

**Planning Obligation by Deed of Agreement  
under Section 106 of the Town and Country  
Planning Act 1990**

relating to the development at The Crescent,  
Drayton

Dated : 07 AUGUST 2013

Broadland District Council (1)  
Bullen Investments Limited (2)

DATE 07 AUGUST 2013

#### PARTIES

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Norwich, Norfolk NR7 0DU ("Council")
- (2) BULLEN INVESTMENTS LIMITED of The Lowlands, Drayton, Norwich, Norfolk NR8 6HA ("Owner")

#### INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site registered with the Land Registry under title number NK275512.
- 3 The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

#### OPERATIVE PART

##### 1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

<b>"Act"</b>	the Town and Country Planning Act 1990.
<b>"Affordable Housing"</b>	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market.
<b>"Affordable Housing Rent"</b>	80% of the rent that would be charged for the lease of the Affordable Housing Unit if it were a Market Housing Unit of equivalent size.
<b>"Affordable Housing Unit"</b>	the Dwelling together with space for car parking shown on the drawing attached to this deed at Appendix 2.
<b>"Affordable Housing Tenant"</b>	the Eligible Tenant in occupation of the Affordable Housing Unit.
<b>"Application"</b>	the application for full planning permission dated 22 April 2013 submitted to the Council for the Development and allocated reference number 20130539.
<b>"Approved Eligible Tenant"</b>	an Eligible Tenant approved by the Owner for occupation of the Affordable Housing Unit in accordance with paragraph 2.2 of the Second Schedule.
<b>"Chargee"</b>	any mortgagee or chargee or the successors in title to such mortgagee or chargee or any receiver or manager

(including an administrative receiver) appointed pursuant to the Law of Property Act 1925.

<b>"Commencement of Development"</b>	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.
<b>"Development"</b>	the development of the Site with the demolition of 6 existing dwellings and the construction of 10 new dwellings with associated vehicle access and landscaping as set out in the Application.
<b>"Dwelling"</b>	any unit of residential occupation being a self-contained house, maisonette, bungalow or flat constructed as part of the Development and "Dwelling" shall be construed accordingly
<b>"Eligible Tenant"</b>	a potential occupant of the Affordable Housing Unit identified by the Council in accordance with the Third Schedule.
<b>"Interest"</b>	interest at 4 per cent above the base lending rate of the Barclays Bank Plc from time to time.
<b>"Market Housing Units"</b>	those Dwellings which are general market housing for sale on the open market and which are not Affordable Housing.
<b>"Occupation" and "Occupied"</b>	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
<b>"Plan"</b>	the plan attached to this Deed at Appendix 1.
<b>"Planning Permission"</b>	the full planning permission subject to conditions to be granted by the Council pursuant to the Application.
<b>"Practical Completion"</b>	Issue of a certificate of practical completion by the Owner's architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect.
<b>"Registered Provider"</b>	A provider of social housing registered in the register kept by the Regulator of Social Housing as provided for in Chapter 3 of the Housing and Regeneration Act 2008 (or any statutory re-enactment or modification thereof).

**“Repair and Major Works Standards”**

the standards set out in the Fourth Schedule.

**“Site”**

the land against which this Deed may be enforced (save where expressly stated otherwise) as shown edged red on the Plan.

**2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the 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 respective statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.

**3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority.

**4 CONDITIONALITY**

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 8.1, 14, 15 and 16 which shall come into effect immediately upon completion of this Deed.

**5 THE OWNER'S COVENANTS**

- 5.1 The Owner covenants with the Council so as to bind the Site or a part of the Site as set out in the Second Schedule.

**6 THE COUNCIL'S COVENANTS**

- 6.1 The Council covenants with the Owner as set out in the Third Schedule.

## **8 MISCELLANEOUS**

- 8.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, and execution of this Deed.
- 8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.3 This Deed shall be registered as a local land charge by the Council.
- 8.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Development and Building Control. Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 8.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 8.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.9 Save for the obligations contained in the Second Schedule this Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 8.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 8.11 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority.

## **10 WAIVER**

No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **11 INDEXATION**

Any sum referred to in the Second Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

**12 INTEREST**

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

**13 VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

**14 DISPUTE PROVISIONS**

14.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

**15 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

**16 DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

## FIRST SCHEDULE

### **Details of the Owner's Title, and description of the Site**

The freehold Site named 'The Crescent', north of Taverham Road and south-west of Fakenham Road, in Drayton, Norwich registered at the Land Registry under title number NK275512 and shown edged red on the Plan.



