

**Planning Obligation by Deed of Agreement  
under Section 106 of the Town and Country  
Planning Act 1990**

relating to the development of a residential  
dwelling at the rear of Lynacre 6 Norwich Road  
Strumpshaw Norwich Norfolk NR13 4NT

Dated :

24<sup>th</sup> March

2009



THIS DEED is made the 24<sup>th</sup> day of March 2009

BETWEEN

- (1) Broadland District Council of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 ODU ("Council") and
- (2) Norfolk County Council of County Hall Martineau Lane Norwich Norfolk NR1 2SG ("County Council") and
- (3) MICHAEL JOHN CROW and MARGARET ROSEMARY CROW both of Hill Rise 8 Norwich Road Strumpshaw Norwich Norfolk NR13 4NT ("the First Owners") and
- (4) MICHAEL REGINALD TURNER of Lynacre 6 Norwich Road Strumpshaw Norwich Norfolk NR13 4NT ("the Second Owner")

WHEREAS

- (1) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated
- (2) The County Council is a local planning authority and the local highway authority for the area in which the Site is situated
- (3) The First Owners are the freehold owners of that part of the Site shown edged red on the Plan and forming part of Hill Rise 8 Norwich Road Strumpshaw Norfolk NR13 4NT as the same is registered at H M Land Registry under Title Number NK225130
- (4) The Second Owner is the freehold owner of that part of the Site shown edged yellow on the Plan and forming part of Lynacre 6 Norwich Road Strumpshaw Norwich Norfolk NR13 4NT as the same is registered at H M Land Registry under Title Number NK338407
- (5) The Second Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed
- (6) The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed

NOW THIS DEED WITNESSES AS FOLLOWS:

**1 DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

- |                               |   |
|-------------------------------|---|
| "Act"                         | the Town and Country Planning Act 1990 (as amended)   |
| "Application"                 | the application for full planning permission dated 26 <sup>th</sup> day of January 2009 submitted to the Council for the Development and allocated reference number 20090088  |
| "Commencement of Development" | the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of |

	site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements
"Development"	the Development of the Development Land pursuant to the Planning Permission
"Dwelling"	a bungalow to be constructed pursuant to the Planning Permission
"Development Land"	land at the rear of Lynacre 6 Norwich Road Strumpshaw Norwich Norfolk NR13 4NJ as the same is shown for the purposes of identification only edged in blue on the Plan and forming part of the property registered at HM Land Registry under title number NK338407
"Plan"	the plan attached to this Deed
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application
"Site"	the land against which this Deed may be enforced as shown edged red (being 28 metres at a setback of 2.5 metres from the public highway) and edged yellow (being 23 metres at a setback of 2.5 metres from the public highway) on the Plan and forming part of Hill Rise 8 Norwich Road Strumpshaw Norfolk NR13 4NT and part of Lynacre 6 Norwich Road Strumpshaw Norwich Norfolk NR13 4NJ which land is required to be provided as a visibility splay on either side of the access where it meets the highway

## **2 CONSTRUCTION OF THIS DEED**

In this Deed unless the context otherwise requires:-

- 2.1 Reference in this Deed to any party shall include the successors in title assigns of that party and in the case of the Council and County Council the successors to their respective statutory functions and references to clauses and schedules are references to clauses in and schedules to this Deed
- 2.2 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it

### **3       LEGAL BASIS**

- 3.1       This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and any other enabling powers
- 3.2       The covenants, restrictions and requirements imposed upon the First Owners and the Second Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council as local planning authorities against the First Owners and the Second Owner

### **4       CONDITIONALITY**

This Deed is conditional upon:

- (i)       the grant of the Planning Permission; and
- (ii)      the Commencement of Development

### **5       THE OWNER'S COVENANTS**

The First Owners and the Second Owner covenant with the Council and the County Council as set out in the Schedule to this Deed

### **6       MISCELLANEOUS**

- 6.1       The First Owners and the Second Owner shall pay to the Council and the County Council on completion of this Deed the reasonable legal costs of the Council and the County Council incurred in the negotiation, preparation and execution of this Deed
- 6.2       No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 6.3       This Deed shall be registrable as a local land charge by the Council
- 6.4       Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 6.5       This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires prior to the Commencement of Development
- 6.6       No person shall be liable for any breach of any of the covenants or obligations contained in this Deed after he or they shall have parted with their entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 6.7       save insofar as legally or equitably permitted nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local planning authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council were not a party to this Deed

### **7       WAIVER**

No waiver (whether expressed or implied) by the Council (or the County Council) of any breach or default by the First Owners and or the Second Owner in performing or observing any of the

covenants and obligations in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or the County Council) from enforcing the covenants and obligations or for acting upon any subsequent breach or default

## **8 CHANGE IN OWNERSHIP**

The First Owners and the Second Owner agree with the Council to give the Council immediate written notice of any change in ownership of any of their respective interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and usual address

## **9 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales

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

### **FIRST SCHEDULE**

The First Owners hereby jointly and severally covenant with the Council and the County Council as follows:

1. On Commencement of Development to secure the permanent maintenance of the existing close boarded fence erected between B and C on the Plan.
2. That at all times after the Commencement of Development that part of the Site shown edged red on the Plan shall be maintained free from any obstruction including any hedge plant shrub tree or wall exceeding 225 millimetres above the level of the adjacent highway carriageway in order for that part of the Site to be used as a visibility splay for the access to and from the Development Land
3. That in default thereof the County Council and/or the Council or their respective agents or contractors may enter that part of the Site edged red on the Plan and carry out works required to comply with covenants 1 and 2 of this Schedule and that the reasonable costs of so doing shall be a debt due on completion of those works from the First Owners to the County Council or the Council

The Second Owner hereby covenants with the Council and the County Council as follows:

1. That at all times after the Commencement of Development that part of the Site edged yellow on the Plan shall be maintained free from any obstruction including any hedge plant tree shrub or wall exceeding 225 millimetres above the level of the adjacent highway carriageway in order for that part of the Site to be used as a visibility splay for the access to and from the Development Land
2. That in default thereof the County Council and/or the Council or their respective agents or contractors may enter that part of the Site edged yellow on the Plan and carry out any works required to comply with covenant 1 of this Schedule and that the reasonable costs of so doing shall be a debt due on completion of those works from the Second Owner to the County Council or the Council
3. On commencement of the Development to permanently close off the existing driveway to and from the public highway of Lynacre 6 Norwich Road Strumpshaw and thereafter to lay out and only










use or allow the use of the re-aligned driveway as shown indicatively on the Plan for the purposes of vehicular access to and from Lynacre as aforesaid

SIGNED as a DEED by the said

MICHAEL JOHN CROW and

MARGARET ROSEMARY CROW

  
M. R. Crow

in the presence of:

Witness Name: J. T. HENT

(BLOCK CAPITALS)

Signature:



Address:

The Green Ayle Norfolk

Occupation:

Legal Manager

SIGNED as a DEED by the said

MICHAEL REGINALD TURNER



in the presence of:

Witness Name:

SUSAN CHENT

(BLOCK CAPITALS)

Signature:

S. Chent

Address:

The Green Ayle Norfolk

Occupation:


Solicitor

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

  
Authorised Signatory: \_\_\_\_\_

HEAD OF CORPORATE SERVICES  
& MONITORING OFFICER

THE COMMON SEAL OF )  
NORFOLK COUNTY COUNCIL )  
was affixed in the presence of: )



Authorised Signatory:  
HEAD OF LAW

