

Dated 8 April

2015/6

BROADLAND DISTRICT COUNCIL

and

RGW PORTUGAL LIMITED

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

relating to land on the west side of Hungate Street
Aylsham Norfolk NR11 6JZ

THIS DEED is dated

8 April

20156

PARTIES:

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU (referred to as "the Council")
- (2) **RGW PORTUGAL LIMITED** (registered company number 06217191) whose registered office is at Gable House 239 Regents Park Road London N3 3LF as to the part registered under title number NK262634 (referred to as the "Owner")

together referred to as 'the Parties'

INTRODUCTION

- (A) The Council is a local planning authority 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

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 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 Council's Head of Planning or other officer of the

Council notified to the Owners

Index Linked	Index linked from the date of this Agreement 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 index ceases to be published, another index notified to the Owners by the Nominated Officer)
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 erection of 9 dwellings and allocated reference number 20142017 or another planning permission for the Development granted pursuant to section 73 or 96A of the Act as the Council agrees (in its absolute discretion) in writing
Plan	The plan attached to this Deed
Site	The land known as land on the west side of Hungate Street Aylsham NR11 6JZ and registered at H M Land Registry under title numbers NK262634 and NK430351 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 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 Covenants given by more than one party can be enforced against them individually or jointly
- 2.3 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
- 2.4 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done
- 2.5 This Deed is governed by and interpreted in accordance with the law of England

3. COVENANTS

- 3.1 The Owner covenants with the Council for themselves and their successors in title to observe and perform the obligations and stipulations contained in schedules 1, 2, 3 and 4 to this Deed
- 3.2 The Council covenants with the Owner to comply with their respective obligations contained in Schedules 1, 2, 3 and 4 to 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 (unless the breach occurred before he disposed of his interest)
- 4.2 The Owner confirms that it 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
- 4.3 This Deed will not bind anyone who acquires an interest in part of the Site for the purpose of the supply of utility services
- 4.4 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed up to and including the sum of £750.00
- 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
- 4.8 This Deed shall be registered as a local land charge by the Council.

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 sent via email, 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 relevant
 - 7.2.1 anticipated Triggers seven days in advance of each anticipated date
 - 7.2.2 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

Schedule 1

Recreation and Open Space

In this Schedule the following expressions have the following meanings:

"Complete"	completion of the Dwelling to the stage that it is ready for Occupation
"Off-Site Open Space Contribution"	A financial contribution of £22,323.81 calculated by the Nominated Officer in accordance with the tables at paragraphs 2.1 and 2.2 Index Linked for the acquisition, layout and maintenance of open space in the parish of Aylsham in accordance with the Development Management DPD Open Spaces Policy

1. The Owners covenants with the Council as follows:

- 1.1 Not to Complete the fourth Dwelling on the Development until 50% of the Off-Site Open Space Contribution has been paid to the Council and not to Complete the final Dwelling until the remaining 50% of the Off-Site Open Space Contribution has been paid to the Council

2. Open Space Contributions Table

2.2 Provision

Type of Open Space	Financial contribution				
	1 bed	2 bed	3 bed	4 bed	5 bed +
Formal Recreation					
• Children's play space	83.74	111.66	139.57	167.49	195.40
• Formal Recreation (Sport)	288.54	384.72	480.90	577.08	673.26
Green Infrastructure	426.97	569.30	711.62	853.95	996.27

Allotments	14.50	19.34	24.17	29.01	33.84
The above costs are derived from NORSE contract costs, newly installed play areas in Broadland and Sport England facility costs					

3. The Council covenants with the Owner as follows:

3.1 At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied such obligations have been performed

3.2 The District Council shall pay the Off-Site Open Space Contribution when received into a fund which shall be used exclusively to improve the provision of open space with the Parish of Aylsham

3.3 If the District Council has not used Off-Site Open Space Contribution or any part thereof within 5 years from the date of receipt in accordance with the terms of this Agreement it will on written application be refunded to the Owner together with any interest accrued.

Schedule 2

Affordable Housing

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

- "Affordable Dwellings" the Dwellings to be constructed to Design & Quality Standards on the Site as Affordable Housing and "Affordable Dwelling" shall be construed accordingly
- "Affordable Housing" The Intermediate Rented Housing and Affordable Rented Housing to be provided to Eligible Households whose needs are not met by the market
- "Affordable Housing Mix" The Rented Housing, dwelling types, location and size to consist of:
2 x 2 bedroom 4 person houses
- "Affordable Housing Provision" the construction and provision of Affordable Dwellings on the Site equating to 20% of the total number of Dwellings (or such other percentage as the Council may agree in its absolute discretion) in accordance with the Affordable Housing Mix
- "Affordable Housing Scheme" A scheme securing the Affordable Housing Provision and specifying:

- The timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings;

- The identity of the Provider or such details as the Council requires to satisfy itself that the Affordable Dwellings will be secured as Affordable Housing in perpetuity;

