

DATED Eleventh day November

2003

BROADLAND DISTRICT COUNCIL

- AND -

MR A H B STIMPSON

-AND-

MRS E L STIMPSON

---

AGREEMENT

Made pursuant to Section 106 of the Town  
and Country Planning Act (as amended) 1990  
and any other enabling power relating to the  
development of land at Keeling Hall Farm  
Keeling Hall Lane Foulsham Norwich  
Norfolk

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steeles  
2 The Norwich Business Park  
Whiting Road  
Norwich NR4 6DJ

THIS AGREEMENT is made the 11<sup>th</sup> day of November Two thousand and Three  
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 of ARTHUR HUGH BLAND STIMPSON and EMMA  
LOUISE STIMPSON both of The Old Rectory Rectory Road Suffield Norwich  
Norfolk NR11 7EW (hereinafter called “The Owners”) of the second part

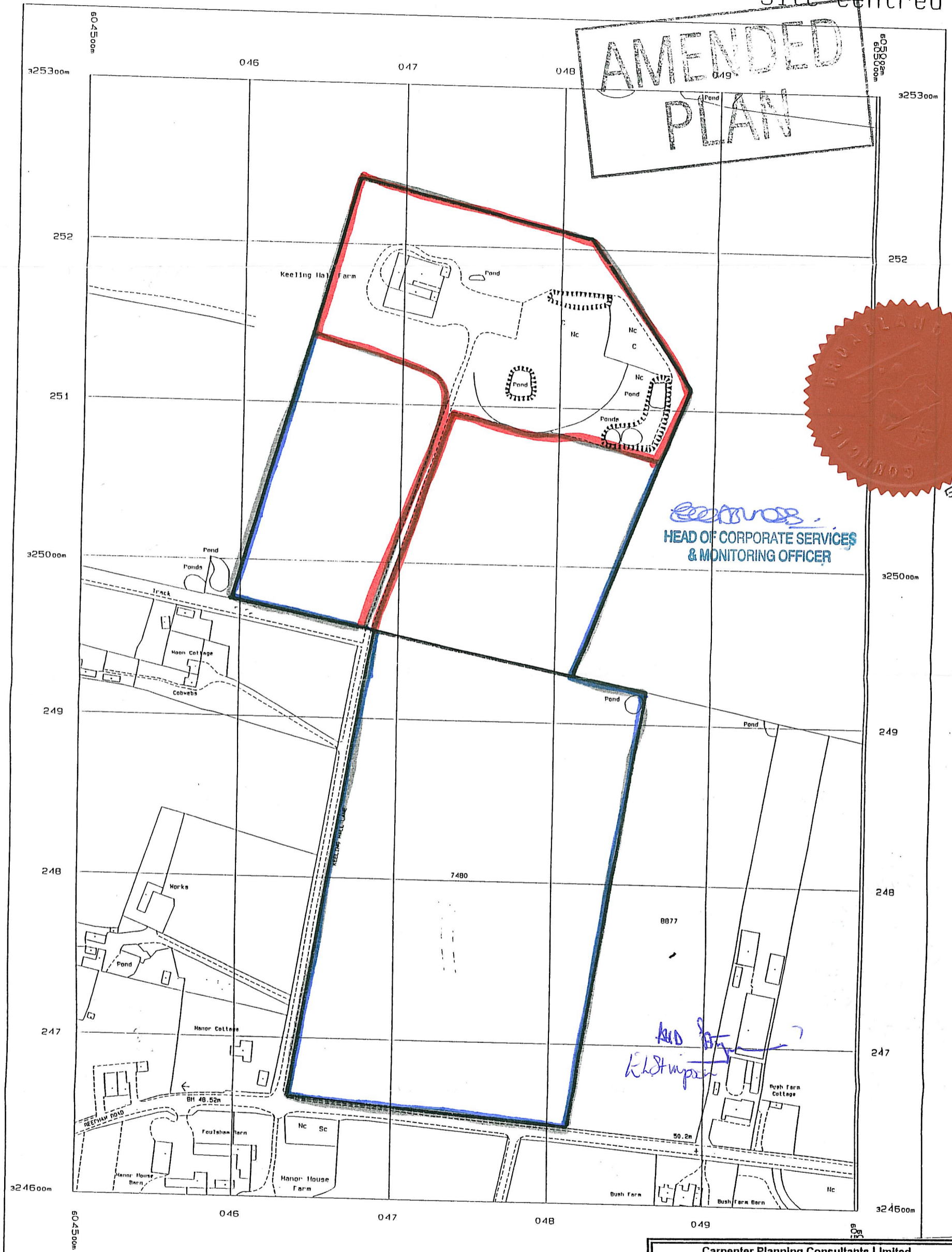
RECITALS

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

“Application”	means the application for planning permission to develop the Land and dated 13 <sup>th</sup> May 2002 submitted to the Council in accordance with the Application plans and other materials deposited with the Council and bearing reference no 20020752
“Development”	means the development permitted by the Permission
“Director”	means the Council’s Strategic Director (Community Services) or other officers of the Council acting under his hand
“Landscape Management Scheme”	Those matters as set out in Schedule One hereof

“The Effective Date”	The date on which a material operation as defined in Section 56(4) of the Town and Country Planning Act 1990 is undertaken
“the Land”	means the land referred to in Recital (C)
"Ongoing Management Plan	Those matters as set out in Schedule Two hereof
“Permission”	means the detailed planning permission granted pursuant to the Application together with any renewal or modification thereof
“Timetable”	the submission in writing of a timetable specifying when each aspect of the landscaping shall be planted. This timetable shall be linked to key phases in the construction of the dwelling. The timetable shall show that all landscaping will be completed upon occupation of the dwelling
“the Owners”	means the Owners named above or their successors in title being the Owners or Owners for the time being of the Land but excluding purchasers of individual dwellings comprised in the Development
“the Plan”	means the plan annexed hereto
“1990 Act”	means the Town and Country Planning Act 1990 (as amended)

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



