.2.1 the Developer shall make enquiries in the market in order to locate occupants for the Unit Shops and to advertise the availability or anticipated availability of the Unit Shops to future occupiers;

1.2.2 the rent at which the Unit Shops will be leased shall not exceed the market rates for units of this size in this location;

1.2.3 in the event that a prospective occupier of a Unit Shop proposes to use it for a purpose other than that which is presently permitted by the Council then the Developer shall lend such assistance as is reasonable in the circumstances to assist the prospective occupier in promoting its planning application for a change of use;

1.2.4 in the event that an existing or prospective occupier of a Unit Shop proposes to extend the size of any individual Unit Shop by

consolidating any one or more of the Unit Shops and this is required to secure an occupier or the continued occupation of a Unit Shop then the Developer shall lend such assistance as is reasonable in the circumstances to assist the existing or prospective occupier in achieving this including (without prejudice to generality) consulting the Council

- 1.3 If notwithstanding the reasonable commercial endeavours of the Developer under paragraph 1.2 it shall have been unable to procure the occupation of the Unit Shops within 6 months after Opening then it shall be treated as having discharged its obligations under this paragraph 1.

2 **The Commuted Payment**

- 2.1 The Developer **HEREBY COVENANTS** with the County Council that it will within twenty Working Days of the date of written request from the County Council (which request may only be made within five years from Implementation of the Permission) pay to the County Council the Commuted Payment

- 2.2 This obligation on the part of the Developer is on terms that the County Council will deal with the Commuted Payment in the following way:

2.2.1 upon receipt of the Commuted Payment from the Developer it will forthwith pay the same into an interest-bearing account;

2.2.2 the County Council will not use any part of the contribution paid pursuant to paragraph 2.1 otherwise than towards:

2.2.2.1 the County Council's park and ride scheme granted planning permission reference P05/02/0234 dated 27 November 2002; or

2.2.2.2 any other mitigating measures to alleviate any traffic burden the Development might have on the surrounding highway network PROVIDED THAT where the County Council intend to use the contribution towards such mitigating measures it will consult with and have due regard for any representations or requests that the Developer may have in relation to the mitigating measures;

2.2.3 if any part of the Commuted Payment remains unexpended three years after it shall have been paid the County Council will forthwith on written demand return the unexpended balance to the Developer together with all accrued interest.

2.3 For the avoidance of doubt, the maximum amount payable by the Developer under this paragraph 2 is the amount of the Commuted Payment **PROVIDED THAT** the County Council shall be entitled in its absolute discretion to undertake works costing more than this amount using other funding

3 **New Bus Service**

3.1 The Developer **HEREBY COVENANTS** with the Council that it will prior to Opening procure a New Bus Service from the Site meeting the following criteria:

3.1.1 the service will comprise of one midi-bus vehicle being a low-floor fully accessible vehicle;

3.1.2 the service will be run by the Developer or the Developer's chosen bus operator for a period of three years (subject to paragraph 3.2);

3.1.3 the bus will run on an hourly timetable Mondays to Saturdays between the hours of 09h00 and 21h00 or such other times as agreed in writing by the Developer and the Council;

3.1.4 (subject to paragraph 3.2) the provision of the New Bus Service may be reviewed on the first anniversary of its commencement and annually thereafter to consider the user and effectiveness of the New Bus Service and upon a review the Developer may with the agreement of the Council conclude in the alternative either:

3.1.4.1 to vary the timing, coverage and route of the service in order to maximise its utilisation; or

3.1.4.2 to temporarily suspend the New Bus Service; or

3.1.4.3 to cease the New Bus Service

3.2 In the event that the Developer and Council are unable to agree on a course of action following a review the Developer may refer the dispute to an expert in such matters appointed by the President for the time being of the Institute of Civil

Engineers or its successor on the following terms and notify the Council in writing of such referral ("the Notification"):

- 3.2.1 the person appointed pursuant to paragraph 3.2 shall be a person having at least five years or more post-qualification experience relevant to the subject matter of the dispute
- 3.2.2 the reference to the expert shall be on terms that determination shall not take place until 20 Working Days have expired since the date of the Notification ("the Notification Period")
- 3.2.3 the reference to the expert shall be on terms that determination shall take place within ten Working Days of the later of:
 - 3.2.3.1 the expiration of the Notification Period
 - 3.2.3.2 the expert accepting his instructions
 - 3.2.3.3 (where the Council submits representations within the Notification Period) the supply to the expert of any such representations
- 3.2.4 the expert shall be limited in his findings to the proposal put by the Developer PROVIDED THAT if the Council makes representations, the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them AND THAT he shall provide written reasons for his decision and
- 3.2.5 the findings of the expert shall (other than in the case of manifest material error) be final and binding

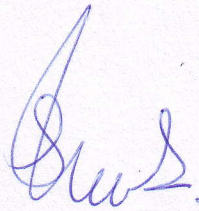
3.3 **Bus Publicity**

Prior to Opening, the Developer will procure publicity of the New Bus Service and will continue to publicise the New Bus Service whilst it remains in service