AND, where the parties agree any amendment or alteration to the Affordable Housing Mix or the Affordable Housing Provision:

- The number, location, type and size of Affordable Dwellings to be constructed on the Site;

- full details of the Affordable Housing Mix (such proposal to reflect the Council's up to date strategic housing market assessment and specific local needs as determined and agreed by the Council) including the types of Rented Housing;
- details of the type of tenancy and rent and deposit payments required by tenant;
- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme

"Affordable Dwellings"	Rented	Dwellings to be let by a Provider with an appropriate agreement with the HCA for the provision of affordable rents being controls that limit the rent to no more than 80 per cent of local market rents including any service charges or as otherwise agreed with the Council in writing
"Approved Housing Scheme"	Affordable	the Affordable Housing Scheme approved by the Council in accordance with paragraph 1.1 of this Schedule including any amendment, revision or substitution approved by the Council in writing
"Complete"		a stage of construction such that a Dwelling has a complete roof and all windows and external doors installed and where further works do not ordinarily amount to "development" for the purposes of section 55(1) of the Act and "Complete" and "Completed" shall be construed accordingly.
"Design Standards"	& Quality	the appropriate standards as specified by the HCA or such other construction standards as the Council may specify
"Eligible Household"		A person or persons in need of accommodation who are unable to rent or buy on the local open market nominated by the Council in accordance with Schedule 3 and determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council

"HCA"		the Homes & Communities Agency or it's successor body or other appropriate body as the Council may nominate
"Intermediate Dwellings"	Rented	Dwellings at rents above those of Social Rented Dwellings but below local market rents that Eligible Households can afford (which shall be no more than 80% of local market rents including any service charges and shall not exceed the local housing allowance for that area) as determined by the Council
"Open Market Dwelling"		Any Dwelling constructed as part of the Development which is not an Affordable Dwelling
"Provider"		either: <ul style="list-style-type: none"> (i) a Registered Provider; or (ii) another organisation that owns the Affordable Dwellings and has been approved in writing by the Council
"Public Subsidy"		funding provided by the Council, the HCA or any other public body or successor body towards the provision of Affordable Housing
"Registered Provider"		Is as defined in the Housing and Regeneration Act 2008
"Rented Housing"		one or more of Affordable Rented Dwellings and Social Rented Dwellings and Intermediate Rented Dwellings
"Social Rented Dwellings"		Dwellings owned or managed by a Provider let at rents not exceeding the Target Rent
"Target Rent"		The rent for Social Rented Dwellings as determined by the national rent regime published by the HCA or any subsequent replacement or where there is no such replacement at a rent determined by the Council

The Owners hereby covenants with the Council as follows:

- 1.1 Not to Commence the Development until the Affordable Housing Scheme has been submitted to and approved by the Council in writing
- 1.2 Not to Occupy the first Open Market Dwelling until an exchanged unconditional contract for the sale of the Affordable Dwellings to a Provider has been supplied to the Council SAVE THAT where the Council agrees that the Affordable Dwellings are not to be transferred this obligation shall not apply
- 1.3 Not to construct the Affordable Dwellings otherwise than in accordance with the Approved Affordable Housing Scheme and the timescales and details set out therein.
- 1.4 Not to Occupy more than 50% of the Open Market Dwellings until all of the Affordable Dwellings to be provided under the Approved Affordable Housing Scheme are Complete and have been transferred to the approved Provider (or where no transfer is required their ongoing provision has been secured) in accordance with and subject to the following terms:
 - a) for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed;
 - b) free from all financial charges, adverse rights, restrictions or other encumbrances which would interfere with the use of the Affordable Dwellings as Affordable Housing;
 - c) with the benefit of all necessary easements, rights and utilities; and
 - d) any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme
 - e) any transfer shall contain provisions that will ensure that all the Rented Housing are let in accordance with the local lettings policy set out in the Third Schedule
- 1.5 Not to use the Affordable Dwellings for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme PROVIDED THAT the obligations contained in this Schedule shall not be binding upon:

1.5.1 a mortgagee or chargee (or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a "Receiver") of the whole or any part of the Affordable Dwelling or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT it is has first complied with the following:

- a) such mortgagee or chargee or Receiver shall first give notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses; and
- b) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the obligations contained in this Schedule which provisions shall determine absolutely in relation to the affected Affordable Dwellings

2. Nomination Rights to the Affordable Dwellings

- 2.1 If in the event the Owner becomes the Provider for the Affordable Housing then the Affordable Dwellings are to be let in accordance with the nominations agreement set out in Schedule 4 respectively.