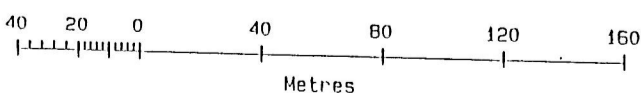
*[Signature]*  
HEAD OF CORPORATE SERVICES  
& MONITORING OFFICER

*[Signature]*  
K. Stimpson

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Scale 1: 2500

Carpenter Planning Consultants Limited 22, Wensum Street, Norwich, NR3 1HY Tel: (01603) - 622050	
Client: Mr & Mrs H Stimpson	No:
Site: Keeling Hall, Foulsham	
Project: Proposed dwelling	
Drawing: Site Location plan	
Date: April 2002	Scale: 1:2500
Drawing No.	Revision No.
Drawn By:	Checked By:
With the permission of the Controller of Her Majesty's Stationery Office	

- (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
- (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 schedules are references to clauses in and schedules to this Agreement
- (vii) where a party or any officer or employee is required to give its consent approval or agreement in any specific provision in this Agreement such approval or agreement shall not be unreasonably withheld or delayed
- (viii) 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 a Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated
- (C) The Owners are registered as Proprietor with absolute title of the land (hereinafter called "the Land") shown for the purpose of identification only edged red on the plan annexed hereto as the same is registered with Title Number NK271730 subject to the matters contained in the Charges Register for that Title Number but otherwise free from encumbrances
- (D) 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

NOW THIS DEED WITNESSETH as follows:-

- 1.1 This Agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and any other enabling power
- 1.2 The covenants that appear hereinafter are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council
- 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 Owners 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 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 any 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 either:-
- 1.9.1 the Permission is quashed revoked or otherwise withdrawn; or
- 1.9.2 planning permission on the Land is granted subsequently and implemented for proposals incompatible with the Development
- 1.10 **NOTICES**
- 1.10.1 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 1.10.2

1.10.2 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
The Owners	Mr A H B Stimpson and Mrs E L Stimpson The Old Rectory Rectory Road Suffield Norwich Norfolk NR11 7EW

