

DATED *Eighteenth January*

2005

BROADLAND DISTRICT COUNCIL

- AND -

G B PLANT LIMITED

AGREEMENT

Made pursuant to Section 106 of the
Town and Country Planning Act 1990 (as
amended) and any other enabling power
relating to the development of land
adjacent to Four Oaks Shortthorn Road
Stratton Strawless Norwich
Norfolk

steeles (law) llp
3 The Norwich Business Park
Whiting Road
Norwich NR4 6DJ

JB/4349-1440-1

THIS AGREEMENT is made the ~~Eighteen~~ day of *January* Two thousand and Five BETWEEN BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich in the County of Norfolk (hereinafter called "the Council") of the one part and of G B PLANT LIMITED (Company Registration Number 02126858) whose registered office is situated at 15 Upper King Street Norwich NR3 1RB (hereinafter called "the Owner") of the other part

RECITALS

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

"Affordable Dwellings" shall mean the Low Cost Market Housing and the Social Rented Housing, comprising six dwellings to be constructed on those plots on the Land which together have a frontage to Shortthorn Road of not less than 58 metres (and in respect of the Social Rented Housing to be constructed by or on behalf of a Registered Social Landlord) and "Affordable Dwelling" shall mean any one of the Affordable Dwellings

"Application" means the application for planning permission to develop the Land and dated 30th April 2004 submitted to the Council in accordance with the Application plans and

other materials deposited with the Council
and bearing reference no 20040753

“Commutated Sum Payment” means a sum to be calculated by the
Council (as increased by the Inflation
Provision) by reference to column 2 of the
table annexed hereto

“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 or in his
place

“Dwelling” a dwelling forming part of the Development

“District Valuer” means an Officer of the Valuation Office of
the Inland Revenue

“Inflation Provision” the increase (if any) in the RICS All in
Tender Price Index between the date of this
Agreement and the date upon which a
payment of money is made pursuant to this
Agreement

“Low Cost Market Housing” means the two Affordable Dwellings to be
sold at 20% less than the value determined
by the District Valuer and for this %
discount to be maintained in perpetuity.
The right to buy these properties needs to

be in the priorities as set down below in the nomination rights for the Social Rented Housing.

“Permission”

means the outline planning permission granted pursuant to the Application together with any reserved matters approval renewal or modification thereof

“Plan”

means the plan annexed hereto

“Registered Social Landlord” means a Housing Association or other non profit making body, either of which being a Registered Social Landlord within the meaning of the Housing Act 1996

“Social Rented Housing”

means the four Affordable Dwellings with a rent equivalent to the Housing Corporations’ target rent for dwellings of the relevant size let by a Registered Social Landlord or the Council through its common housing register. The nomination rights for these units needs to be firstly to persons currently living or working in Stratton Strawless, then to those who need to live in Stratton Strawless in order to provide support to an existing resident, then to persons in adjoining parishes and then to other neighbouring parishes

“1990 Act”

means the Town and Country Planning Act
1990 (as amended)

(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
- (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,

Graham Byrne. on behalf of
G.B. Plant Ltd.



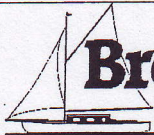
[Signature]

Company Secretary



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Date 07 May 04	Location Shortthorn Rd, Stratton Strawless	
Scale 1:1250	OS Reference TG1945419434	

**Commuted sum
due for off site
recreational
provision.**

Size of dwelling	Sites in rural areas	Market towns and villages	Norwich fringe parishes
1-bed	£1,939	£2,354	£2,946
2-bed	£1,939	£2,354	£2,946
3-bed	£2,909	£3,530	£4,418
4-bed	£2,909	£3,530	£4,418
5-bed and above	£3,878	£4,707	£5,891

Figures based on prices pertaining as at Aug'03.

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 1990 Act for the area within which the Land is situated
- (C) The Owner is 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 as the same is registered with Title Number NK299089 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 consider 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 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 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
PROVIDED THAT the Council will use its reasonable endeavours
within fourteen working days of written request to the Director provide
the Owner with written confirmation for the benefit of purchasing
owner/occupiers of the Low Cost Market Housing of the state of
compliance by the Owner and its successors in title with the obligations
in this Agreement with the intention of reassuring potential purchasers
of the same that there are no outstanding breaches in respect of the
obligations in this Agreement at the time of their proposed purchase
and PROVIDED FURTHER that the restrictions obligations and
stipulations set out in this Agreement shall not bind