## SECOND SCHEDULE

### The Owner's Covenants with the Council

#### **Affordable Housing**

- 1 The Owner covenants so as to bind the Site not to Occupy more than eight Market Housing Units before the Affordable Housing Unit has been constructed in accordance with the Planning Permission and made ready for residential occupation.
- 2 The Owner covenants so as to bind the Affordable Housing Unit with the effect that the covenants shall relate to and be enforceable only against the Affordable Housing Unit:
  - 2.1 that subject to the provisions of this Schedule 2 from the date of Practical Completion of the Affordable Housing Unit it shall not be used other than for Affordable Housing and Occupied other than by an Approved Eligible Tenant or a Chargee or any person deriving title from the Approved Eligible Tenant or any successor in title thereto;
  - 2.2 that following receipt from the Council of details of an Eligible Tenant the Owner shall:
    - 2.2.1 acting reasonably decide whether or not to approve the Eligible Tenant for occupation of the Affordable Housing Unit; and
    - 2.2.2 notify the Council of its decision;
  - 2.3 that unless otherwise agreed with the Council the Owner shall not allow or permit occupation of the Affordable Housing Unit other than at a rent not exceeding the Affordable Housing Rent;
  - 2.4 that the Owner shall maintain and manage the Affordable Housing Unit in accordance with the Repair and Major Works Standards in Schedule 4 of this Agreement;
- 3 The obligations in this Schedule 2 shall not be binding upon:
  - 3.1.1 a Chargee of the Affordable Housing Unit PROVIDED THAT such Chargee acting pursuant to any event of default shall first give written notice to the Council of its intention to dispose and shall have used reasonable endeavours over a period of twelve weeks from the date of the written notice to dispose of the Affordable Housing Unit to a Registered Provider or to the Council for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies, interest and costs and expenses incurred by the Chargee in respect of the mortgage or charge. If such disposal has not taken place within the twelve week period, the Chargee shall be entitled to dispose of the Affordable Housing Unit free from the affordable housing provisions in this Agreement which shall determine absolutely;
  - 3.1.2 the Affordable Housing Unit where the Affordable Housing Unit has been transferred to a Registered Provider and that Registered Provider is required to dispose of such

Affordable Housing Unit pursuant to a right to buy under Part V of the Housing Act 1985 or the Right to Acquire pursuant to Section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable;

- 3.1.3 an occupier who has exercised a statutory right to acquire or right to buy in respect of a particular Affordable Housing Unit.

### THIRD SCHEDULE

#### **Council's Covenants**

1. Within 5 working days of receiving notice from the Owner that the Affordable Housing Unit is or is about to become vacant the Council shall identify one or more Eligible Tenants and provide the Owner with the details of such Eligible Tenants.
2. Within 5 working days of receiving notice from the Owner in accordance with paragraph 2.2 of Schedule 2 that no Eligible Tenants are approved the Council shall identify one or more alternative Eligible Tenants and provide the Owner with the details of such alternative Eligible Tenants.
3. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

#### FOURTH SCHEDULE

##### **Repair and Major Works Standards**

- 1 Agree an appointment that is convenient for the Affordable Housing Tenant and the Owner. This will normally either be a morning or afternoon appointment.
- 2 Treat the Affordable Housing Unit with respect as the home of the Affordable Housing Tenant.
- 3 Show the Affordable Housing Tenant proof of identity before entering the Affordable Housing Unit.
- 4 Aim to complete the work in one visit and let the Affordable Housing Tenant know when the work will be finished.
- 5 Carry out an annual safety inspection of gas installations installed within the Affordable Housing Unit.
- 6 Tell the Affordable Housing Tenant when the Affordable Housing Unit is due for any improvements.
- 7 Where possible, offer the Affordable Housing Tenant choice about improvements to the Affordable Housing Unit if the Affordable Housing Tenant has at all times complied with the tenancy agreement.
- 8 Provide the Affordable Housing Tenant with a named liaison member of staff before, during and after any major improvement works.
- 9 Keep the Affordable Housing Tenant informed throughout the work.

THE COMMON SEAL OF BROADLAND DISTRICT COUNCIL )  
was affixed in the presence of: )


  


Authorised Signatory:




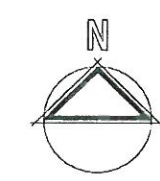
EXECUTED AS A DEED by BULLEN INVESTMENTS LIMITED )  
in the presence of: )

Director:

  
DIRECTOR

Director/Secretary:

 WITNESS



North Point



*M. Anne*  
Head of Democratic Services and  
Monitoring Officer

**BROADLAND  
DISTRICT COUNCIL**  
22 Apr 2013  
20130539  
**PLANNING CONTROL**

REV	DATE	DESCRIPTION	DRAWN	CHECKED BY
Revisions				

**Planning**

**Bullen Investments Ltd**  
The Crescent  
Drayton

**Site Location Plan**

**4421**

**PL01**

19/04/2013 1:1250

Chaplin Barratt Limited  
51 Yarmouth Road  
Norwich  
NR4 6ET  
Tel: 01603 700000  
Fax: 01603 700001  
office@chaplinbarratt.com  
www.chaplinbarratt.com

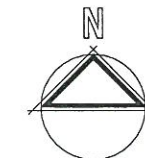
Also at:  
London  
Winchester  
Stratford-upon-Avon  
Great Yarmouth

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*N. W. [Signature]*  
Director





Affordable dwelling shown blue

Site boundary shown red

REV	DATE	DESCRIPTION	DRAWN	CHECKED BY
Revisions				
1				



**Planning**

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NR7 9ET  
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**Bullen Investments Ltd**  
Client  
**The Crescent**  
Drayton

**Site Plan Indicating Affordable Housing**

**4421**

**PL11**

**18/06/2013**

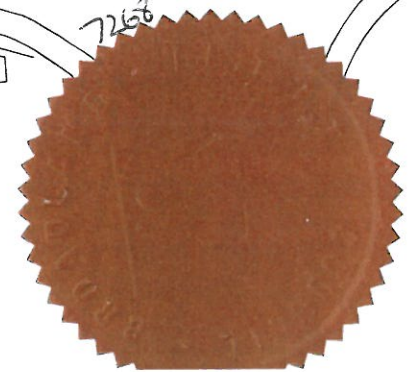
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Check all dimensions and report any errors or omissions.

0 50m  
Scale 1:500

TAVERHAM ROAD

THE CRESCENT

M. Murrell  
Head of Democratic Services and Monitoring Officer



N. 12  
Director