

AN UNDERTAKING DATED

1<sup>st</sup> October

2015

GIVEN BY:

(1) DAVID ERIC SMITH

TO:

(2) BROADLAND DISTRICT COUNCIL

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Made pursuant to Section 106 Town and Country Planning Act 1990  
relating to the development of the land to the rear of  
Lower Street, Salhouse, Norwich

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The Guildyard

51 Colegate

Norwich

Norfolk

NR3 1DD

Ref: JZM/JMC/221949.3

THIS UNDERTAKING is given on

1<sup>st</sup> October

2015

BY

(1) **DAVID ERIC SMITH** of The Old Maltings, Anchor Street, Coltishall, Norwich,  
Norfolk, NR12 7AQ ("Owner");

TO

(2) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Thorpe  
St Andrew, Norwich NR7 0DU ("District Council")

## RECITALS

- 1 The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site registered at HM Land Registry under title number NK315364.
- 3 The Owner enters into this Deed in order to secure the planning obligations contained herein should the District Council grant Planning Permission.

## NOW THIS DEED WITNESSES AS FOLLOWS:

## OPERATIVE PROVISIONS

### 1 DEFINITIONS

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

"Act"	the Town and Country Planning Act 1990.
"Application"	the application for outline planning permission dated 6 July 2015 submitted to the District Council and allocated reference number 20151129
"Changing Room Permission"	the planning permission granted by the District Council for the erection of replacement changing

room facilities and relocation of storage containers on 1 September 2015 and allocated reference number 20151128 (as may be amended)

"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 and "Commence Development" shall be construed accordingly.
"Development"	the development of four self-build/custom houses on the Site pursuant to the Application.
"Dwellings"	the residential dwellings to be constructed on the Site as part of the Development and "Dwelling" shall be construed accordingly.
"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the "Occupy" shall be construed accordingly.
"Planning Permission"	a planning permission granted following the determination of the Application.
"Self/Custom Build Houses"	a house or group of houses which is commissioned by an individual or group of individuals from a builder contractor or package company and is built by an individual either by

themselves or with the assistance of appropriate tradesmen

"Site"

the land to the rear of Lower Street, Salhouse, Norwich NR13 6RB and shown for identification purposes only on the plan edged red attached to this Deed at Schedule 1 and registered at the Land Registry under title number NK315364.

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause or Schedule such reference (unless the context otherwise requires) is a reference to a clause or schedule in this Deed and any reference in a Schedule to a paragraph or Part shall be a reference (unless the context otherwise requires) to a paragraph or Part of that Schedule.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 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.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and references to the District Council shall include the successors to its statutory functions.

- 2.7 The headings are for reference only and shall not affect the construction of this Deed.

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and all other enabling powers.

- 3.2 The covenants, restrictions and requirements undertaken by the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council as local planning authority.

### **4 CONDITIONALITY**

This Deed is conditional upon:

- 4.1 the grant of the Planning Permission; and
- 4.2 the Commencement of Development.

save for the provisions of Clauses 9 and 10 which shall come into effect immediately upon completion of this Deed.

### **5 THE COVENANTS**

- 5.1 The Owner covenants with the District Council as set out in the Second Schedule.

### **6 MISCELLANEOUS**

- 6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.2 This Deed shall be registrable as a local land charge.
- 6.3 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.
- 6.4 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 (without the written consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

- 6.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT the reservation of any rights or the inclusion of any covenants in any transfer shall not constitute an interest for the purposes of this clause.
- 6.6 This Deed shall not be enforceable against statutory undertakers or the owners and occupiers of the Dwellings.
- 6.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission.
- 6.8 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the District Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authority.

## **7 WAIVER**

No waiver (whether expressed or implied) by the District Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **8 NOTICE**

The Owner agrees to notify the District Council within 28 days of:

- 8.1 the date of Commencement of Development;
- 8.2 the occupation of any Dwelling which acts as a trigger for the performance by the Owner of any obligation owed to the District Council.

**9 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the Owners submit to the non-exclusive jurisdiction of the courts of England and Wales.