Schedule 3

AFFORDABLE HOUSING LOCAL LETTING POLICY: LOCAL CONNECTION ELIGIBILITY CRITERIA

Up to one third (or such other amount as the Council shall reasonably require) of the Rented Housing (as chosen by the Council) shall be let on first occupation in accordance with the local lettings policy set out below:

- (i) first allocations shall be made to people living in the Parish of Aylsham;
- (ii) if there is no suitable person in paragraph (i) allocations will be made to people who work in the Parish of Aylsham
- (iii) if there are no suitable persons in paragraphs (i) and (ii) allocations will be made to people who need to move to the Parish of Aylsham to give/receive support to/from close family
- (iv) If there are no suitable persons in paragraph (i) and/or (ii) and/or (iii) above, allocations will be made to households living in the Broadland District in accordance with the Council's policies relating to housing allocation or where no such persons are available to an Eligible Household as approved by the Council

Administrative Procedure for Nominations

- To grant to the Council nomination rights to 100% of the Rented Housing
- The administrative procedure for nominations shall be in accordance with the Council's housing allocations policy as amended from time to time or in accordance with alternative procedures as the Council and the Owners shall agree between them

Schedule 4

Nominations Agreement

- 1.1 Not later than six weeks prior to first occupation the Provider shall give to the Council's Housing Register Team notice of those Dwellings available for occupation;
- 1.2 no more than two weeks following submission of the information required by clause 1.1 above the Council shall send to the Provider details of an Eligible Household in accordance with Schedule 2
- 1.3 the Provider shall then arrange a viewing and (provided the Eligible Household is acceptable to the Provider who shall not unreasonably withhold or refuse such acceptance) offer a 6 month assured shorthold tenancy of the Dwelling to the Eligible Household subject first to assessment by the Provider to ensure that the Dwelling is appropriate for the applicant's needs. The provider shall notify the Council not later than 5 working days following such an assessment if the Provider deems the Dwelling not to be appropriate for the Eligible Household. The Council will re-nominate not later than 5 working days after receipt from the Provider.
- 1.4 an offer of a tenancy shall be taken to be rejected if an applicant fails to sign a tenancy agreement within 5 working days of it being offered following a viewing of the Dwelling or following the receipt of a refusal of the tenancy from the applicant either verbally or in writing.
- 1.5 in the event that the Eligible Household rejects the tenancy agreement offered by the Provider, the Council shall nominate an alternative Eligible Household within 5 working days, and the Provider shall then follow the procedure set out in clause 1.3 above.
- 1.6 in the event that a Dwelling remains unoccupied after three Eligible Households have failed to sign the tenancy agreement offered (or 60 days have passed since

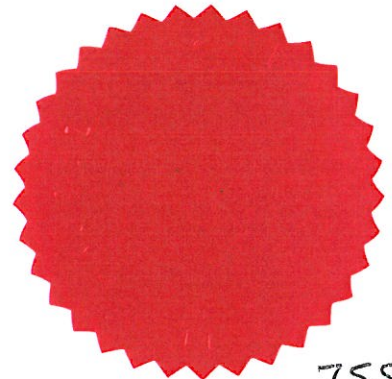
the date of the notice referred to in clause 1.1), the Provider shall be at liberty to identify, nominate and let the Dwelling to an alternative tenant.


2. The procedure for nomination at subsequent lettings shall be as follows:
 - 2.1 not later than 5 working days after the date when the Dwelling becomes available for re-let the Provider shall give notice of the Dwelling available for occupation to the Council's housing register team
 - 2.2 not later than 5 working days after the Provider's notice the Council shall send to the Provider details of an Eligible Household for the Dwellings in accordance with Schedule 2
 - 2.3 the Provider shall then arrange a viewing and (provided the Eligible Household is acceptable to the Provider who shall not unreasonably withhold or refuse such acceptance) offer a 6 month assured shorthold tenancy of the Dwelling to the Eligible Household subject first to assessment by the Provider to ensure that the Dwelling is appropriate for the applicant's needs. The provider shall notify the Council not later than 5 working days following such an assessment if the Provider deems the Dwelling not to be appropriate for the Eligible Household. The Council will re-nominate not later than 5 working days after receipt from the Provider.
 - 2.4 an offer of a tenancy shall be taken to be rejected if an applicant fails to sign a tenancy agreement within 5 working days of it being offered following a viewing of the Dwelling or following the receipt of a refusal of the tenancy from the applicant either verbally or in writing.
 - 2.5 in the event that the Eligible Household rejects the tenancy agreement offered by the Provider, the Council shall nominate an alternative Eligible Household within 5 working days, and the Provider shall then follow the procedure set out in clause 2.3 above.

2.6 in the event that a Dwelling remains unoccupied after three Eligible Households have failed to sign the tenancy agreement offered (or 30 days have passed since the date of the notice referred to in clause 2.1), the Provider shall be at liberty to identify, nominate and let the Dwelling to an alternative tenant.

IN WITNESS whereof the parties to this Deed 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:



..... M. Mue
Authorised Signature 

7555

EXECUTED as a Deed by X
RGW PORTUGAL LIMITED acting by a director
in the presence of:

Witness' signature:

Witness' full name:  MR DARREN COVE

Witness' address: 1 POND COTTAGE ANTINGHAM NORFOLK NR28 0WJ

Witness' occupation: Builder