

DATED 8<sup>th</sup> August 2005

BROADLAND DISTRICT COUNCIL

- AND -

BURE VALLEY DEVELOPMENTS LIMITED

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PLANNING OBLIGATION BY WAY OF  
A G R E E M E N T

Pursuant to Section 106 of the Town  
and Country Planning Act 1990  
relating to the development of land at  
former London Tavern Public House  
High Street Coltishall

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THIS AGREEMENT is made the 8<sup>th</sup> day of August 2005  
BETWEEN BROADLAND DISTRICT COUNCIL of Thorpe Lodge  
Yarmouth Road Thorpe St Andrew Norwich in the County of Norfolk (hereinafter  
called "The Council") of the first part and BURE VALLEY DEVELOPMENTS  
LIMITED (Company Number 03515112) whose registered office is situate at Pear  
Tree Cottage 73 Rectory Road Coltishall Norwich NR12 7HW (hereinafter called  
the "Owner") of the second part

(A) INTERPRETATION AND DEFINITIONS

- (1) In this Agreement unless the context otherwise requires the following  
expressions shall have the following meanings:-

"the Act"	means the Town and Country Planning Act 1990 (as amended)
"Application"	means the application for detailed planning permission for the development of seven residential dwellings received on the 17 <sup>th</sup> December 2004 under reference number 20041986
"Development"	means the redevelopment of the land edged red on the Plan annexed hereto for residential purposes pursuant to the Permission
"Dwelling"	means a dwelling forming part of the Development
"Director"	means the Council's Strategic Director (Community Services) or other officers of the

