

Dated 5th March

2021

Broadland District Council
-and-
Harold Jones (Farms) Limited
-and-
Edward Harold Jones

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

relating to land at Hall Farm, Reepham Road, Little Witchingham NR9 5NY

THIS DEED is dated 5th March

2021

PARTIES:

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Norwich, NR7 0DU (referred to as "the Council")
- (2) **HAROLD JONES (FARMS) LIMITED** (Co. Regn. No. 00493281) whose registered office is at Church Farm, Little Witchingham, Norfolk, NR9 5PA (referred to as "the Developer")
- (3) **EDWARD HAROLD JONES** of Church Farm, Church Road, Little Witchingham, Norwich NR9 5PA (referred to as "the Owner")

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) 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 NK435486 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

	<p>ground surveys</p> <p>removal of contamination or other adverse ground conditions</p> <p>erection of temporary fences</p> <p>temporary display of site notices and/or advertisements</p> <p>and 'Commence' and 'Commenced' will be construed accordingly</p>
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	<p>Occupation of the Site, or any part of it, for any purpose authorised by the Permission, but excluding occupation for the purposes of:</p> <p>construction</p> <p>internal and external refurbishment</p> <p>decoration</p> <p>fitting-out</p> <p>marketing</p> <p>and 'Occupy' and 'Occupied' will be construed accordingly</p>
Permission	The planning permission to be granted by the Council for the conversion of barns to 5 dwellings with associated landscaping and parking and allocated reference number 20201592
Plan	The plan attached to this Deed
Site	The land known as Hall Farm, Reephams Road, Little Witchingham, NR9 5NY and registered at H M Land Registry under title number NK435486 shown edged

Red line boundary = approximately 4,998m² / 0.4998 hectares



Deputy Monitoring Officer

The Belt

The Ring

2.4m x 90m
visibility splay

REEPHAM ROAD

Little
Witchingham
Hall

Pond

Refuse
collection
point

Hall Cottages

MARKS CLOSE LANE

Park View

■ = Additional
land owned by
the applicant.

0 50m

Red line alteration
Refuse collection point and visibility splay
included in area.

rev.	date	description	issued by	chk'd
7	17/11/20			
6	12/11/20			
5	10/09/20	Areas altered		
4	27/07/20	Blue shading added		
3	07/07/20	Blue line added		
2	01/07/20	Site area revised		
1	17/06/20			

rev.	date	description	issued by	chk'd
7	17/11/20			
6	12/11/20			
5	10/09/20			
4	27/07/20			
3	07/07/20			
2	01/07/20			
1	17/06/20			

NOTES
Do not scale from this drawing. Use figured dimensions only.
All dimensions to be checked on site.
All drawings to be read in conjunction with other contract documentation.
Any discrepancies to be reported to the Contract Administrator before any work commences.
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client: E Jones
project: Hall Farm, Little Witchingham
dwg title: Location Plan
discipline: ARCHITECTURE
project no: 51399
dwg no: DR-A-0001
scale @ A3
date: 04/07/20
1:1250
status: Planning

BIDWELLS
Trumpington Road
Cambridge CB2 8LD
t: 01223 841841
f: 01223 845150
bidwells.co.uk

Trigger

red on the Plan

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 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 5, 6.4, 7, 8, 9 and any 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 covenants with the Council for himself and his 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 their respective requirements contained in this Deed.
- 4.3 The Council covenants with the Owner and 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 Nothing in this Deed binds the Developer to pay;
 - 5.3.1 any contribution before the date on which it is due under the Schedules, or
 - 5.3.2 any contribution at all if the relevant due date is not reached, or
 - 5.3.3 any greater contribution than provided in the relevant Schedule.
- 5.4 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.
- 5.5 The contributions specified in the Schedules are to be increased in line with the Inflation Provision.
- 5.6 In the event of any delay in paying the contributions specified in the Schedules then from the due date of payment:
 - 5.6.1 the contributions are a debt due to the Council and are recoverable by action by the Council; and
 - 5.6.2 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.

