

Dated

5 March

2019

Broadland District Council

-and-

D A Barnes, D J Hall and K J Ewing

**DEED OF PLANNING OBLIGATION
UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

relating to land at Old Station Yard
Cawston Road/Stoney Lane, Reepham, Norfolk

THIS DEED is dated

5 March

2019

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0DU (referred to as "the Council")
- (2) DEREK ALAN BARNES of 7 St John's Close, Hethersett, Norfolk, DOUGLAS JAMES HALL of 115 Fakenham Road, Taverham, Norfolk and KENNETH JOHN EWING of Dale Farm, Reepham Road, Bawdeswell, Norfolk (together referred to as "the Owners")

together referred to as 'the Parties'

INTRODUCTION

- (A) The Council is the local planning authority for the purposes of this deed for the area within which the Site is located.
- (B) A planning application has been made to the Council for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed.
- (C) The Owners own the freehold of the Site which is registered at the Land Registry under title number NK114862 and held free from encumbrances

1. DEFINITIONS

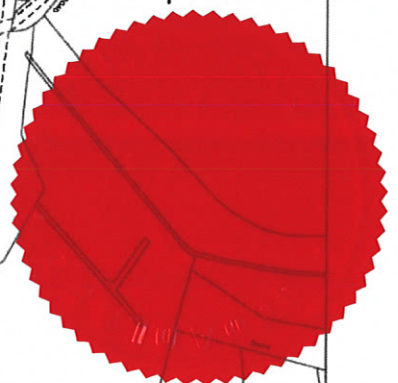
In this Deed the following expressions have the following meanings:

Act	The Town and Country Planning Act 1990 as amended.
Care Commission	Quality An executive non departmental public body of the Department of Health and Social Care of the United Kingdom with responsibility for regulating monitoring and inspecting health and social care services in England
Care Village	That part of the Development comprising 60 no. bedroom care home (C2 use); 20 no. assisted flats

	(C2 use); 15 no. assisted bungalows (C2 use); assembly room/club house (C2 use) and associated car parking, service yards, access roads, drainage works and landscaping shown edged in green on Plan 2 attached to this Deed
CIL Regulations	The Community Infrastructure Regulations 2010 as amended
Commencement	<p>The date on which a material operation (as defined in Section 56(4) of the Act) is first carried out, except (for the purposes of this Deed only) operations consisting of:</p> <ul style="list-style-type: none"> a. site clearance including removal of hedging b. demolition c. archaeological investigations d. ground surveys e. removal of contamination or other adverse ground conditions f. erection of temporary fences and/or g. temporary display of site notices and/or advertisements <p>and 'Commence' and 'Commenced' will be construed accordingly</p>
Development	The Development of the Site in accordance with the Permission
Dwelling	A dwelling to be built on the Site as part of the Development
Index Linked	Index linked from 9 January 2019 until the date any payment referred to in this Deed is made, such index linking being equivalent to any change in the RICS Building Cost Information Service All In Tender Index published by the Office for National Statistics (or if such index ceases to be published, another index notified to the Owners by the

	Nominated Officer)
Nominated Officer	The senior officer of the Council responsible for development management or other officer of the Council notified to the Owners
Occupation	Occupation of the Site, or any part of it (including for the avoidance of any doubt the Care Village), for any purpose authorised by the Permission, but excluding occupation for the purposes of: <ul style="list-style-type: none"> a. construction b. internal and external refurbishment c. decoration d. fitting-out and/or e. marketing and 'Occupy' and 'Occupier' will be construed accordingly
Permission	The planning permission to be granted by the Council for erection of food retail store (A1 Use); offices (B1a use); 60 no. bedroom care home (C2 use); 20 no. assisted flats (C2 use); 15 no. assisted bungalows (C2 use); assembly room/club house (C2 use) and associated car parking, service yards, access roads, drainage works and landscaping and allocated reference number 20180963
Plan 1 and Plan 2	The plans attached to this Deed and marked as such
Site	The land known as Old Station Yard, Cawston Road/Stony Lane, Reepham, Norfolk and registered at H M Land Registry under title number NK114862 shown hatched red on Plan 1
Trigger	means the date of Commencement of Development and any trigger or threshold in this Deed linked to the taking of specified steps, payment of money, or linked to the prohibition of a specified action