**10 DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

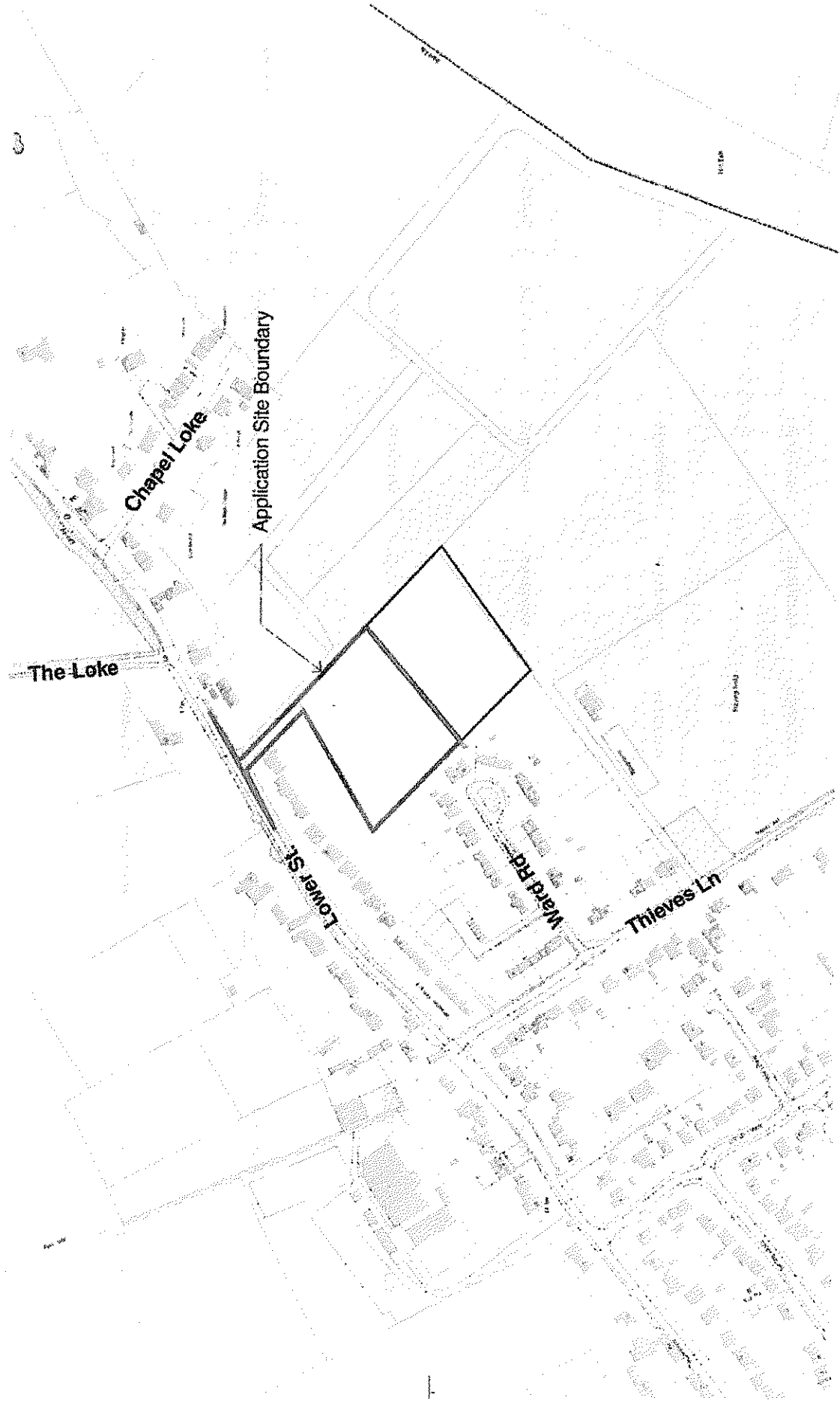
## FIRST SCHEDULE

### Site Plan





2

BROADLAND  
DISTRICT COUNCIL  
08 July 2015  
20151129  
PLANNING CONTROL



**LOCATION MAP**

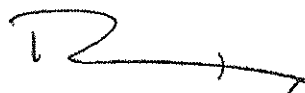
-  Application Site Boundary
-  Land ownership Boundary

## **SECOND SCHEDULE**

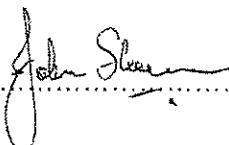
### **The Owners covenants with the District Council**

- 1 The Owner covenants with the District Council as follows:
  - 1.1 Not to Occupy or allow Occupation of any Dwelling on the Site until the development permitted under the Changing Room Permission has been constructed and made ready for use in accordance with the Changing Room Permission; and
  - 1.2 All Dwellings shall only be constructed as Self/Custom Build Houses in accordance with the terms of this Deed.

SIGNED as a deed by **DAVID ERIC SMITH** in the presence of:



Signature of Witness:.....



Name of Witness:.....

JOHN RICHARD SHARMAN

Address of Witness:.....

14 Broadhurst Road Norwich NR4 6RD.