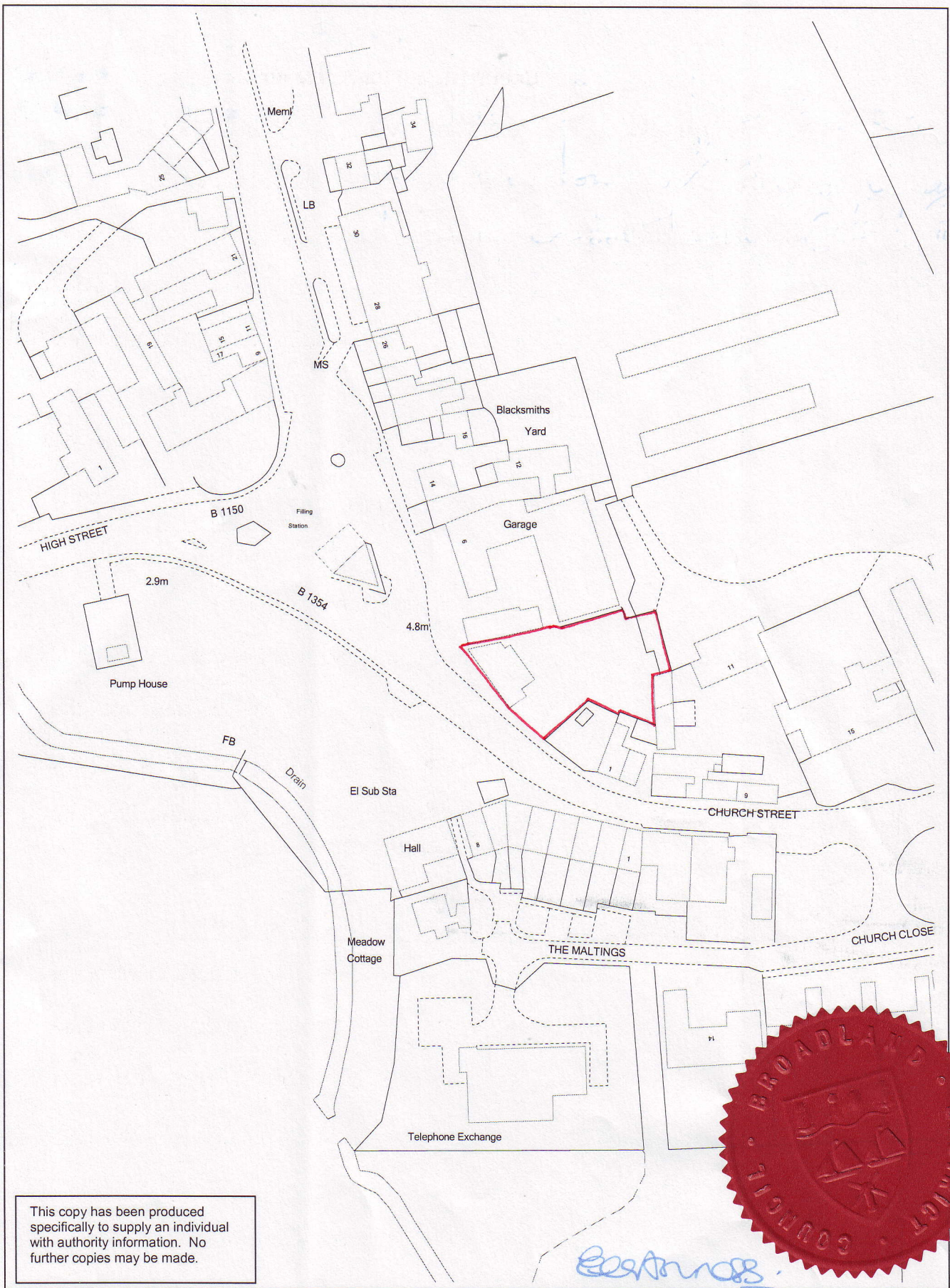


	Council acting under his hand
"Off-Site Open Space Contribution"	means the sum of £16,734 increased in accordance with the Inflation Provision
"Inflation Provision"	means the increase (if any) in the RICS All In Tender Price Index between 1 <sup>st</sup> August 2003 and the date upon which a payment of money is made pursuant to this Agreement
"Permission"	means the planning permission granted pursuant to the Application a draft of which is annexed to this Agreement together with any renewal or modification thereof
"Implementation"	means the commencement of the Development permitted by the Permission and for the purposes of this definition Section 56 of the Act shall determine when the Development is begun

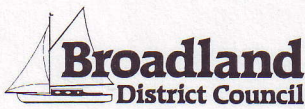
(2) In this Agreement unless the context otherwise requires:

- (i) words importing the masculine gender shall where appropriate include the feminine gender and the neuter gender or vice versa as the case may be and words importing the singular number shall where appropriate include the plural number and vice versa
- (ii) "party" or "parties" means a party or parties to this Agreement
- (iii) references to any party shall include the successors in title and assigns of that party





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Application No: 20041986

Former London Tavern PH, High Street, Coltishall

Scale:  
1:1250

Date:  
6-Jun-05



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- (iv) where a party includes more than one person any obligations of that party shall be joint and several
  - (v) headings in this Agreement shall not form part of or affect its construction
  - (vi) references to clauses and schedule are references to clauses in and schedules to this Agreement
  - (vii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument
- (B) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated
- (C) The Owner is seized of land situated and known as land at the former London Tavern High Street Coltishall in the County of Norfolk (hereinafter together called "The Land") shown for the purpose of identification only edged red on the plan annexed hereto (hereinafter called "The Plan") for an estate in fee simple absolute
- (D) The Application was submitted by David Futter Associates Limited
- (E) Having regard to the Development Plan and other material considerations the Council considers it expedient in the interests of the proper planning of their area that provision should be made for regulating or facilitating the



Development of the Land in the manner hereinafter appearing and the Council is satisfied the Permission can only be granted subject to and upon completion of this Agreement

N O W THIS DEED WITNESSETH as follows:-

- 1.1 This Agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and any other enabling power
- 1.2 The covenants that appear hereinafter are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as Local Planning Authority
- 1.3 This Agreement is a Deed and may be modified or discharged in part or in total at any time after the date of this Agreement by agreement between the parties in the form of a Deed
- 1.4 This Agreement is a local land charge and upon completion shall be registered by the Council as such
- 1.5 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof
- 1.6 Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Agreement



- 1.7 This Agreement shall be governed by the laws of England
- 1.8 No party shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement after that party has parted with its respective interest in the Land or the part of the Land in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of that party's interest in the Land or any part thereof in respect of which any such breach has taken place
- 1.9 This Agreement shall cease to have effect if the Permission has lapsed without having been implemented or has been revoked or quashed or has been modified other than at the request of the Owner
- 1.10 Notwithstanding anything else in this Agreement the covenant by the Owner to observe the obligations under this Agreement shall not take effect until Implementation of the Permission
- 1.11 The Council will upon written request by the Owner at any time after the Owner's obligation in this Agreement have been discharged issue written confirmation to that effect and forthwith procure the cancellation of all entries made in any statutory register to protect them
- 1.12 NOTICES
- 1.12.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be deemed to have been validly served or given if received by facsimile delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is addressed and delivered or sent by facsimile or by



recorded delivery post to the address of the party concerned as nominated in sub-clause

- 1.12.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council	The Strategic Director (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich
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The Owner	Pear Tree Cottage 73 Rectory Road Coltishall Norwich NR12 7HW
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- 1.12.3 Any notice or other written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer