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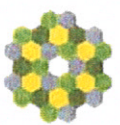
M. Mue

Head of Democratic Services and
Monitoring Officer

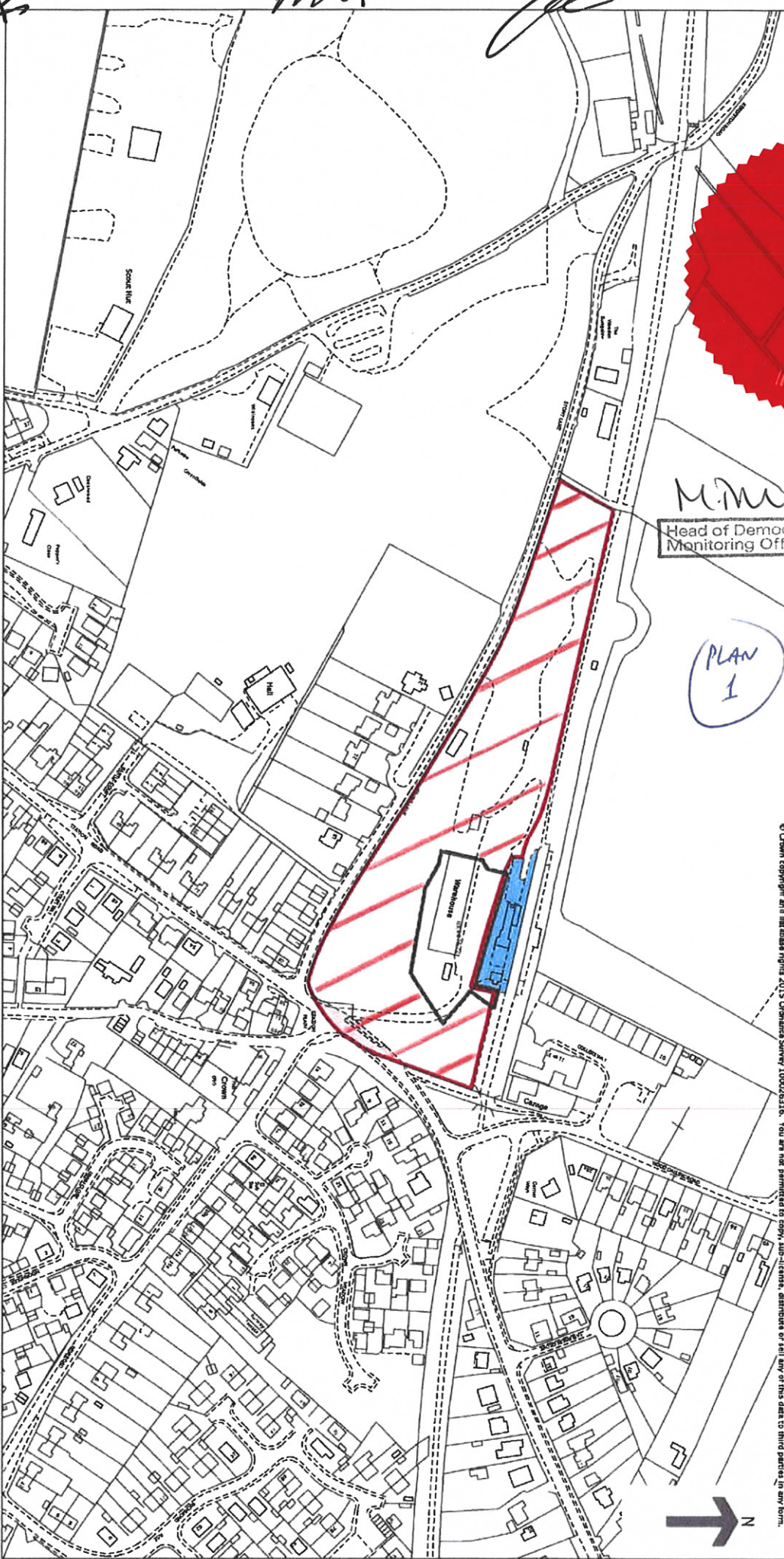
PLAN
1

HM Land Registry
Official copy of
title plan

Title number **NK114862**
Ordnance Survey map reference **TC10235W**
Scale **1:2500**
Administrative area **Norfolk : Broadland**



