

Dated 26 October 2016

Broadland District Council

-and-

David John Waller and Sally Ruth Waller

**DEED OF PLANNING OBLIGATION
UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**
relating to land at North of Mead Close,
Buxton with Lamas,
NR10 1UB

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, NR7 0DU (referred to as "the Council")
- (2) DAVID JOHN WALLER and SALLY RUTH WALLER, 12 Mead Close, Buxton, Norwich, NR10 5EL (referred to as "the Owners")

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 Owners have 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

Inflation Provision The increase (if any) in the Royal Institution of Chartered Surveyors Build Cost Information Service; All in tender price Index between January 2015 and the date upon which a payment of the Off Site Open Space Contribution/Maintenance Sum/Green Infrastructure Contribution is made pursuant to this Deed.

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
marketing
and 'Occupy' and 'Occupied' will be construed accordingly

Permission The planning permission to be granted by the Council and allocated reference number 20150082 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 North of Mead Close, Buxton with Lamas, NR10 5EL and registered at H M Land Registry under title numbers NK127801 and NK430933 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 It is agreed by the Parties that any obligation contained within this Deed which sets out how a planning obligation will be performed 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 Conditional on and subject to the grant and issue of the Permission:

3.1.1 The Owners covenant with the Council for themselves and their successors in title to observe and perform the obligations and stipulations contained in this Deed

3.1.2 The Council covenant with the Owners 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 (other than the Mortgagee) with an interest in the Site whose consent is necessary to make this Deed binding on all interests in the Site

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

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

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 upon provision of a VAT invoice

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
 - 6.2.1 anticipated Triggers seven days in advance of each anticipated date
 - 6.2.2 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
Affordable Housing
Part 1

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 Housing and Rented Housing to be provided to Eligible Households whose needs are not met by the market |
| "Affordable Housing Mix" | 85% Rented Housing and 15% Intermediate Housing (or as otherwise agreed by the Council in its absolute discretion) |
| "Affordable Housing Provision" | the construction and provision of Affordable Dwellings on the Site equating to 33% 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" | <p>A scheme securing the Affordable Housing Provision and specifying:</p> <ul style="list-style-type: none"> - 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 |

| | |
|--------------------------------------|---|
| | <p>perpetuity;</p> <ul style="list-style-type: none"> - 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 Intermediate Housing and Rented Housing; - such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme |
| "Affordable Rented Dwellings" | Dwellings to be let by a Registered 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 Affordable Housing Scheme" | 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 & Quality Standards" | The level one space standards as specified by the Homes and Communities Agency or its successor or such other construction standards as may be agreed between the Owners and the Council |
| "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 determined in accordance with the Council's local lettings policy as specified in Part 2 |
| "HCA" | the Homes & Communities Agency or it's successor body or other appropriate body as the Council may nominate |
| "Intermediate Dwellings" | Dwellings for sale at prices below local market price that Eligible Households can afford as determined by the Council acting reasonably including low cost homes (but not including low cost market housing), shared ownership, shared equity and equity loan products as approved by the Council |
| "Intermediate Housing" | "Intermediate Rented Dwellings" as agreed by the Council |
| "Intermediate Rented Dwellings" | 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 as determined by the Council |
| "Open Market Dwelling" | Any Dwelling constructed as part of the Development which is not an Affordable Dwelling |

| | |
|---------------------------|---|
| | |
| "Provider" | <p>either:</p> <p>(i) a Registered Provider; or</p> <p>(ii) another organisation that owns the Affordable Dwellings and has been approved in writing by the Council</p> |
| "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 |
| "Shared Equity Dwellings" | <p>Dwellings purchased on a shared equity basis whereby not more than 75% of the equity is sold to the purchaser with power to increase their percentage of ownership up to 100% after five years of acquisition of the initial share and upon a payment equating to the additional equity being purchased payable to the Council or the Provider as the case may be (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 of the additional equity such scheme to be secured by a mechanism and in a form agreed with and approved by the Council (or such other body as the Council may elect)</p> |

| | |
|------------------------------|---|
| "Shared Ownership Dwellings" | Dwellings purchased on a Shared Ownership Lease |
| "Shared Ownership Lease" | <p>a lease in a form approved by the HCA or where there is no such form in a form approved by the Council such lease to provide for the following:</p> <ul style="list-style-type: none"> - not more than 75% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Provider - power to the purchaser to increase their ownership up to 100% if they so wish - an initial rent not exceeding 2.75% of the value of the equity retained by the Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of the HCA |
| "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 Owner hereby covenants with the Council as follows:

- 1.1 Not to Commence or allow Commencement of the Development until the Affordable Housing Scheme has been submitted to and approved by the Council in writing
- 1.2 Not to Occupy or allow Occupation of 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 or procure the construction operation or provision of 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 Complete 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
- 1.5 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 PROVIDED THAT the obligations contained in this Schedule shall not be binding upon:

- 1.5.1 a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire;
- 1.5.2 an Eligible Household who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest or by a person who has acquired 100% of a Shared Equity Dwelling
- 1.5.3 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 Registered 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

Part 2

AFFORDABLE HOUSING LOCAL LETTINGS POLICY LOCAL CONNECTION ELIGIBILITY CACADE

2. Up to one third (or such other amount as the Council shall reasonably require) of the Affordable Rented Dwellings (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 Buxton with Lamas
- (ii) if there is no suitable person in paragraph 2(i) allocations will be made to people who work in the Parish of Buxton with Lamas
- (iii) if there are no suitable persons in paragraphs 2(i) and 2(ii) allocations will be made to people who need to move to the Parish of Buxton with Lamas to give/receive support to/from close family.