- a) any present or future mortgagee of the Affordable Dwellings;
or
- b) any receiver appointed by such mortgagee or chargee; or
- c) any person acquiring an interest in an Affordable Dwelling
under a statutory right to buy or acquire the said Affordable
Dwelling;
- d) a lessee under a shared ownership lease of an Affordable
Dwelling or a mortgagee or chargee of a shared ownership
lease granted in respect of an Affordable Dwelling; or
- e) a person who has staircased under a shared ownership
lease of an Affordable Dwelling or a mortgagee or chargee
of such an Affordable Dwelling; or
- f) any person deriving title from any such person as is
mentioned in a) to e) (inclusive) above

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

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
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The Owner	15 Upper King Street Norwich NR3 1RB or other registered office of the Owner for the time being
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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 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 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 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 Royal Town Planning Institute 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 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

5. COVENANTS

The Owner

- 5.1 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

6. COMMUTED SUM PAYMENT

- 6.1 The Owner shall give at least 28 days prior written notification of the commencement of the Development to the Council
- 6.2 No later than the date of the notification referred to in clause 6.1 the Owner shall provide to the Council all information reasonably requested by the Council in writing to enable the Council to determine the amount of the Commuted Sum Payment
- 6.3 Within 28 days of the receipt of all information required by the Council pursuant to clause 6.2 the Council shall provide the Owner with written confirmation of the amount of the Commuted Sum Payment and the basis upon which that sum has been calculated which amount shall deemed to have been accepted by the Owner unless within 21 days of receipt of such written confirmation the Owner requires the amount to be determined by arbitration pursuant to clause 3 above

- 6.4 Prior to the first occupation of the fifth Dwelling to pay the Commuted Sum Payment to the Council
- 6.5 To pay interest at the rate of two percent above the base rate of the Cooperative Bank plc if the Commuted Sum Payment is not paid within 14 days of the date upon which any payment becomes due

7. THE COUNCIL'S COVENANTS

- 7.1 The Commuted Sum Payment shall forthwith upon payment by the Owner be credited to a separate interest bearing account with the Council's bankers and together with any interest that may from time to time accrue be applied by the Council towards the cost of improving the recreational facilities for the residents of Stratton Strawless
- 7.2 If any part of the Commuted Sum Payment has not been so expended or committed to be spent (as evidenced by a contract in writing) within ten years of the date of payment by the Owner the Council shall return such moneys as are currently contained in the interest-bearing account to the Owner

The Obligations

8. AFFORDABLE HOUSING

- 8.1 Within twelve months of the date hereof to transfer to a Registered Social Landlord the land on which the Social Rented Housing is to be situate without requiring any payment in respect of the same but subject to an obligation on the transferee to pay the Commuted Sum

Payment to the Council in respect of the four plots comprising the Social Rented Housing in accordance with clause 6.4 above.

8.2 To provide free of charge for each of the four plots comprising the Social Rented Housing the following:-

8.2.1 mains electricity water and provision for foul and surface water drainage PROVIDED THAT the Owner shall be under no obligation to provide mains drainage

8.2.2 access to and from Shortthorn Road by way of a private unadopted road or alternative as agreed with the Council.

8.3 To grant to the Registered Social Landlord at the same time as making the gift referred to in clause 8.1 above easements for the use of the services and the access referred to in clause 8.2 subject to the Registered Social Landlord being obliged to pay a fair proportion of the cost incurred in maintaining, repairing and renewing any service pipes and cables used in common with other properties and also the private road such fair proportion to be determined in the event of a dispute by a surveyor to be appointed by the President for the time being of the Royal Institution of Chartered Surveyors at the instance of any person entitled to seek or obliged to make contribution, the decision of such Surveyor to be final.

8.4 Not to permit the occupation of more than one Dwelling on the Land until such time as the Owner has complied with its obligations in clause 8.1, 8.2 and 8.3 above

8.5 The Owner shall procure a valuation from the District Valuer and submit for approval by the Council prior to the disposal of any unit comprised


within the Low Cost Market Housing; such valuation is to be obtained at
nil cost to the Council

8.6 No disposal of any of the units comprised within the Low Cost Market
Housing shall take place until the approval required under clause 8.4
above has been obtained

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

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

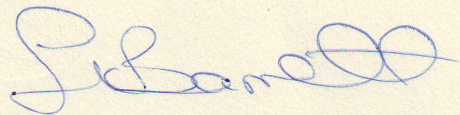



Head of Corporate Service and Monitoring Officer

SIGNED AS A DEED)
by and on behalf of)
G B PLANT LIMITED)
acting by a director and its secretary)

Director 

C. BYRNE

Secretary 

L. K. BARRETT