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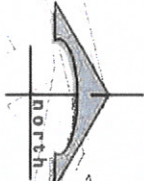
PLAN 2

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Mime)

Head of Democratic Services and
Monitoring Officer

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CYN ARCHITECTS

Direct
CDP Commercial Development
Projects Ltd
Carlton Hall Village Ltd
Carlton England Co-operative

Project Activities

Drawing Title	CANADIAN HONOR/ SIZING LARSEN REEDHAM, NORFOLK NR10 4LE
Transfer Plan	

Date	01-08-18	Forma	1-72506A3	Revision
Drawing	EA	Checker	LMM	CSD Date

2. LEGAL BASIS

- 2.1 This Deed is made pursuant to Section 106 of the Act and, to the extent that it does not contain planning obligations, under Section 111 of the Local Government Act 1972 and all other enabling powers.
- 2.2 The covenants and obligations contained in this Deed create planning obligations for the purposes of section 106 of the Act enforceable by the Council and relate to the Site.
- 2.3 It is agreed by the Parties that any obligation contained within this Deed which sets out how a planning obligation will be performed will not amount to more than one planning obligation per Schedule for the purposes of Regulation 123 of the CIL Regulations.
- 2.4 Covenants given by more than one party can be enforced against them individually or jointly.
- 2.5 A reference to an Act of Parliament includes any later modification or re-enactment, including any statutory instruments made under that Act, and reference to a gender or person includes all genders or classes of person.
- 2.6 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done.
- 2.7 References to any party to this Deed shall include successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.8 Representatives of the Council may enter the Site at any reasonable time to ascertain whether the terms of this Deed are being or have been complied with provided that:
 - 2.8.1 they do not enter any individual Dwelling; and
 - 2.8.2 they adhere to all reasonable health and safety requirements.

3. CONDITIONALITY

This Deed is conditional upon:

- 3.1 The grant of the Permission; and
- 3.2 The Commencement of Development.

Save for the provisions of this clause and clauses 6.4 and 6.13 which shall come into effect immediately on completion of this Deed.

4 COVENANTS

- 4.1 The Owners covenant with the Council for themselves and their successors in title to observe and perform the obligations and stipulations contained in this Deed.
- 4.2 The Council covenants with the Owners to comply with its obligations contained in this Deed.

5 USE OF CONTRIBUTIONS, INDEXATION AND INTEREST

- 5.1 Any improvements referred to in this Deed for which contributions are required may at the Council's absolute discretion be commenced or provided (in whole or in part) at any time after the date of this Deed even if payment of the relevant contribution may not have become due.
- 5.2 If the improvements have been commenced or provided prior to the due date for payment of the relevant contribution then the payment will be regarded as a reimbursement of the costs incurred in providing the improvement.
- 5.3 Nothing in this Deed binds the Owners to pay;
 - 5.3.1 any contribution before the date on which it is due under the Schedules,
or
 - 5.3.2 any contribution at all if the relevant due date is not reached, or
 - 5.3.3 any greater contribution than provided in the relevant Schedule.
- 5.4 The Council are entitled to use all interest accrued on each contribution specified in the Schedules from the date of actual payment of the contribution until the date when the contribution is spent.
- 5.5 The contributions specified in the Schedules are to be Index Linked.
- 5.6 In the event of any delay in paying the contributions specified in the Schedules then from the due date of payment:
 - 5.6.1 the contributions are a debt due to the Council and are recoverable by action by the Council; and
 - 5.6.2 are liable to interest calculated on a daily basis at a rate of 4 percent over the bank rate as set by the Bank of England in force from time to time from the due date for payment until the actual date of payment.

