

Dated 15 August 2016

BROADLAND DISTRICT COUNCIL

- and -

GRAY'S OF NORWICH LIMITED

- and -

SPIXWORTH PARISH COUNCIL

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

relating to land adjacent to St. Marys Care Home, North Walsham Road, Spixworth,
Norfolk

THIS DEED is dated

15 AUGUST

2016

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, NR7 0DU (referred to as "the Council")
- (2) GRAY'S OF NORWICH LIMITED, Company number 03398766 whose registered office is at Brickyard Farm, Hall Lane Drayton, Norwich, Norfolk, NR8 6HH (referred to as "the Owner")
- (3) SPIXWORTH PARISH COUNCIL of Council office, Village Hall, Crostwick Lane, Spixworth, Norwich, NR10 3NQ (referred to as "the Parish Council")

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) Spixworth Parish Council are the Parish Council for the area within which the Site is located and have agreed to take a long lease of the Allotment Site
- (D) Spixworth Parish Council is the Trustee of charity number 273019 – Spixworth Playing Field and Village Hall ("the Charity") which is responsible for the Path Land, the title to which is vested in the Official Custodian for Charities
- (E) 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.
Affordable Housing Contribution	<p>(i) For the period of 3 years following the date of this Deed £175,000</p> <p>(ii) Thereafter either the Market Value Sum or £175,000 whichever is higher.</p>
Allotment Site	that part of the Site shown edged blue on the Plan.
Allotment Specification	<p>the specification for the laying out of the allotments and provision of</p> <ul style="list-style-type: none">a) two concrete paths; andb) two insulated water stand pipes with a sub-meter taken from the water feed to the village hall as shown on the Plan to the Allotment Site, <p>all as approved by the Council in consultation with the Parish Council.</p>
Commencement	<p>The date on which a material operation as defined in Section 56(4) of the Act is first carried out, except operations consisting of:</p> <ul style="list-style-type: none">site clearancedemolitionarchaeological investigationsground surveysremoval of contaminationerection of temporary fences <p>and 'Commence' and 'Commenced' will be</p>

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.
Expert	A chartered surveyor agreed upon by the parties or in default of agreement such chartered surveyor who shall be appointed by the President of the Royal Institution of Chartered Surveyors on the application of either party.
Market Value Sum	The market value from time to time of the Dwelling built or to be built on Plot 3 of the Development being the price at which the Dwelling would be sold on the open market with proper advertising and marketing and with a willing buyer and a willing seller.
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

Path	The path to be constructed on the Path Land.
Path Land	The land shown coloured yellow on the Plan.
Path Specification	The specification for the laying out, lighting and construction of the Path on the Path Land (including the erection of low level fencing between the points marked A and B on the Plan) as approved by the Council and the Parish Council.
Permission	The planning permission to be granted by the Council for 18 new supported retirement bungalows and 20 allotments and allocated reference number 20150991 or if the Council agrees (in its absolute discretion) in writing another planning permission for the Development granted pursuant to section 73 of the Act or a replacement permission for the Development.
Plan	The plan attached to this Deed.
Site	The land known as land adjacent to St Marys Care Home, North Walsham Road Spixworth Norfolk and registered at H M Land Registry under title number NK108271 shown edged by a red dashed line on the Plan with the exception of that half of the entrance to the Site hatched red on the Plan, which the owner has a right of way over

Lease	A 999 year lease granted by the Owner to the Parish Council for a nil premium and a rent of £1.00 per annum in a form reasonably approved by the Parish Council. (For the avoidance of doubt there will be no restriction on the ability of the Parish Council to erect suitable fencing of a type reasonably approved by the Owner on the boundaries of the Allotment Site should it so decide).
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 It is agreed by the Parties:

2.2.1 That there are 2 planning obligations pursuant to Section 106 of the Act and each planning obligation is set out in a separate Schedule to this Deed

2.2.2 That each Schedule to this Deed which sets out how the planning obligation will be performed and sets out the infrastructure or infrastructure project which will be effected will not amount to more than one planning obligation per Schedule for the purposes of

Regulation 123 of the Community Infrastructure Levy Regulations
2010, as amended.

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

3. COVENANTS

- 3.1 The Owner covenants with the Council and the Parish Council for himself and his successors in title to observe and perform the obligations and stipulations contained in this Deed.
- 3.2 The Council covenants with the Owner to comply with their respective requirements contained in this Deed.
- 3.3 The Parish Council covenants with the Owner and the Council to comply with their respective requirements contained in 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 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.
- 4.3 In the event of the Parties not agreeing the Market Value Sum either party may refer the matter to an Expert for determination, with the procedure to be followed being as specified by the Expert and with the costs of the determination to be borne by the parties equally.
- 4.4 This Deed will not bind anyone who acquires an interest in part of the Site for the purpose of the supply of utility services.
- 4.5 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed and will contribute to £1,500 + VAT to the Parish Council's costs in entering into this Deed, entering into the Lease and procuring the entering into of the deed of easement referred to in paragraph 8 of the Second Schedule.
- 4.6 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 4.7 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions.
- 4.8 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.

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 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

Allotments

1. The Owner covenants with the Council and the Parish Council as follows:

- 1.1 not to Commence the Development until the Allotment Specification has been submitted to and approved with confirmation from the Council in consultation with the Parish Council.
- 1.2 not to Commence the Development until the Lease or an agreement for the granting of the Lease has been completed.
- 1.3 not to Occupy more than 9 of the Dwellings until the works comprising the Allotment Specification have been completed to the satisfaction of the Council and the Parish Council and, if an agreement for the granting of the Lease has been entered into in accordance with paragraph 1.2 the Lease has been completed.

