

Dated

13th May

2015

Broadland District Council

-and-

Acle Parish Council

**DEED OF PLANNING OBLIGATION
UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**
relating to land North of Springfield, Acle, Norfolk

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 Chief Executive or other officer of the
Council notified to the Owner

"Inflation Provision" RICS (Building Cost Information Service) All
Construction TPI: All New Construction between
September 2006 and the date upon which the
payment of the Green Infrastructure contribution (as
defined in the Fourth Schedule) is made pursuant to
this Deed

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 residential development of the Site and allocated reference number 20140787 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 at the First Schedule
Roof Plate Level	The stage of construction of any Dwelling to roof plate level
Site	The land north of Springfield, Acle as shown edged red on the Plan and as registered together with other land at H M Land Registry under title number NK346211
Trigger	The date of Commencement 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 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
- 2.6 The terms of this Deed are conditional on the grant of the Permission and the Commencement of Development
- 2.7 Where under the terms of this Deed the consent or approval of the Council is required, such consent or approval shall not be unreasonably withheld or delayed

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 this Deed
- 3.2 The Council covenants with the Owner and its successors in title to comply with its obligations 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 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 or the adoption of highways

- 4.4 This Deed (save for the restrictions in the Second Schedule) will not bind any owner or occupier of an individual Dwelling
- 4.5 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed
- 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 disposed of

First Schedule
The Plan

Second Schedule
Affordable Housing

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

Affordable Dwellings The Dwellings to be constructed as Affordable Housing such Dwellings to be built to the Design & Quality Standards and "Affordable Dwelling" shall be construed accordingly

Affordable Housing The Intermediate Housing and Rented Housing to be provided to Eligible Households whose needs are not met by the market

Affordable Housing Provision The provision of 12 Affordable Dwellings on the Site, 10 of which will be Affordable Rented Dwellings and 2 of which will comprise Intermediate Housing

Affordable Housing Scheme A scheme for the construction and on-going provision of the Affordable Dwellings in line with the Affordable Housing Provision and specifying:

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

- the types of Intermediate Housing

- The identity of the Provider or details of how the Affordable Dwellings will be secured as Affordable Housing in perpetuity;

- such other information and requirements as the

	Council may require in connection with the provision of Affordable Housing for the Site and to enable approval of the Affordable Housing Scheme
Affordable Rented Dwellings	Dwellings to be let by a Provider subject to rent controls that limit the rent to no more than 80 per cent of local market rents including any service charges as approved by the Council
Approved Affordable Housing Scheme	The Affordable Housing Scheme submitted by the Owner and approved by the Council
Design & Quality Standards	The Design and Quality Standards as specified by the Homes and Communities Agency or its successor or such other construction standards as may be agreed between the Owner and the Council
"Eligible Household"	A person or persons in need of accommodation who are unable to rent or buy on the open market determined in accordance with the Council's allocation policy or as otherwise approved by the Council
"Intermediate Housing"	One or more Shared Equity Dwellings (or such other form of housing available for Eligible Households as the Owner and the Council agree)
"Open Market Dwellings"	Those Dwellings which are not Affordable Dwellings
"Provider"	Either: (i) a "Registered Provider" as defined in the Housing and Regeneration Act 2008; 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 or the Homes and Communities Agency or any successor body for the provision of the Affordable Housing

“Practically Complete” The point at which a certificate of practical completion is issued by or on behalf of the Owner confirming that a Dwelling has been completed to Design & Quality Standards and is ready for Occupation

“Recycling Obligation” An obligation to use any monies paid in relation to the acquisition of any share or interest in an Affordable Dwelling by an Eligible Household (excluding the initial 75% tranche of consideration payable in respect of a Shared Equity Dwelling and net of any sum clawed back by a mortgagee under the provisions of a mortgagee protection clause contained in a lease of a Shared Equity Dwelling) towards alternative Affordable Housing provision within the Council’s administrative area or such other area as the Council may agree

“Rented Housing” One or more of Affordable Rented Dwellings

“Shared Equity Dwellings” Dwellings purchased on a shared equity basis whereby not more than 75 per cent of the equity is sold to the purchaser with power to increase their percentage of ownership up to 100% after five years of acquisition upon a payment equating to the additional equity being purchased payable to the

Owner (or such other body as the Council may elect), such payment to be based on the actual market value as at the date of acquisition by the purchaser of the remaining share such a scheme to be secured by a mechanism agreed with and approved by the Council (or such other body as the Council may elect) and in a form approved by the Council (or by such other body as the Council may elect)

The Owner hereby covenants with the Council as follows:

- 1.1 Not to Commence the Development until the Approved Affordable Housing Scheme has been submitted to and approved by the Council in writing
- 1.2 Not to construct more than 9 Open Market Dwellings beyond Roof Plate Level until an exchanged unconditional contract for the sale of the Affordable Dwellings to a Provider has been supplied to the Council
- 1.3 Not to construct the Affordable Dwellings otherwise than in accordance with the Approved Affordable Housing Scheme and the timescales set out therein.
- 1.4 Not to Occupy more than 11 of the Open Market Dwellings unless and until 50% of the Affordable Dwellings to be provided under the Approved Affordable Housing Scheme are Practically Complete and not to Occupy more than 20 of the Open Market Dwellings unless and until 100% of the Affordable Dwellings to be provided under the Approved Affordable Housing Scheme are Practically Complete and in each case have been transferred to a Provider in accordance with and subject to the following:
 - a) any transfer shall be for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed or to enable Affordable Rented Dwellings to be let or Intermediate Housing to

be let or sold at a cost low enough for Eligible Households to afford.

- b) the transfer shall contain terms to secure any conditions and requirements of the Approved Affordable Housing Scheme
- 1.5 To ensure that 6 of the Affordable Rented Dwellings are let in accordance with the Table and Cascade B (in perpetuity) as set out in the Third Schedule
- 1.6 Not to use or allow the Affordable Dwellings to be used for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme other than:
- 1.6.1 by a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire the said Affordable Dwelling pursuant to the Housing Act 1985 the Housing Act 1996 or the Housing and Regeneration Act 2008 or any other statutory provision for the time being in force in respect of a particular Affordable Dwelling and all persons deriving title thereunder provided that the Recycling Obligation is complied with;
 - 1.6.2 by a person who has staircased to acquire 100% of a Shared Equity Dwelling and all persons deriving title thereunder provided that the Recycling Obligation is complied with;
 - 1.6.3 by a mortgagee of a Shared Equity Dwelling lawfully exercising the mortgagee protection provisions contained in a lease of a Shared Equity Dwelling and all persons deriving title under such mortgagee provided that the Recycling Obligation is complied with;
 - 1.6.4 by a mortgagee exercising its power of sale in respect of any Affordable Dwelling or any receiver or administrator of that mortgagee or any administrative receiver of a Provider (each an "Affordable Housing Mortgagee") and all persons deriving title under an Affordable Housing

Mortgagee PROVIDED THAT it is has first complied with the following:

- a) the restrictions and obligations contained in Sections 144 to 159 of the Housing and Regeneration Act 2008 and provided copies of all notices served and any proposals received together with updates as to progress to the Council and
- b) given the Council the option to purchase the relevant Affordable Dwellings or nominate another Provider to purchase the relevant Affordable Dwellings for a period commencing on the date that the Affordable Housing Mortgagee gives the Council notice ("the Mortgagee Notice") and ending on the later of two calendar months after the date of the Mortgagee Notice or the end of the Moratorium Period (as defined and arising under either Section 145 or 147 of the Housing and Regeneration Act 2008) and the Council (or its nominated Provider) shall be entitled to complete the purchase of the Affordable Dwellings at any time up to one calendar month after expiry of the Moratorium Period
or, in the event of any statutory amendment resulting in the removal or lapse of the relevant provisions contained in the Housing and Regeneration Act 2008 and without alternative statutory provision, to instead comply with the reasonable directions of the Council in relation to the disposal by giving not less than two months prior notice to the Council of any intention to dispose of any of the Affordable Dwellings and if the Council responds by written notice within two months from receipt of the Mortgagee Notice setting out arrangements for the transfer of the Affordable Dwellings so as to maintain them as Affordable Housing then the Affordable Housing Mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer but if the Council does not serve its response notice within the said two months or if having used its reasonable endeavours, the Affordable Housing Mortgagee shall not have effected the transfer envisaged in the Council's response notice within two

months of that notice then the Affordable Housing Mortgagee shall be entitled to dispose of the Affordable Dwellings free from the restrictions set out in this Deed

And Provided further that nothing contained in this paragraph 1.6.4 shall prevent or delay any Affordable Housing Mortgagee properly exercising its powers from acting in a proper manner so as to preserve or maximize the value of its security

Third Schedule

Affordable Housing Table

PLOT NUMBER	DWELLING TYPE	TENURE	LETTINGS CASCADE A OR B
5	1 bedroom 2 person house	ART	B
6	1 bedroom 2 person house	ART	B
7	3 bedroom 5 person house	ART	B
8	2 bedroom 4 person house	ART	B
9	2 bedroom 4 person house	S/E	A
10	3 bedroom 5 person house	S/E	A
20	1 bedroom 2 person bungalow	ART	A
21	1 bedroom 2 person bungalow	ART	B
22	1 bedroom 2 person bungalow	ART	A
23	2 bedroom 4 person bungalow (Wheelchair adapted)	ART	A
24	1 bedroom 2 person house	ART	B
25	1 bedroom 2 person house	ART	A

ART means Affordable Rented Dwelling

S/E means Shared Equity Dwelling

Administrative Procedure for Nominations

- To grant to the Council nomination rights to 100% of the Affordable Rented Dwellings
- 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 Owner shall agree between them.