- 5.7 All payments under this Deed are exclusive of value added tax (VAT) and any VAT due must also be paid.
- 5.8 Any money from time to time held by the Council in respect of any payment made to the Council by the Owners under the provisions of this Deed will in any event become the absolute property of the Council and will not be subject to return by the Council to the party who made that payment but shall continue to be held by the Council under the terms of this Deed if that party:
- 5.8.1 becomes bankrupt or has a winding-up petition or a petition for an administration order presented against it, or
 - 5.8.2 passes a winding-up resolution or an administrative receiver or a receiver and manager is appointed in respect of the property (or any part thereof) belonging to that party, or
 - 5.8.3 enters into any arrangement scheme compromise moratorium or composition with its creditors or any of them.
- 5.9 The Council may spend part of each contribution specified in the Schedules on reasonable legal costs and disbursements which are supplemental to or incurred in connection with the spending of the said contribution in accordance with the relevant Schedule.

6. OTHER PROVISIONS

- 6.1 No person will be liable for any breach of this Deed if he no longer has an interest in the Site or the part of the Site in respect of which such breach occurs (unless the breach occurred before he disposed of his interest). For the avoidance of doubt, the reservation of any rights easements or the inclusion of any covenants or restrictions in any transfer shall not constitute an interest for the purposes of this clause.
- 6.2 The Owners confirm that they are the owners of the Site with full power to enter into this Deed and that there is no person or body with an interest in the Site whose consent is necessary to make this Deed binding on all interests in the Site.
- 6.3 The covenants, restrictions and requirements contained in this Deed shall not be enforceable against any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of

electricity gas water telecommunications or highways in connection with the Development of the Site.

- 6.4 On completion the Owners will pay the Council's reasonable legal costs in connection with this Deed.
- 6.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.6 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions.
- 6.7 No waiver, express or implied, by the Council of any breach or failure to perform or observe any of the covenants, terms or conditions of this Deed constitutes a continuing waiver, nor prevents the Council from enforcing any of the provisions in this Deed.
- 6.8 If the Permission is quashed revoked or expires before Commencement then, save for clause 6.4, this Deed will cease to have effect (insofar only as it has not already been complied with).
- 6.9 Subject to clause 6.10, nothing in this deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted after the date of this Deed.
- 6.10 If the Permission is subject to an application under Section 73 of the Act for the removal or amendment of any condition attached to the Permission then the obligations in this deed shall also apply to the new planning permission resulting from such application if so approved by the Council (acting in its absolute discretion).
- 6.11 This Deed is registrable as a local land charge.
- 6.12 An agreement, approval, consent or expression of satisfaction required by the Owners from the Council under the terms of this Deed must be given in writing and shall not be unreasonably withheld or delayed.
- 6.13 The provisions of this Deed (other than this clause which takes immediate effect) will be of no effect until this deed has been dated.
- 6.14 Nothing contained or implied in this Deed will fetter, prejudice or affect the rights, discretions, powers, duties and obligations of the Council in the exercise of any of its functions as local authority.

7. DISPUTES

- 7.1 If any dispute is not resolved between the Parties, any of the Parties may refer it for determination by an expert. The expert will be appointed by agreement between the parties or, in default of agreement, by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's decision shall be final and binding.
- 7.2 The expert is to be replaced by a fresh appointee in the event that he becomes at any time unable or unwilling for any reason to proceed to discharge his functions. The fresh appointee is to be appointed in the manner prescribed in this clause.
- 7.3 The expert is to make his decision within 6 weeks of being appointed.
- 7.4 The costs of appointing the expert are to be shared equally by the parties to the dispute except where the expert takes the view that one party has acted unreasonably. In that case the expert has binding discretion as to apportionment of the costs.
- 7.5 Nothing in this clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings.

