

DATED

Ninth day of January

2004

BROADLAND DISTRICT COUNCIL

- AND -

MR TERENCE DAVIES

- AND -

MRS JACQUELINE SUSAN DAVIES

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 Land adjacent
to 24 Pitt Farm Ringland Norwich Norfolk

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

THIS AGREEMENT is made the 9th day of January Two thousand and Four
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 Mr Terence Davies and Mrs Jacqueline Susan Davies both of
Manor Farm Ringland Norwich Norfolk (hereinafter called "the Owner") of the second
part

RECITALS

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

"Affordable Housing" means those two rental dwellings which having
regard to its rent or other consideration is
suitable for occupation by people who are in
Housing Need

"Application" means the application for planning permission
to develop the Land and dated 24 December
2001 and duly registered by the Council on 14th
January 2002 in accordance with the
Application plans and other materials deposited
with the Council and bearing reference no
20010813

"Development" means the development permitted by the
Permission

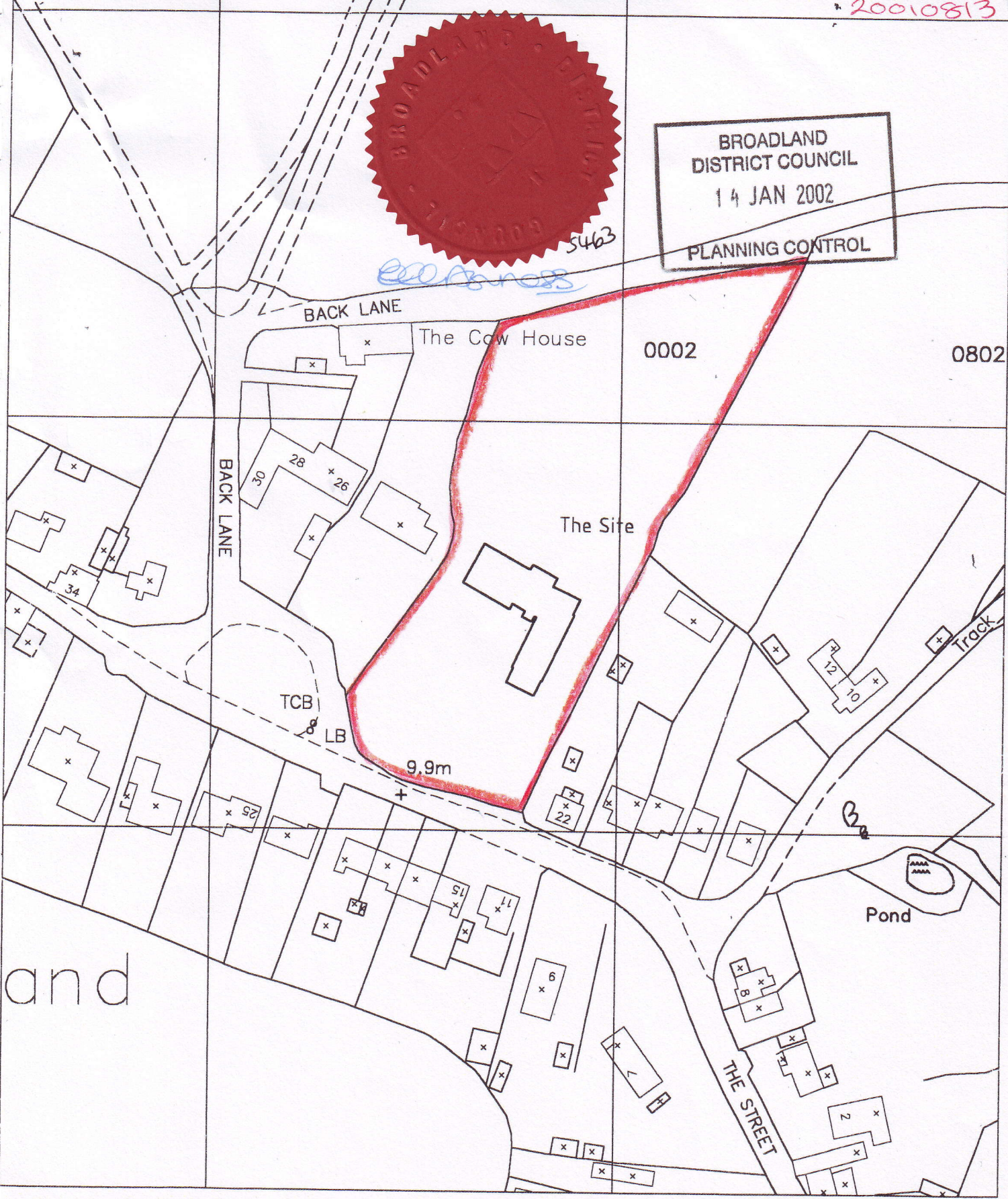
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BROADLAND
DISTRICT COUNCIL
14 JAN 2002
PLANNING CONTROL

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Client	Mr T Davies	Date	21.12.01	Drawn	JPD	OWEN BOND PARTNERSHIP ARCHITECTS Queens House, Queens Road, Norwich NR1 3PL Telephone (01603) 620326 Fax (01603) 761590 E-Mail - Architects@owenbond.freemove.co.uk
Project	Proposed Residential Development at Pitt Farm, Ringland.	Scale	1:1250	Drawing Number	01/5869/04	
Drawing	Site Location Plan					