5.7 All payments under this Deed are exclusive of value added tax (VAT) and any VAT due must also be paid.

5.8 Any money from time to time held by the Council in respect of any payment made to the Council by the Owner 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:

5.8.1 becomes bankrupt or has a winding-up petition or a petition for an administration order presented against it, or

5.8.2 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

5.8.3 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.

5.9 The Council may spend part of each contribution specified in the Schedules 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 the 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 written request of the Owner and/or Developer, 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 7 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:

"Approved Open Space Scheme"	The Open Space Scheme as approved by the Nominated Officer including any amendment or substitution agreed by the Nominated Officer in writing
"Inflation Provision"	The increase (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service All in Tender Price Index between January 2015 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 and / or Open Space Maintenance Contribution (if any) allocated to the provision and maintenance of green infrastructure as detailed in Part 3 of this Schedule
"Management Company"	A company to be set up for the purposes of managing and maintaining the Open Space in perpetuity
"Nominated Body"	One of the following as determined by the Council: a) the Council; b) the town or parish council for the area within which the Site is located; c) the Management Company; or d) such other body as the Council may elect as being responsible for maintenance of the Open Space
"Off-Site Open Space Contribution"	A sum in lieu of any deficiency in the amount or type of Open Space being provided compared to that required in accordance with the Councils current Open Space Policies 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 provision of Open

"Open Space"	<p>Space in the parish of Little Witchingham and in the case of the Green Infrastructure Contribution to be used at or 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</p> <p>Land to be set aside 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 Policies</p>
"Open Space Maintenance Contribution"	<p>A financial contribution towards the repair and maintenance of the Open Space within the Site to be calculated in accordance with Part 3 of this Schedule and increased in line with the Inflation Provision</p>
"Open Space Policies"	<p>Means 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 or such replacement policies or documents as the Council may specify (or any amendment or revision therefore) relating to the provision of open space, recreation, sport, allotments, green infrastructure and other similar types of amenity land and facilities</p>
"Open Space Scheme"	<p>A scheme securing the provision of Open Space calculated in accordance with Part 4 of this Schedule (unless the Nominated Officer agrees an Off-Site Open Space Contribution in lieu of part or all of the Open Space in which case such lower amount as the Nominated Officer agrees) and containing:</p> <ul style="list-style-type: none"> - full details of the amount of sport, play, allotment and green infrastructure provision to be provided in line with the Open Space Policies - the extent, location and boundaries of the Open Space - details of the design and layout of the Open Space all equipment, drainage features, access arrangements, street furniture, fencing and landscaping together with appropriate plans drawings and specifications - details of the ongoing management and maintenance of the Open Space including whether a Management Company is proposed as the Nominated Body - such other information as the Council may

reasonably require to enable approval of the Open Space Scheme

Standard Terms

In accordance with the reasonable requirements of the Council in consultation with the Nominated Body to include:

- the transfer of the freehold estate of the Open Space Unencumbered with full title guarantee
- for a sum not exceeding £1 (one pound)
- with the benefit of all necessary rights and easements and with vacant possession
- subject to a restriction on the future use of the Open Space for recreational and amenity purposes by the general public
- an obligation to maintain the Open Space to a standard suitable for use by members of the public
- a requirement that the Nominated Body's conveyancing fees and disbursements are paid for by the Owner

"Unencumbered"

Means free from all adverse rights, easements, restrictions or other encumbrances which would interfere with the use of the Open Space Land as public open space and all encumbrances which might result in additional cost or liability to the Nominated Body not normally associated with the use of the Open Space

The Developer and Owner hereby covenant with the Council as follows:

1. OPEN SPACE

- 1.1 Not to Commence the Development until the Open Space Scheme has been submitted to and approved in writing by the Nominated Officer
- 1.2 Where the Nominated Officer has agreed to a deficiency in the amount of Open Space within the Site to pay the Off-Site Open Space Contribution prior to first Occupation of any Dwelling