Note:

If there are no suitable persons in paragraph 2(i) and/or 2(ii) and/or 2(iii) allocations will be made to households living in the Broadland District, in accordance with the Council's policies relating to housing allocations.

Administrative Procedure for Nominations

3. To grant to the Council nomination rights to 100% of the Affordable Rented Housing Units.

3.1 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.

SCHEDULE 2

Open Space

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

| | |
|----------------------------------|--|
| Off Site Open Space Contribution | <p>A financial contribution to be used for the acquisition, layout and maintenance of sports, play and allotment land in the parish of Buxton and for green infrastructure where appropriate District wide in accordance with policy DPD EN3 of the Council or such subsequent policy.</p> <p>The contributions will be calculated in accordance with the Councils standard charges as defined in Schedule 4 of this agreement, subject to the inflation provision.</p> <p>The final contribution level will be determined by the final housing mix and identified need in Buxton at reserved matters.</p> |
| Inflation provision | <p>The increase (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service; All Construction TPI: All New Construction. Between January 2015 and the date upon which a payment of the Open Space contribution / Maintenance Sum / Green Infrastructure Contribution is made pursuant to this Agreement.</p> |

2. The Owners covenant with the Council as follows

2.1 Not to Occupy or allow Occupation of more than 5 Dwellings on Site unless or until the Off-Site Open Space Contribution has been paid to the Council.

SCHEDULE 3

Council Covenants

1. The Council hereby covenants with the Owners that:
2. It will deposit the Off-Site Open Space Contribution into an interest bearing account and will apply the capital and any interest accrued wholly and exclusively towards the provision and maintenance of sports, play and allotment land in the Parish of Buxton and for green infrastructure in accordance with policy DPD EN3 of the Council or such subsequent policy as set out in this Deed.
3. In the event that any Off-Site Open Space Contribution has not been committed (by way of contract or expenditure of monies) within 10 years of receipt of payment to refund any unspent balance of the contribution to the payer together with any interest accrued.

SCHEDULE 4

Standard Open Space charges

Table 1 – Cost per dwelling for Open Space land purchase

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

Table 2 – Cost per dwelling for equipping open space

| Equipping | | | | | |
|-----------|--------|------|-------------------------|------------|--------|
| Property | Sports | Play | Green Infrastructure | allotments | Total |
| 1 bed | £289 | £89 | £429 | £15 | £822 |
| 2 bed | £385 | £119 | £572 | £19 | £1,095 |
| 3 bed | £481 | £149 | £715 | £24 | £1,369 |
| 4 bed | £577 | £178 | £858 | £29 | £1,642 |
| 5+ bed | £673 | £208 | £1001 | £34 | £1,916 |

Table 3 – Cost per dwelling for maintenance of open space

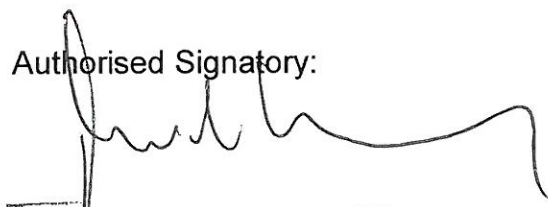
| Maintenance | | | | |
|-------------|--------|------|----------------------|--------|
| Property | Sports | Play | Green infrastructure | Total |
| 1 bed | £303 | £30 | £253 | £586 |
| 2 bed | £404 | £41 | £338 | £783 |
| 3 bed | £505 | £51 | £422 | £978 |
| 4 bed | £606 | £61 | £506 | £1,173 |
| 5+ bed | £707 | £71 | £591 | £1,369 |

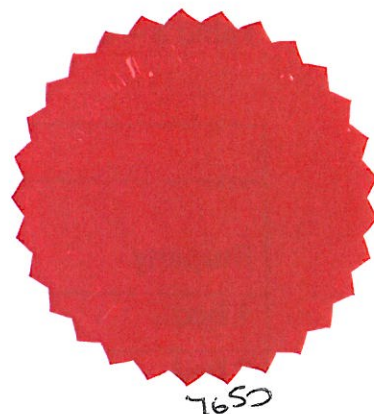
IN WITNESS whereof the parties hereto have executed this document as a Deed on
the day and year first before written.

THE COMMON SEAL OF Broadland District Council
was affixed in the presence of:

)
)

Authorised Signatory:


CHIEF EXECUTIVE



EXECUTED AS A DEED by David John Waller
in the presence of:

)
)

D. J. Waller
S. R. Waller

Witness

Desmond Yatham

Witness Address

24 Thorpe Hall Close
Thorpe St Andrew
Norwich
NR7 0TH

EXECUTED AS A DEED by Sally Ruth Waller
in the presence of:

)
)

S. R. Waller

Witness

Desmond Yatham

Witness Address

24 Thorpe Hall Close
Thorpe St Andrew
Norwich
NR7 0TH