EXECUTED as a Deed by
TESCO STORES LIMITED acting by

)
)

DIVISIONAL
Director



DIVISIONAL
Director/Secretary



H.M. LAND REGISTRY

TITLE NUMBER

NK 033 10

ORDNANCE SURVEY
PLAN REFERENCE

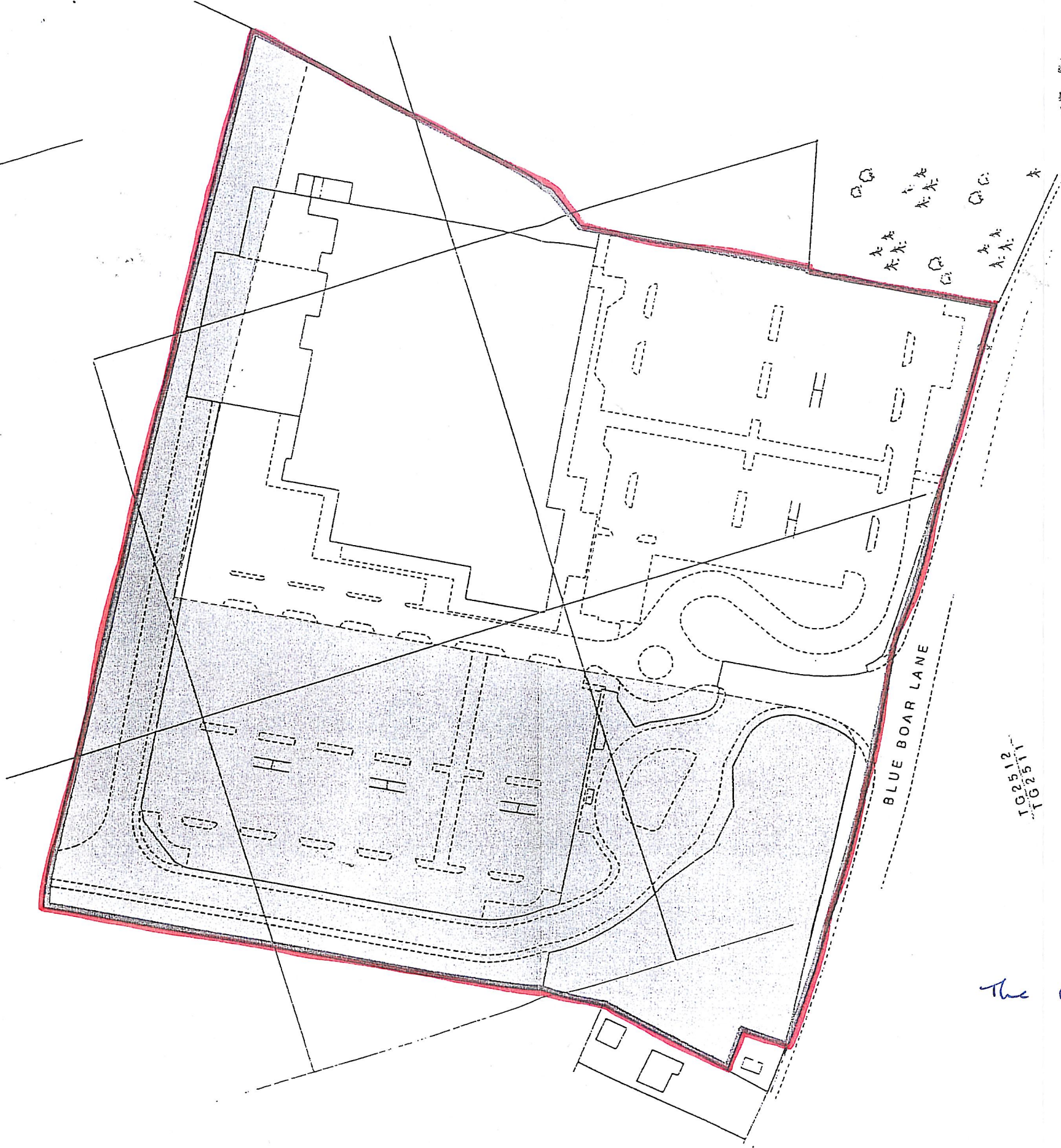
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COUNTY NORFOLK

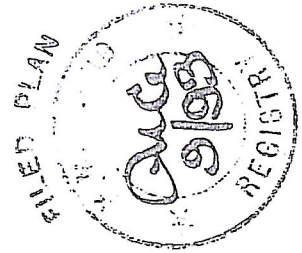
DISTRICT NORWICH

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The Plan

TG2512
TG2511



This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground. For more information see Land Registry Public Guide 7 - Title Plans.
This official copy shows the state of the title plan on 6 December 2004 at 10:21:14.
It may be subject to distortions in scale.
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