

Dated

23 FEBRUARY

2017

**BROADLAND DISTRICT COUNCIL**

-and-

**CHRISTOPHER JOHN CHARLES MUTTEN**

- and -

**BADGER BUILDING (E.ANGLIA) LIMITED**

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

relating to land on the east side of Station Road Reedham Norfolk NR13

THIS DEED is dated

23 FEBRUARY

2017

**PARTIES:**

- (1) **BROADLAND DISTRICT COUNCIL** Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew NORWICH NR7 0DU (referred to as "the Council")
- (2) **CHRISTOPHER JOHN CHARLES MUTTEN** Manor Cottages Low Road Eyke Woodbridge Suffolk IP12 2QF (referred to as "the Owner")
- (3) **BADGER BUILDING (E.ANGLIA) LIMITED** Company number 02407008 whose registered office is at Stanley House Stanley Street Lowestoft Suffolk NR32 2DZ (referred to as "the Developer")

together referred to as 'the Parties'

**INTRODUCTION**

- (A) The Council is a local planning authority for the area within which the Site is located
- (B) Wheatman Planning Limited has applied on behalf of the Developer for the outline Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed
- (C) The Owner owns the freehold of the Site which is registered at the Land Registry under title number NK333206

**1. DEFINITIONS**

In this Deed the following expressions have the following meanings:

"Act" the Town and Country Planning Act 1990

"Commencement"	<p>the date on which a material operation as defined in Section 56(4) of the Act is first carried out, except operations consisting of:</p> <ul style="list-style-type: none"> <li>site clearance</li> <li>demolition</li> <li>archaeological investigations</li> <li>ground surveys</li> <li>removal of contamination</li> <li>erection of temporary fences</li> </ul> <p>and 'Commence' and 'Commenced' will be construed accordingly</p>
"Development"	<p>the Development of the Site in accordance with the Permission</p>
"Dwelling"	<p>a dwelling to be built on the Site as part of the Development</p>
"Inflation Provision"	<p>the increase (if any) in the Royal Institution of Chartered Surveyors Build Cost Information Service; All Construction TPI; All New Construction between January 2015 and the date upon which a payment of the Open Space Contribution is made pursuant to this Deed</p>
"Nominated Officer"	<p>the senior officer of the Council responsible for development management or other officer of the Council notified to the Owner</p>
"Occupation"	<p>Occupation of the Site, or any part of it, for any purpose authorised by the Permission, but excluding occupation for the purposes of:</p> <ul style="list-style-type: none"> <li>construction</li> </ul>

internal and external refurbishment  
decoration  
fitting-out  
marketing  
and 'Occupy' and 'Occupied' will be construed accordingly

"Permission"

the outline planning permission to be granted by the Council for a residential development and allocated reference number 20151061 or if the Council agrees (in its absolute discretion) in writing another planning permission for the Development granted pursuant to section 73 of the Act or a replacement permission for the Development

"Plan"

the plan (drawing REE-004, Rev A, dated January 2017) attached to this Deed

"Site"

the land on the east side of Station Road Reedham Norfolk NR13 and registered at Land Registry under title number NK333206 shown edged red on the Plan

"Trigger"

means the Commencement date 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



## **2. LEGAL BASIS**

- 2.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Council
- 2.2 It is agreed by the Parties:
- 2.2.1 That there are two planning obligations pursuant to Section 106 of the Act and each planning obligation is set out in a separate Schedule to this Deed
- 2.2.2 That each Schedule to this Deed which sets out how the planning obligation will be performed and sets out the infrastructure or infrastructure project which will be effected will not amount to more than one planning obligation per Schedule for the purposes of Regulation 123 of the Community Infrastructure Levy Regulations 2010, as amended.
- 2.3 Covenants given by more than one party can be enforced against them individually or jointly
- 2.4 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
- 2.5 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done
- 2.6 This Deed is governed by and interpreted in accordance with the law of England

### **3. COVENANTS**

- 3.1 The Owner covenants with the Council for himself and his successors in title to observe and perform the obligations and stipulations contained in this Deed
- 3.2 The Council covenant with the Owner to comply with their respective requirements contained in this Deed