AND FOR THE AVOIDANCE OF DOUBT nothing in the above administrative procedure shall affect the requirement for the Affordable Dwellings to be allocated in accordance with Cascade A or Cascade B as set out in the above table

CASCADE A

Allocations will be made to households living in the Broadland District in accordance with the Council's policies relating to housing allocation.

CASCADE B

Allocations will be made to applicants on the Housing List managed and maintained by Broadland District Council on the following priority basis:

- 2.1 Residents of Acle who have lived in the parish of Acle for a total of at least 3 of the last 10 years.
- 2.2 Former residents of Acle who have had their main home in the parish of Acle for 3 of the last 10 years.
- 2.3 Households who need to move to the parish of Acle to give/receive support from family/relatives.
- 2.4 Residents of the adjacent parishes of Beighton, Halvergate, Lingwood and Burlingham, and Upton with Fishley who have lived in these parishes for the last three years.
- 2.5 People working in the parish of Acle who have done so for a year or more.
- 2.6 Residents of Acle who have lived in the parish for less than three years.
- 2.7 Residents of the adjacent parishes of Beighton, Halvergate, Lingwood and Burlingham, and Upton with Fishley who have lived in these parishes for less than 3 years.
- 2.8 Residents of the adjacent parishes of Blofield, Brundall, Cantley, Freethorpe, Hemblington, South Walsham, and Strumpshaw, who have lived in these parishes for the last three years.
- 2.9 Residents of the adjacent parishes of Blofield, Brundall, Cantley, Freethorpe, Hemblington, South Walsham, and Strumpshaw who have lived in these parishes for less than 3 years.
- 2.10 Residents of Broadland District in accordance with the Council's policies relating to housing allocation
- 2.11 Any other person

**Fourth Schedule
Recreation and Open Space**

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

Approved Play Area Scheme	A scheme for the laying out and equipping of the Play Area and surrounding open space approved in writing by the Nominated Officer
Green Infrastructure Contribution	A sum of £98,191.32 to be used towards green infrastructure / informal open space provided for in clause 4.1 as increased by the Inflation Provision
Green Infrastructure Scheme	A scheme approved by the Council for the carrying out of works for the provision of, or enabling better access to, green infrastructure. The approved scheme must include: <ul style="list-style-type: none"> • a detailed scheme of the works • a timetable for their delivery • appropriate triggers working with the Occupation of Dwellings • the value of the works
Excess	If a Green Infrastructure Scheme is approved, the balance (if any) between the Green Infrastructure Contribution and the value of the works as approved under the Green Infrastructure Scheme save that if the Council considers (acting reasonably) that the Green Infrastructure Scheme mitigates the adverse consequences of the Development in terms of its impact upon recreational disturbance the Excess will be nil.
Notification	A notification by the Owner that it will be submitting a Green Infrastructure Scheme
Play Area	The area of land shown as play area on drawing 1270-A-PL04F.

1. The Owner covenants with the Council as follows:

- 1.1 Not to Commence the Development until the Approved Play Area Scheme is in existence
- 1.2 Not to occupy more than 10 Dwellings before the Approved Play Area Scheme has been implemented and completed and within 28 days of completion of the Approved Play Area Scheme to submit to the Council a post installation inspection report

2. **The Owner covenants with the Council** not to Commence the Development until the Owner has notified the Council whether it will be submitting a Notification

3. If the Owner has given a Notification **the Owner covenants with the Council:**

3.1 Not to occupy any of the Dwellings before the Green Infrastructure Scheme has been approved

3.2 Not to Occupy more than 90% of the Dwellings until the works identified within the Green Infrastructure Scheme have been completed unless otherwise agreed with the Council (acting reasonably)

3.3 To pay the Excess (if any) to the Council before the Occupation of the final Dwelling

4. If the Owner has not given the Notification **the Owner covenants with the Council:**

4.1 Not to Occupy any of the Dwellings until 50% of the Green Infrastructure Sum has been paid to the Council and not to Occupy more than 17 Dwellings until the remainder of the Green Infrastructure Sum has been paid to the Council

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

2.1 To use the Green Infrastructure Contribution or Excess towards the provision and/or improvement of green infrastructure/ informal open space in the locality.

2.2 Not to unreasonably withhold or delay approval of a Green Infrastructure Scheme and to approve a scheme of works which have previously been approved by Norfolk County Council in relation to the Development

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 in the presence of:



7466

Authorised Signatory:

Head of Democratic Services and
Monitoring Officer

EXECUTED as a Deed by
Acle Parish Council acting by:

.....
John Harriss, Chairman

.....
Anthony Hemmingway, Vice-chairman