1.10.3 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 office

## 2. **GENERAL**

2.1 The Owners HEREBY FURTHER AGREE 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 works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided

otherwise) to be at the sole expense of the Owners and at no cost to the Council

- 2.3 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. ARBITRATION

- 3.1 Any dispute or difference arising between the parties as a result of this Agreement shall be referred to the arbitration or a single arbitrator to be agreed upon between the parties, or failing agreement within fourteen days after any of the parties has given to the other parties a written request requiring the appointment of an Arbitrator, to a person to be appointed at the request of any of the parties by the President of The Institution of Civil Engineers for the time being
- 3.2 Any reference to arbitration shall be undertaken in accordance with and subject to the provisions of the Arbitration Act 1996 save as follows:-
- (a) the seat of the arbitration shall be at the Council's offices in Norwich
  - (b) where appropriate the Arbitrator may consolidate arbitral proceedings;
  - (c) with the parties agreement the Arbitrator may appoint experts or legal advisers
- 3.3 Any of the parties mentioned in clause 3.1 concerned in any such dispute or difference arising from this Agreement wishing to refer any such dispute or

difference to arbitration shall notify the other parties in writing of such intention without delay

3.4 The Arbitrator shall act as a referee and not as an expert except in any case where the parties to a dispute or difference agree on the Arbitrator when such parties may also agree that such Arbitrator shall act as an expert

3.5 Subject to Sections 67, 68 and 69 of the Arbitration Act 1996, the parties agree to be bound by the decision of the Arbitrator

#### **4. RIGHTS OF THIRD PARTIES**

The Contracts (Rights of Third Parties) Act 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.

#### **5. COVENANTS**

##### **The Owners**

5.1 The Owners hereby covenant and undertake 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**

#### **6. LANDSCAPING MANAGEMENT SCHEME**

6.1 Within one month of the date of this Agreement the Owners shall appoint a landscape consultant who shall be approved in writing by the Director.

6.2 Within three months of The Effective Date the Owners shall ensure that the landscape consultant has submitted to the Council for approval a phased landscape management scheme (hereinafter called "the Landscape

Management Scheme”) covering a minimum period of 20 years which will be based on the Outline Landscape Proposals in Schedule One hereof and shall cover the matters set out in Schedule Two hereof and upon approval the Scheme shall be deemed to be incorporated into the terms of this agreement.

6.3 The Owners shall implement all the works set out in the Landscape Management Scheme in accordance with the approved timetable.

6.4 Following the approval of the Scheme the Owners will as often as may be necessary appoint a landscape consultant who shall be approved in writing by the Director to undertake maintenance inspections identified in Landscape Management Schemes submitted in accordance with Clauses 6.2 and 6.4 hereof and to identify all works that are necessary to ensure that the Landscape Management Scheme is implemented successfully and to prepare a timetable for its implementation

## **7. REVOCATION OF PLANNING CONSENT 00.1362**

7.1 This permission shall be construed as an alternative to that development permitted under Planning Permission 00.1362 and no work whatsoever shall be undertaken in respect of that consent.

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

## **SCHEDULE ONE**

### **OUTLINE LANDSCAPE PROPOSALS FOR THE LANDSCAPE MANAGEMENT SCHEME**

- (a) details of all trees to be cleared
- (b) details of all trees to be retained and demonstrate by way of a written report from an arboriculturalist the works necessary to all retained trees
- (c) a phased Timetable linked to the construction of the house, for all trees, hedges and shrubs to be planted and the sowing of all grassed areas
- (d) full details including Timetable for the restoration and replanting of the moat and the pond
- (e) full details including Timetable for the planting of the orchard
- (f) provision for the replacement of any trees, shrubs and hedges that die within 5 years of planting
- (g) details of the species, sizes and numbers of all trees and shrubs to be planted including phased timing and planting
- (h) the planting of all boundary trees and hedges prior to any works commencing on the construction of the dwelling and of the avenue of Quercus Robur or any other species of avenue tree agreed upon.

## **SCHEDULE TWO**

### **ONGOING MANAGEMENT PLAN**

An ongoing Management Plan shall be prepared every five years. The plan shall be submitted to the Council for approval six months prior to the expiry of the previous Management Plan and upon approval the terms shall be deemed to be incorporated into the terms of this Agreement.

THE COMMON SEAL of )

BROADLAND DISTRICT COUNCIL )

was hereunto affixed in the presence of )



*[Handwritten signature]*

Head of Corporate Services and Monitoring Officer

SIGNED AS A DEED BY

ARTHUR HUGH BLAND STIMPSON

) X *[Handwritten signature]*

AND

EMMA LOUISE STIMPSON

) *[Handwritten signature]*

In the presence of

*[Handwritten signature]*

SIMON D. SHAW

SCOTTOW HALL

NORWICH

NR10 50F

FARMER