### **4. OTHER PROVISIONS**

- 4.1 No person will be liable for any breach of this Deed if he no longer has an interest in the Site (unless the breach occurred before he disposed of his interest)
- 4.2 The Owner confirms that he is the owner 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
- 4.3 This Deed will not bind anyone who acquires an interest in part of the Site for the purpose of the supply of utility services
- 4.4 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed
- 4.5 This Deed is a Local Land Charge and shall be registered as such by the Council.
- 4.6 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 4.7 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions

- 4.8 No waiver, express or implied, by the Council constitutes a continuing waiver, nor prevents the Council from enforcing any of the provisions in this Deed

## **5. DISPUTES**

- 5.1 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
- 5.2 Nothing in this Clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## **6. INTEREST AND VAT**

- 6.1 If any payment due to the Council is paid late interest will be added from the date payment is due to the date of payment at the rate of 4% above the base lending rate of the Bank of England from time to time
- 6.2 All payments under this Deed are exclusive of value added tax (VAT) and any VAT due must also be paid

## **7. NOTIFICATIONS**

- 7.1 Any notice or written communication given under this Deed is validly given if hand delivered or sent by recorded delivery post to the address set out at the beginning of this Deed, unless written notification of another address has been received
- 7.2 The Owner will notify the Nominated Officer in writing within 7 days of reaching the Triggers in this Deed

- 7.3 If the Owner disposes of his interest in all or part of the Site he 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



## **SCHEDULE ONE**

### **Site Plan**

The plan (drawing REE-004, Rev A, dated January 2017) attached to this Deed showing the land on the east side of Station Road Reedham Norfolk NR13 shown edged red on the Plan and the tree belt shown for identification purposes hatched green on the Plan.



## **SCHEDULE TWO**

### **Affordable Housing**

In this Schedule (and elsewhere in this Deed where the context permits) the following words and expressions shall have the following meanings:

"Affordable Dwellings"	the Dwellings to be constructed to Design & Quality Standards on the Site as Affordable Housing and "Affordable Dwelling" shall be construed accordingly
"Affordable Housing"	the Affordable Rented Tenure and Intermediate Tenure Dwellings to be provided to Eligible Households whose needs are not met by the market
"Affordable Housing Mix"	62.5% Affordable Rented Tenure and 37.5% Intermediate Tenure Dwellings (or as otherwise agreed by the Council in it's absolute discretion)
"Affordable Housing Provision"	the construction and provision of Affordable Housing on the Site equating to 33% of the total number of Dwellings in accordance with the Affordable Housing Mix
"Affordable Housing Scheme"	<p>a scheme securing the Affordable Housing Provision and specifying:</p> <ul style="list-style-type: none"><li>- the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings;</li><li>- the identity of the Provider</li></ul>



- the number, location, type and size of Affordable Dwellings to be constructed on the Site;
- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme

"Affordable Rented Dwellings"

Dwellings to be let by a Registered Provider with an appropriate agreement with the HCA for the provision of affordable rents being controls that limit the rent to no more than 80% of local market rents including any service charges or as otherwise agreed with the Council in writing and subject to nominations by the Council in accordance with Part 2 of this Schedule

"Approved Affordable Housing Scheme"

the Affordable Housing Scheme approved by the Council in accordance with paragraph 1.1 of this Schedule including any amendment, revision or substitution approved by the Council in writing

"Complete"

a stage of construction such that a Dwelling has a complete roof and all windows and external doors installed and where further works do not ordinarily amount to "development" for the purposes of section 55(1) of the Act and "Complete" and "Completed" shall be construed accordingly

"Design & Quality Standards"

means the Level One Space Standards as specified by the Homes and Communities Agency or its successor or such other



construction standards as may be agreed between the Owners and the Developers

"Eligible Household"

a person or persons in need of accommodation who are unable to rent or buy on the local open market nominated by the Council in accordance with Part 2 of the Schedule and determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council

"HCA"

Homes and Communities Agency or its successor body or other appropriate body as the Council may nominate

"Intermediate Dwellings"

Dwellings for sale at prices below local market price that Eligible Households can afford as determined by the Council acting reasonably including low cost homes (but not including low cost market housing), shared ownership, shared equity and equity loan products as approved by the Council

"Open Market Dwelling"

any Dwelling constructed as part of the Development which is not an Affordable Dwelling

"Parish"

Parish of Reedham

"Provider"

either:

- (i) a Registered Provider; or
- (ii) another organisation that owns the Affordable Dwellings and has been approved in writing by the Council