2. ON-SITE OPEN SPACE

Where Open Space is to be provided within the Site under the Approved Open Space Scheme:

- 2.1 To layout and provide the Open Space in accordance the Approved Open Space Scheme to the written satisfaction of the Council
- 2.2 Not to Occupy any Dwellings otherwise than in accordance with and subject to the timetable contained within the Approved Open Space Scheme and the

planning conditions imposed by the Planning Permission

- 2.3 To thereafter maintain the Open Space Unencumbered to a standard suitable for use by members of the public as approved by the Nominated Officer and not to use the Open Space for any purpose other than public recreation and amenity land for the general public
- 2.4 Not to Occupy more than 80% of the Dwellings unless:
- a) Where the Management Company is the Nominated Body:
 - i) the Management Company has been created to the satisfaction of the Council; and
 - ii) the memorandum and articles of association and the form of transfer of the Open Space to the Management Company has been submitted to the Nominated Officer for approval and has been approved by the Council; and
 - b) the Open Space has been provided in accordance with the Approved Open Space Scheme and transferred to the Nominated Body subject to the Standard Terms; and
 - c) the Open Space Maintenance Contribution has been paid to the Council

PROVIDED THAT the Nominated Body shall not be required to accept the transfer of the Open Space unless it has been provided and maintained in strict accordance with the Approved Open Space Scheme

Part 2

Council Obligations

The Council covenants with the Owner and Developer as follows:

- 2.1 The Council shall upon approval of the Open Space Scheme confirm the Nominated Body.
- 2.2 To pay the Open Space Maintenance Contribution to the Nominated Body within 28 days of receipt
- 2.3 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 Policies detailing the cost per dwelling for the Provision
and Maintenance of Open Space as at January 2015

Purchase of Off Site Open Space

Land purchase					
Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£252	£51	£24	£600	£927
2 bed	£336	£68	£32	£800	£1,236
3 bed	£420	£85	£40	£1,000	£1,545
4 bed	£504	£102	£48	£1,200	£1,854
5 + bed	£588	£119	£56	£1,400	£2,163

Equipping of Off Site Open Space

Equipping					
Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£288	£89	£15	£429	£821
2 bed	£385	£119	£19	£572	£1,095
3 bed	£481	£148	£24	£715	£1,368
4 bed	£577	£178	£29	£858	£1,642
5+ bed	£674	£207	£34	£1,001	£1,916

Maintenance of Off-Site and On-Site Open Space

Maintenance				
Property	Sports	Play	Green infrastructure	Total
1 bed	£303	£30	£253	£586
2 bed	£404	£41	£338	£783
3 bed	£504	£51	£422	£977
4 bed	£605	£61	£506	£1,172
5+ bed	£707	£72	£591	£1,370

Extract from Open Space Policies detailing the cost per dwelling for the provision of
on-site Open Space

Number of bedrooms	Children's play spaces m²	Sports facilities m²	Allotments m²	Green Infrastructure · m²
1 bed	5.1	25.2	2.4	60
2 bed	6.8	33.6	3.2	80
3 bed	8.5	42.0	4	100
4 bed	10.5	50.4	4.8	120
5+ bed	11.9	58.8	5.6	140

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:

A handwritten signature in dark ink, appearing to be 'C. Jones'.

Deputy Monitoring Officer

EXECUTED AS A DEED by
HAROLD JONES (FARMS) LIMITED
in the presence of:

)
)
)

Director:

A handwritten signature in dark ink, appearing to be 'P. Jones'.

Director/Secretary:

A handwritten signature in dark ink, appearing to be 'C. Jones'.

EXECUTED AS A DEED by
EDWARD HAROLD JONES
in the presence of:

)
)
)

A handwritten signature in dark ink, appearing to be 'Edward Harold Jones'.

Witness:

A handwritten signature in dark ink, appearing to be 'H. Sayer'.

H. SAYER - Sparham Hall