8. NOTIFICATIONS

- 8.1 Any notice or written communication given under this Deed is validly given if hand delivered or sent by recorded or special delivery post to the address set out at the beginning of this Deed, unless written notification of another address has been received.
- 8.2 The Owners will notify the Nominated Officer in writing of the relevant
- 8.2.1 anticipated Triggers seven days in advance of each anticipated date,
- 8.2.2 actual Triggers within seven days of each actual date.
- 8.3 If the Owners (or any one of them) dispose of their interest in all or part of the Site they will notify the Nominated Officer within 7 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site.

9. JURISDICTION

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

SCHEDULE 1

Plan 1

Plan 2

SCHEDULE 2

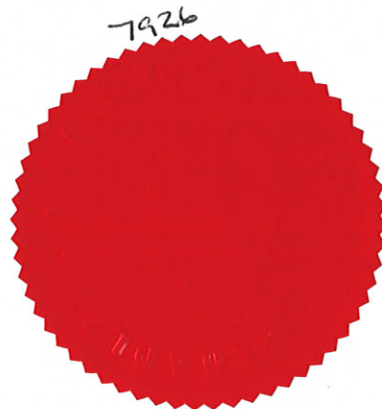
The Care Home

The Owners hereby covenant with the Council as follows:

1. That prior to first Occupation the operator of the Care Village will ensure that it and its care operations at the Care Village will be regulated by the Care Quality Commission
2. That the operator of the Care Village will ensure that each of the 20 assisted flats and the 15 assisted bungalows within the Care Village is from the commencement of their Occupation, provided with a minimum amount of at least 4 hours of care each week
3. That the operator of the Care Village will ensure that the minimum age of at least one Occupier of any of the 15 assisted bungalows within the Care Village is 75 years dating from the date of their first Occupation and that at least one Occupier of any of the 20 assisted flats within the Care Village (and each Occupier of the 60-bed care home) has medical needs which fulfil the care requirements of the Care Quality Commission
4. That the operator of the Care Village will ensure that the Occupiers of any of the 20 assisted flats and the 15 assisted bungalows within the Care Village will from their date of first Occupation be contractually bound and required to pay a weekly maintenance fee to contribute towards the costs of daily bin collections from and structural maintenance of the relevant flat or bungalow (as the case may be)
5. That the operator of the Care Village will ensure that each and every of the 20 assisted flats and the 15 assisted bungalows within the Care Village will from the date of first Occupation contain level access bathing/showering facilities, accessible doorways and internal circulation, higher level electrical sockets and emergency alarm systems with pull cords and intercom facilities to facilitate and secure immediate response all in accordance with the requirements and to the satisfaction of the Care Quality Commission

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

THE COMMON SEAL OF Broadland District Council)
was affixed in the presence of:)



Authorised Signatory:

M. Throver

Head of Democratic Services and
Monitoring Officer

MARTIN THROVER

EXECUTED AS A DEED by
Derek Alan Barnes

) *Derek Alan Barnes*
)

in the presence of: *y* ANDREW JONATHAN
BARNES

Signature of witness *y* A. J. Barnes

Printed name of witness *y* ANDREW JONATHAN
BARNES

Address of witness *y* HOWES PERCIVAL WY
FLINT BUILDINGS
1 BEDDING LANE
NORWICH
NR3 1R9

EXECUTED AS A DEED by
Douglas James Hall

) x D. James Hall
)

in the presence of: x ANDREW JONATHAN
BARNES

Signature of witness x A. J. Barnes

Printed name of witness x ANDREW JONATHAN
BARNES

Address of witness x HOWES PERCIVAL LUP
FLINT BUILDINGS
1 BEDDING LANE
NORWICH
NR3 1RQ

EXECUTED AS A DEED by
Kenneth John Ewing

) x K. J. Ewing
)

in the presence of: x

T. Hughes

Signature of witness x

TRACEY HUGHES

Printed name of witness x
FLINT BUILDINGS
1 BEDDING LANE
NORWICH
NR3 1RQ

Address of witness x