"Public Subsidy"	funding provided by the Council the HCA or any other public body or successor body towards the provision of Affordable Housing
"Registered Provider"	as defined in the Housing and Regeneration Act 2008
"Shared Equity"	Dwellings purchased on a shared equity basis whereby not more than 75% of the equity is sold to the purchaser with power to increase their percentage of ownership up to 100% after five years of acquisition of the initial share (provided that an institutional lender mortgagee only may exercise the staircasing rights at any time) and upon a payment equating to the additional equity being purchased payable to the Council or the Provider as the case may be (or such other body as the Council may elect). Such payment to be based on the actual market value as at the date of acquisition of the additional equity such scheme to be secured by a mechanism and in a form agreed with and approved by the Council (or such other body as the Council may elect)
"Shared Ownership"	Dwellings purchased on a Shared Ownership Lease
"Shared Ownership Lease"	a lease substantially in a form approved by the HCA or where there is no such form in a form approved by the Council such lease to provide for the following: - not more than 75% and not less than 25% of

the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Provider

- power to the purchaser at any time to increase their ownership up to 100% if they so wish
- an initial rent not exceeding 2.75% of the value of the equity retained by the Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of the HCA

The Owner hereby covenants with the Council as follows:

- 1.1 Not to Commence or allow Commencement of the Development until the Affordable Housing Scheme has been submitted to and approved by the Council in writing
- 1.2 Not to Occupy or allow Occupation of the first Open Market Dwelling until an exchanged unconditional contract for the sale of the Affordable Dwellings to a Provider has been supplied to the Council SAVE THAT where the Council agrees that the Affordable Dwellings are not to be transferred this obligation shall not apply
- 1.3 Not to construct or procure the construction operation or provision of the Affordable Dwellings otherwise than in accordance with the Approved Affordable Housing Scheme and the timescales and details set out therein.



- 1.4 Not to Occupy or allow Occupation of more than 50% of the Open Market Dwellings until all of the Affordable Dwellings to be provided under the Approved Affordable Housing Scheme are Complete and have been transferred to the approved Provider (or where no transfer is required their ongoing provision has been secured) in accordance with and subject to the following terms:
- a) for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed;
  - b) free from all financial charges adverse rights restrictions or other encumbrances which would interfere with the use of the Affordable Dwellings as Affordable Housing;
  - c) with the benefit of all necessary easements, rights and utilities; and
  - d) any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme
- 1.5 Not to use or allow the Affordable Dwellings to be used for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme PROVIDED THAT the obligations contained in this Schedule shall not be binding upon:
- 1.5.1 a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire;
  - 1.5.2 an Eligible Household who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest or by a person who has acquired 100% of a Shared Equity Dwelling
  - 1.5.3 a mortgagee or chargee (or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or



any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a "Receiver") of the whole or any part of the Affordable Dwelling or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT it is has first complied with the following:

- a) such mortgagee or chargee or Receiver shall first give notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings or another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses; and
- b) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the obligations contained in this Schedule which provisions shall determine absolutely in relation to the affected Affordable Dwellings

## **Part 2 Local Letting Policy**

### **1. LOCAL CONNECTION ELIGIBILITY CRITERIA**

1.1 Unless otherwise agreed in writing up to one third (or such other amount as the Council shall reasonably require) of the Affordable Rented Dwellings (as chosen by the Council) shall be let on first occupation in accordance with the local lettings policy set out below:

1.1.1 first allocations shall be made to people living in the Parish of REEDHAM.

1.1.2 if there is no suitable person in paragraph 1.1.1 allocations will be made to people who work in the Parish of REEDHAM.; and

1.1.3 if there are no suitable persons in paragraphs 1.1.1 and 1.1.2 allocations will be made to people who need to move to the Parish of REEDHAM to give/receive support to/from close family.

1.1.4 If there are no suitable persons in paragraph 1.1.1 and 1.1.2 and 1.1.3 above, allocations will be made to households living in the Broadland District in accordance with the Council's policies relating to housing allocation or where no such persons are available to an Eligible Household.

## 2. Administrative Procedure for Nominations

2.1 To grant to the Council nomination rights to 100% of the Affordable Rental Dwellings unless otherwise agreed in writing.

2.2 The administrative procedure for nominations shall be in accordance with the Council's housing allocations policy as amended from time to time or in accordance with alternative procedures as the Council and the Owner shall agree between them.