Ravi
JSD Davies

“Director”	means the Council’s Strategic Director (Community Services) or other officers of the Council acting under his hand
“Dwelling”	means a dwelling forming part of the Development
“Environmental Improvements Locally”	means to include some or all of the following: tree pruning, hedge cutting and grass cutting in locations determined by the Parish Council within the Parish of Ringland
“Environmental Improvements Sum”	the sum of Three Thousand One Hundred and Thirty Two Pounds and Fifty Pence £3,132.50 as increased by the Inflation Provision
“Housing Register”	means that register maintained by the Council pursuant to Section 162 of the Housing Act 1996 or any statutory modification or re-enactment thereof
“Implementation”	means implementation of the Permission by the carrying out of a material operation as defined in section 56(4) of the Town and Country Planning Act 1990 comprised in the Development and exclusively referable to the Permission, save for the following matters which shall not constitute a material operation

and consequently shall not individually or together constitute Implementation: enabling works, demolition, site clearance, the provision of infrastructure, exploratory boreholes, operations permitted by the Town and Country Planning General Permitted Development Order 1995 or any amendment or replacement thereof and operations to enable any of the foregoing to take place

“Inflation Provision”

means 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 or play equipment provided in accordance with the requirements of the provisions of this Agreement

“Local Connection and Housing Need”

shall be evidenced by entry on the Housing Register provided that where there is a person or persons on the Housing Register who reside in the parish of Ringland then no other person shall be deemed to have Local Connection and Housing Need

“Local Reference Rent”

means that maximum rent for the Affordable Housing if it were owned or managed by a social landlord registered pursuant to Section 3 of the Housing Act 1996 or any statutory

modification or re-enactment thereof or in default thereof such other rent as the Council shall reasonably determine as affordable by persons with Local Connection and Housing Need and that the Local Reference Rent at the date hereof is Three Hundred and Seventy One Pounds (£371) per calendar month

“Occupation” when a Completion Certificate is issued by the NHBC or other such competent body

“Owner” the owner for the time being of the Land

“Permission” means the detailed planning permission granted pursuant to the Application together with any renewal or modification thereof

“Registered Social Landlord” shall have the meaning ascribed by the Housing Act 1996

“Rental Dwelling” means the Affordable Housing to be let by or on behalf of a Housing Association or the Council in accordance with its objects and “Rental Dwellings” shall mean any one of the Rental Dwellings

“The T Davies 1988
Settlement”

means the family trust established by the
Owner in 1988

“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 schedule 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 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 annexed hereto as the same is registered with Title Number NK273420 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 and the County 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 Developers 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 The entry into force of the provisions of this Agreement (other than this clause 1.9 which has effect immediately) is conditional upon:

(a) the Permission being duly granted, and

(b) Implementation

1.10 This Agreement shall cease to have effect if either:-

1.10.1 the Permission is quashed revoked or otherwise withdrawn; or

1.10.2 planning permission on the Land is granted subsequently and implemented for proposals incompatible with the Development

1.11 NOTICES

1.11.1 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

1.11.2 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 Owner	Mr Terence Davies Manor Farm Ringland Norwich NR8 6JH Mrs Jacqueline Susan Davies Manor Farm Ringland Norwich NR6 6JH

1.11.3 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 the sole expense of the Developers 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 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

The Obligations

6. AFFORDABLE HOUSING

- 6.1 Not to commence development on the Land without first having submitted to the Strategic Director (Community Services) of the Council for approval a scheme or schemes for the construction and long term management of the Affordable Housing by a Registered Social Landlord or Parish or Village Trust or The T Davies 1988 Settlement and upon approval such scheme shall be deemed to be incorporated in the provisions of this agreement
- 6.2 Prospective tenants shall be nominated from within Ringland parish with Local Connection and Housing Need
- 6.3 In the event that there are no prospective tenants within Ringland parish then the Council will nominate prospective tenants from adjoining parishes
- 6.4 The Affordable Housing units shall not be occupied other than by a person with Local Connection and Housing Need
- 6.5 The Affordable Housing Units shall not be occupied other than by a person nominated by the Council from the Housing Register and nominations shall take place in accordance with 6.2 and 6.3 above
- 6.6 Not to permit the occupation of more than two houses on the Land until such time as the Affordable Housing units have been constructed and are ready for occupation
- 6.7 At any time the Affordable Housing Units may be transferred into the ownership or management of an RSL or by the 1988 Davies Trust

7. ENVIRONMENTAL IMPROVEMENTS SUM

- 7.1 The Owner shall pay the Environmental Improvements Sum for Environmental Improvements Locally to the Council prior to the Occupation of more than one of the dwellings to be constructed on the land

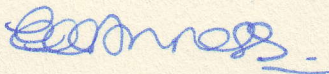
7.2 To pay interest at the rate of two percent above the base rate of the Cooperative Bank plc if the Environmental Improvements Sum is not paid within 14 days of the date on which any payment becomes due

8. THE COUNCIL'S COVENANTS

8.1 The Environmental Improvements Sum shall forthwith upon payment by the Owner be credited to a separate interest-bearing account with the Council's bankers and together with all interest that may from time to time accrue be applied by the Council towards the cost of providing Environmental Improvements Locally within the parish of Ringland

8.2 If any part of the Environmental Improvements Sum 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 forthwith return such moneys to the Owner

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 Services and Monitoring Officer

SIGNED AS A DEED BY
MR TERRY DAVIES

X *T Davies* X

In the presence of

witness' signature:
witness' name:
witness' address:
witness' occupation:

SIGNED AS A DEED BY
MRS JACQUELINE SUSAN DAVIES

S. Berwick
MRS S. BERWICK
36 ST. PHILLIPS RD
NORWICH
Housewife

J S Davies
J S D X

In the presence of

witness' signature:
witness' name:
witness' address:
witness' occupation:

S. Berwick
MRS S. BERWICK
36 ST PHILLIPS RD
NORWICH
Housewife.