## 2. GENERAL

- 2.1 The Owner HEREBY FURTHER AGREES that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Land under the terms of the Agreement are hereby waived

- 2.2 All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not presently been charged in respect of that supply the person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly



### 3. RIGHTS OF THIRD PARTIES

The Contract (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act

### 4. COVENANTS

- 4.1 The Owner hereby covenants and undertakes with the Council so as to bind the Land and each and every part thereof to carry out and comply with the obligations set out in this Agreement

The Obligations

### 5. OFF-SITE OPEN SPACE CONTRIBUTION

- 5.1 Within fourteen days of Implementation of the Permission on the Land the Off-Site Open Space Contribution as increased by the Inflation Provision shall be paid to the Council

- 5.2 Interest at 4% above the base rate of the Co-operative Bank PLC shall be paid on any part of the above Contribution not paid within fourteen days of the date upon which it becomes due in accordance with Clause 5.1 above

### 6. THE COUNCIL'S OBLIGATIONS

- 6.1 The Council undertakes with the Owner that the Off-Site Open Space Contribution (as increased by the Inflation Provision) shall be applied towards the provision of new open space in the Parish of Coltishall or towards the improvement and maintenance of existing open space in the Parish of Coltishall



6.2 If any part of the Off-Site Open Space Contribution is not used by the Council for its intended purposes under clause 6.1 of this Agreement within a period of seven (7) years from the date of the payment due under clause 5.1 above ("the Repayment Date") then the Council shall forthwith repay to the Owner (in this case being the person or company who actually paid the Off-Site Open Space Contribution) the Off-Site Open Space Contribution (or those parts of the Off-Site Open Space Contribution not used by the Council pursuant to its covenant in clause 6.1 above) together with interest at the Local Authority 7 day deposit rate from time to time from the date it was paid by the Owner to the Council pursuant to the provisions of clause 5.1 of this Agreement

## 7. LEGAL COSTS

7.1 The Owner hereby agrees that prior to the completion of this Agreement it will pay the Council's proper and reasonable legal costs (including VAT) associated with the drafting and negotiation of this Agreement.

## 8. NOTIFICATION

8.1 The Owner hereby agrees to serve written notice on the Council within seven days of Implementation of the Permission notifying it of the commencement of the Development

IN WITNESS WHEREOF this Agreement has been executed and delivered as a Deed on the date first written above



**Application Number**

20041986

David Futter Associates Limited  
Arkitech House  
35 Whiffler Road  
Norwich  
NR3 2AW

**Date Of Decision :** 14 July 2005  
**Development :** Erection of 7 Dwellings  
**Location :** Site of Former London Tavern P H, High Street, Coltishall  
**Applicant :** Bure Valley Developments Ltd

**Town & Country Planning Act 1990**

The Council in pursuance of powers under this Act **GRANTS PLANNING PERMISSION** for the development referred to above, in accordance with the submitted plans and application forms, and subject to the following conditions:-

- 1 The development hereby permitted shall be begun before the expiration of five years from the date of this decision.
- 2 The development hereby permitted shall not be carried out otherwise than in accordance with
  - Site Layout- Drawing no. 4527/01E, received 22 March 2005.
  - Elevations and Floor Plans - Drawing no. 4527/04B, received 22 March 2005 Units 1-4
  - Elevations and Floor Plans- Drawing no. 4527/05A, received 22 March 2005 Units 5-7
- 3 Prior to the commencement of development, details of all external materials (including brick, roof tile, fascias, canopies, eaves, colour of render and dormer window finish) to be used in the development shall be submitted to and approved by the Local Planning Authority. The development shall then be constructed in accordance with the approved details.
- 4 Prior to the commencement of the first use hereby permitted the vehicular access shall be constructed in accordance with the Norfolk County Council residential access construction specification, and additionally to accord with details to be approved in writing by the Local Planning Authority, for the first 4 metres into the site as measured back from the near edge of the adjacent carriageway.