### **SCHEDULE THREE**

#### **Open Space**

In this Schedule (and elsewhere in this Deed where the context permits) the following words and phrases shall have the following meaning:

"Amenity Land"	the tree belt shown for identification purposes coloured dark green on the Plan
"Amenity Land Scheme"	a scheme for the landscaping and ongoing maintenance of the Amenity Land to a standard agreed with the Council
"Approved Amenity Land Scheme"	means the Amenity Land Scheme approved by the Nominated Officer in writing including any amendment or revision agreed in writing by the Nominated Officer
"Off-Site Open Space Contribution"	a financial contribution in lieu of the deficiency in Open Space to be provided within the Site compared to that required in accordance with the Council's current planning policies to be used for the acquisition, layout and maintenance of Open Space in the parish of Reedham serving the Development and for green infrastructure where appropriate district wide and calculated in accordance with Part 2 of this Schedule and subject to Inflation Provision and subject further to Part 3 of this Schedule
"Open Space"	means land available for use as public open space and green infrastructure including



equipped play and sports pitches in accordance  
with the Councils up to date Recreational  
Provision in Residential Development  
Supplementary Planning Document

**1. The Owner covenants with the Council as follows:**

- 1.1 Not to Commence or allow Commencement of the Development until the Amenity Land Scheme has been submitted to and approved in writing by the Council (such approval not to be unreasonably withheld)
- 1.2 Not to Commence or allow Commencement of the Development until the Off-Site Open Space Contribution has been paid to the Council with the exception of the green infrastructure/informal Open Space element of the Off-Site Open Space Contribution which shall become payable within 28 days following approval of the Pedestrian Improvement Costs Assessment
- 1.3 To maintain the Amenity Land in accordance with the Approved Amenity Land Scheme

**2. The Council covenants with the Owner as follows:**

- 2.1 To deposit the Off-Site formal recreational Open Space Contributions in an interest bearing account and apply the capital and any interest accrued towards the provision and maintenance of Open Space as set out in this Deed
- 2.2 In the event that the Off-Site formal recreational Open Space Contributions have not been committed (by way of contract or expenditure of monies) within five years of receipt of payment to refund any unspent balance of the contribution to the payer together with any interest accrued



- 2.3 In the event that the green infrastructure and informal Open Space Contribution has not been committed (by way of contract or expenditure of the monies) within ten years of receipt of payment to refund any unspent balance of the Contribution to the payer together with any interest accrued.

## Part 2 Off-Site Open Space Contribution

**Table 1** – Cost per dwelling for Open Space land purchase

Property	Sports	Play	Green Infrastructure	Total
1 bed	£252	£51	£600	£903
2 bed	£336	£68	£800	£1,204
3 bed	£420	£85	£1,000	£1,505
4 bed	£504	£102	£1,200	£1,806
5 + bed	£588	£119	£1,400	£2,107

**Table 2** – Cost per dwelling for equipping open space

Property	Sports	Play	Green Infrastructure	Total
1 bed	£289	£89	£429	£807
2 bed	£385	£119	£572	£1,076
3 bed	£481	£149	£715	£1,345
4 bed	£577	£178	£858	£1,613
5+ bed	£673	£208	£1001	£1,882

**Table 3 – Cost per dwelling for maintenance of open space**

Maintenance				
Property	Sports	Play	Green infrastructure	Total
1 bed	£303	£30	£253	£586
2 bed	£404	£41	£338	£783
3 bed	£505	£51	£422	£978
4 bed	£606	£61	£506	£1,173
5+ bed	£707	£71	£591	£1,369

### Part 3

#### Pedestrian Improvements Contribution

"Pedestrian Improvements Costs Assessment"	the financial costs reasonably and properly incurred by the Developer only for the construction of the Pedestrian Improvements Works not to include the costs connected to any s278 Highways Act 1980 Agreements as required
"Pedestrian Improvements Works"	improvements as indicated in Proposed Reedham Footpath Upgrades Rev A dated April 2016 which is attached to this Deed as Schedule Four

## **PEDESTRIAN IMPROVEMENTS**

### **1. The Developer hereby covenants with the Council as follows:**

- 1.1 Within 28 days of completion of the pedestrian improvements as indicated in the Proposed Reedham Footpath Upgrades Rev A dated April 2016 the Pedestrian Improvements Costs Assessment shall have been submitted to and approved by the Council

### **2. The Council hereby covenants with the Developer as follows:**

- 2.1 Following approval of the Pedestrian Improvement Costs Assessment in accordance with paragraph 1.1 above to reduce the green infrastructure and informal open space element of the Off-Site Open Space Contribution by the approved amount of the Pedestrian Improvement Costs Assessment. Any balance payable to the Council to be paid by the Developer within 28 days of the approval of the Pedestrian Improvement Costs Assessment.