2. The Parish Council covenants with the Owner as follows:

- 2.1. The Parish Council covenants to enter into the Lease and to act reasonably in agreeing its terms.

Over 55 years Occupancy Restrictions

- 3. The Owner covenants with the Council.
- 3.1 The Dwellings must not be occupied by persons under the age of 55 years provided that such restriction shall not prevent occupation by:

- 3.1.1. a younger partner of someone who is 55 or over and in occupation
- 3.1.2. the younger partner if the older partner who is 55 or over dies and had until his or her death been in occupation
- 3.2 Not to dispose of a Dwelling unless all reasonable steps have been taken to ensure the new occupier will comply with the occupancy restriction.
- 3.3 To provide to the Council on request such reasonable evidence as it may require to check compliance with the occupancy restriction.

Affordable Housing Contribution

- 4. The Owner covenants with the Council.
 - 4.1. To pay the Affordable Housing Contribution to the Council before more than 9 of the Dwellings are Occupied.
 - 4.2. Not to Occupy more than 8 of the Dwellings until the Affordable Housing Contribution has been paid.
- 5. The Council covenants with the Owner to use the Affordable Housing Contribution for the provision of affordable housing within the Broadland District within 10 years of the date of its payment and to refund to the Owner (or as it may direct) any part of the Affordable Housing Contribution which it has not used for such purpose forthwith after the expiry of such period.

Footpath Link

- 6. The Owner covenants with the Council and the Parish Council.

- 6.1 To carry out the works included in the Path Specification in a good and workmanlike manner to the reasonable satisfaction of the Parish Council before any of the Dwellings are Occupied.
- 6.2 To maintain the Path in good condition to the reasonable satisfaction of the Parish Council for a period of 2 years from its completion.
- 6.3 To install any sewer constructed under the Path Land in a good and workmanlike manner and to a specification previously approved by the Parish Council.
- 6.4 To maintain in good condition any sewer installed pursuant to paragraph 6.3.
- 6.5 To remedy any damage caused to the Path or adjoining land in consequence of the installation and use of any sewer installed pursuant to paragraph 6.3.
- 6.6 To indemnify the Parish Council in respect of any costs, claims or demands it incurs in consequence of the installation and use of any sewer installed pursuant to paragraph 6.3 in so far as it relates to the Path Land.
7. The Parish Council consents to the works included in the Path Specification (including the installation of a foul sewer pipe or conduit leading from the pumping station serving the Development under the Path) being carried out on its land and to the Path Land being available as a means of access to and from the Dwellings in perpetuity
8. The Parish Council will use its best endeavours to enter into a deed of easement in connection with the sewer under, and right of way over, the Path Land as soon as possible, in such reasonable form as the Owner and the Parish Council shall agree. Until such time as the deed of easement is completed the Parish Council will grant a licence to the Owner (when requested by him) to enter its land and the Path Land for the purpose of

constructing, maintaining and using the sewer and right of way over the Path Land subject to the following terms:

8.1 An initial period of 5 years and thereafter determinable by the Parish Council if use of the sewer and Path ceases and

8.2 the Parish Council agreeing in the same to grant new licences on the transfer of parts of the Site to the transferees of those parts on no less favourable terms

Schedule 2

On-site Amenity Area

1. In this Schedule the following expressions have the following meanings:

Approved On-Site Amenity Area Scheme	A scheme for the laying out and equipping of the On-Site Amenity Area approved in writing by the Nominated Officer.
On-Site Amenity Area	Those parts of the Site that do not comprise the Allotment Site, the Dwellings, the curtilage, footpaths and parking, seating and bin storage areas for the Dwellings and the access road and footpath.
Management Arrangement	The arrangements approved by the Council for the management and maintenance of the On-Site Amenity Area by the Management Company (including the arrangements for securing the costs for undertaking these tasks).
Management Company	A company to manage the On-site Amenity Area approved by the Council.

2. The Owner covenants with the Council as follows:

- 2.1 Not to occupy any Dwellings until the Management Company and the Management Arrangements are in existence.
- 2.2 Not to Occupy more than 9 of the Dwellings until the On-Site Amenity Area is made available for use by the residents of the Dwellings and their visitors.

2.3 To comply with the Management Arrangements.

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 hereunto affixed

)
)
)



Authorised Signatory:

)

7623

CHIEF EXECUTIVE

Signed as a Deed by two members of
SPIXWORTH PARISH COUNCIL

) M. Baggaley
)

in the presence of:

) Beckey Buck

Signed as a Deed by two members of
SPIXWORTH PARISH COUNCIL in
its capacity as trustee of the Charity

) M. Baggaley

) 

in the presence of:

) Beacy Back

Executed as a deed by GRAY'S OF
NORWICH LIMITED

)

)

acting by a director In the presence of:

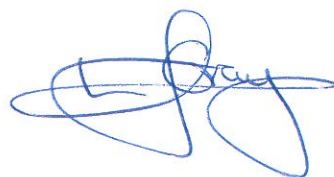
)

Director: L. A. GRAY

)

Signature of Director:

)



Name of Witness (in BLOCK CAPITALS):

) TRACY JANE GUEST

Signature of witness

) 

Address of Witness:

) Unit 8 Beech Avenue
Taweham
Norwich
Norfolk
NR8 6HW