- 5 Prior to the commencement of the first use hereby permitted the proposed parking and turning areas shall be laid out, demarcated, levelled, surfaced and drained, and retained and bin stores/collection points thereafter available for that specific use.
- 6 Prior to the commencement of development, a scheme is required to deal with any contamination of the site. This scheme shall comprise the following elements;
- (a) A comprehensive site investigation to identify the nature and extent of any contamination present i.e. those materials which could have an adverse effect on future occupants, the public, buildings, building services, vegetation in the development and the surrounding environment including controlled waters and amenity areas; and
- (b) The measures to be taken to avoid risk to future occupants, the public, buildings, building services, vegetation in the development and the surrounding environment including controlled waters and amenity areas when the site is developed.
- The investigation shall include areas to be used as gardens and communal spaces and land in which service pipes are to be laid. The method of the proposed site investigation is to be submitted in writing and approved by the Local Planning Authority, prior to the investigation commencing.
- In the event of any previously unsuspected contamination being discovered as part of the site investigation full details shall immediately be submitted to the Local Planning Authority. A suitable remediation strategy to include provision for post remediation testing shall be submitted to and approved by the Local Planning Authority. The remediation scheme shall be carried out in accordance with the approved scheme, prior to the commencement of development.
- 7 Prior to the occupation of the dwelling on the individual plot affected, the boundary treatments shall be constructed in accordance with the approved drawing no. 4527/01E.
- 8 Notwithstanding the provisions of Schedule 2 Part 1 and Part 2 of the Town and Country Planning (General Permitted Development) Order 1995 or any order revoking and re-enacting that Order with or without modification, no buildings, walls, fences or other structures shall be erected within the site curtilages, nor alterations or extensions be made to the dwellings without the prior written approval of the Local Planning Authority.

The reasons for the conditions are:-

- 1 In accordance with Section 91 of the Town & Country Planning Act 1990.



- 2 For the avoidance of doubt and to ensure the permission relates to the application, as amended.
- 3 To ensure the satisfactory development of the site in accordance with Policy GS3 of the Broadland District Local Plan and Policy (RD)GS4 of the Revised Deposit Version Broadland District Local Plan.
- 4 In the interest of highway safety in accordance with Policies GS3 and TRA4 of the Broadland District Local Plan and Policies (RD)GS4 and TRA11 of the Revised Deposit Version Broadland District Local Plan.
- 5 In the interest of highway safety in accordance with Policies GS3 and TRA4 of the Broadland District Local Plan and Policies (RD)GS4 and TRA11 of the Revised Deposit Version Broadland District Local Plan.
- 6 In order to avoid risk to future occupants, the public, building services, vegetation in the development and the surrounding environment when the site is developed.
- 7 To ensure the proper development of the site without prejudice to the amenities of the area, and in accordance with Policy GS3 of the Broadland District Local Plan and Policy (RD)GS4 of the Revised Deposit Version Broadland District Local Plan.
- 8 In accordance with Article 4(1) of The Town & Country Planning (General Permitted Development) Order 1995, the condition is imposed to enable the Local Planning Authority to retain control over the siting and external appearance of the buildings and means of access in the interests of amenity and road safety, in accordance with Policy GS3 of the Broadland District Local Plan and Policy (RD)GS4 of the Revised Deposit Version Broadland District Local Plan.

The reasons for decision are:-

This application has been considered against the development plan for the area, this being the Norfolk Structure Plan and Broadland District Local Plan. The policies particularly relevant to the determination of this application are GS3, ENV2, ENV16, HOU4, SH06, RL6, TRA6 and TRA4 of the Broadland District Local Plan. Regard has also been taken of the relevant policies in the proposed Broadland District Local Plan Replacement (version as agreed by Council or publication of the Revised Deposit) and some weight has been given to the policies (RD) GS4, (RD) ENV2, (RD) ENV16, (RD) HOU4, (RD) SH03, (RD) RL7, (RD) TRA6 and (RD) TRA11.

The application site lies inside the development boundary as defined in the Broadland District Local Plan and is within the Horstead and Coltishall Conservation Area. It is considered that the design of the proposals in their amended form are acceptable when considered against the Conservation Area requirements,



The proposals do not detract from the retail function of Coltishall and do not have an unacceptable effect on the residential amenities of neighbours. The vehicular access arrangements, parking proposals and refuse facilities are considered to be acceptable and the provision/enhancement of outdoor recreational pursuits within the parish is to be secured through a legal agreement with the developers.

The proposed development is therefore in accordance with the policies of the development plan, and represents an acceptable form of development.

- 1 The applicant's attention is drawn to the comments of the Environment Agency dated 24th December 2004.
- 2 If this development involves any works of a building or engineering nature, please note that before any such works are commenced it is the applicant's responsibility to ensure that, in addition to planning permission, any necessary consent under the Building Regulations is also obtained. Advice on this point can be obtained from the Building Control Section of the Planning and Community Services Directorate.

Signed



Mr P Geraghty  
Head Of Planning & Conservation  
Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, NR7 0DU



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



*Rebecca Jones*

Head of Corporate Services and Monitoring Officer

EXECUTED AS A DEED by )  
BURE VALLEY DEVELOPMENTS )  
LIMITED acting by )

*S. Funnell*

Director

*B. Chase*

B. CHASE

~~Director~~/Secretary