## **SCHEDULE FOUR**

### **Proposed Reedham Footpath Upgrades Rev A dated April 2016**

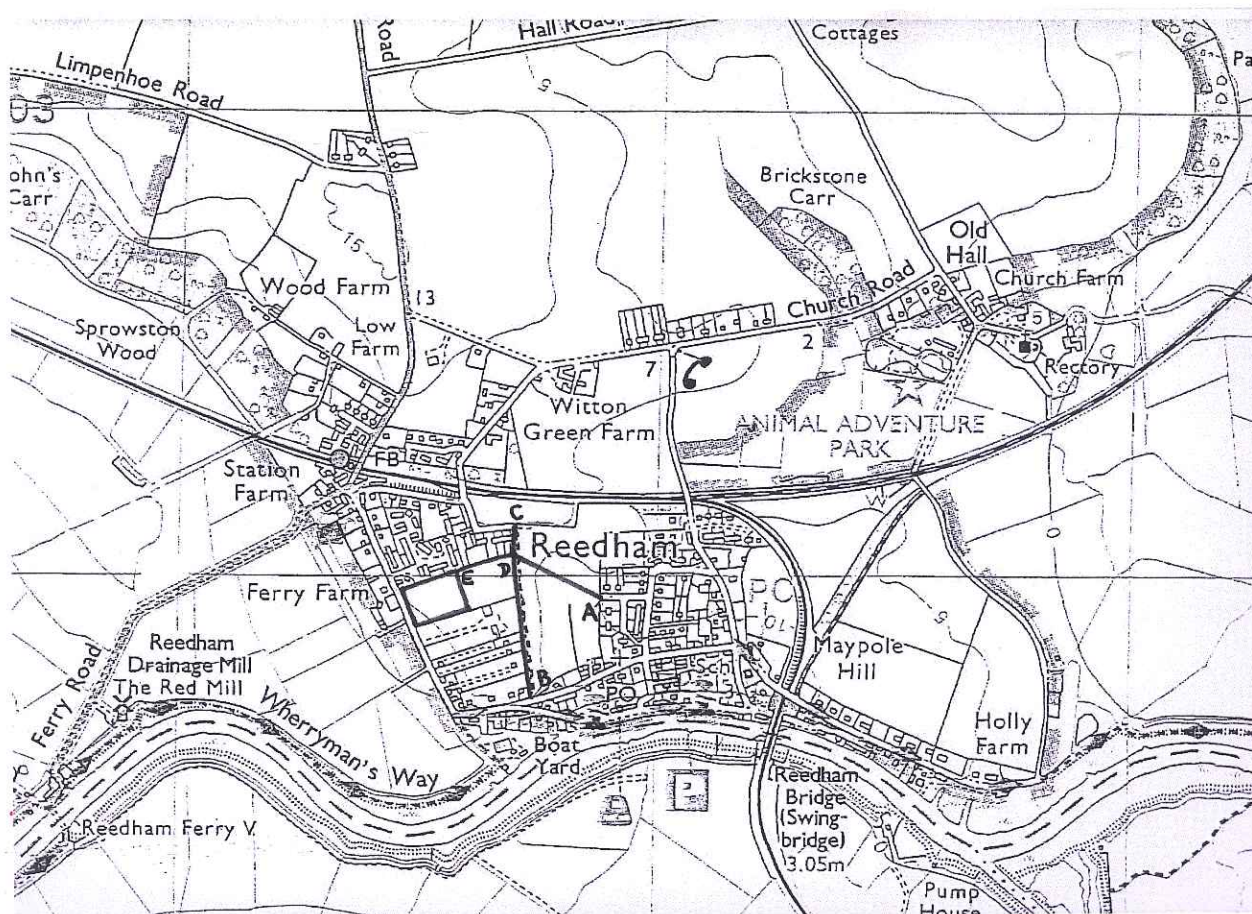


# AMENDED

## Proposed Reedham Footpath Upgrades

April 2016

Revision A



### The Paths

For the avoidance of doubt the footpaths above are identified as follows:-

AD – existing permissive trod path from Cliff Close to FP2

BC – Existing public footpath known as FP2 from The Hills to The Havaker

DE Part of existing permissive path running from Station Road to FP2

### Dedication

Paths AD and DE will be dedicated as Public Rights of Way with path DE linking to the existing public highway on Station Road via a new public highway to be constructed as part of development proposed under planning application 20151061

**BROADLAND  
DISTRICT COUNCIL**

09 Apr 2016

20151061

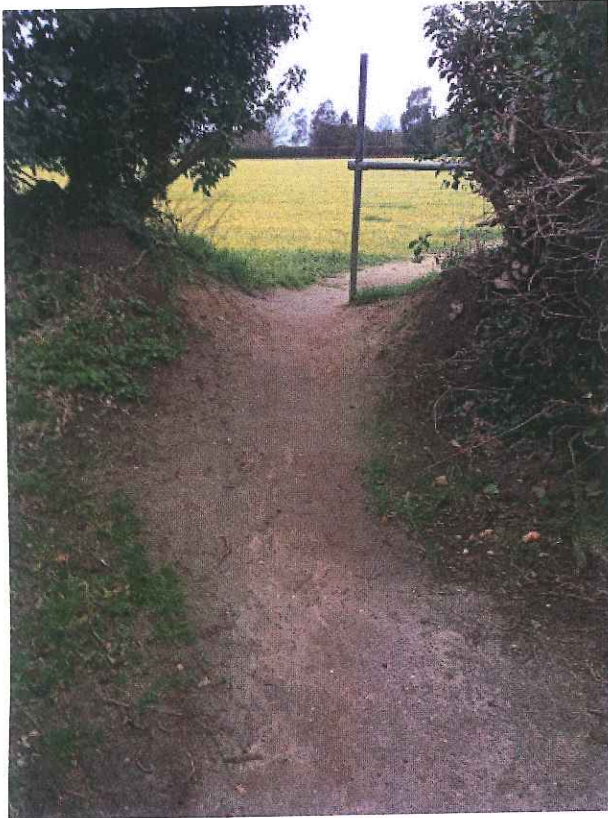
**PLANNING CONTROL**



## Works of Improvement

### Path AD

The path AD will remain as a trod path across the cultivated field with the access from Cliff Close as shown on the photograph being improved by the laying of a durable hard surface finish from the field boundary to the existing cul de sac head in Cliff Close and the cutting back of the hedge either side to provide a suitable entrance. An approved hit and miss style barrier will be erected to prevent unauthorised of the path by motor vehicles.



### ***Unauthorised Access from Cliff Close***

*The existing path has been created by unauthorised access over the years. The slope will be levelled and paved from the cul de sac head on Cliff Close to the field boundary and the existing "barrier" replaced with an approved safety barrier to a spec agreed with the highway authority.*

### Path BC

Path BC is an existing public footpath known as FP2, and has a registered width of 1.5m. It presently has an unmade surface with an average trodden width of around 0.8m, which has been hardened in parts using stone and ash. The first 20 m from its junction with The Hills rises up a short slope and is surfaced in a mixture of concrete and tarmac. This length (20m) will be resurfaced in a suitable material either by over covering in tarmac or relaying in concrete on a suitably prepared base to provide an even surface. The existing raised kerb at the junction with the Hills will be lowered to NCC specification and an appropriate hit and miss style safety barrier erected.

The surface of the path from point B to point C will be levelled across the registered width of 1.5m and receive a 75mm top dressing of suitably compacted hoggin. Where necessary, works to provide a firm base for the top dressing will be carried out.

The existing junction with the Havaker is level and access is gained between an existing garden wall and the latch post of a field gate. It is not proposed to change this arrangement.

Where path DE joins path BC, the existing berm will be removed and level access created between the two paths.

#### **Path DE**

This path has recently been constructed as a permissive path linking Station Road with FP2 and is presently a trod path along the field boundary. The proposed development would replace the lower portion of the path with an adopted road and with the path extending from the cul de sac head around the eastern end of the development and continue on its existing line eastwards to meet FP2.

The width of the path will be increased to 1.5m to match the registered width of path BC with a 75mm top dressing of hoggin laid on a 100mm base of MOT type one all suitably compacted and on geotextile as set out in the email to Graham Worsfold f 18<sup>th</sup> January 2016



#### **Existing junction of path BC (FP2) with The Hills**

*The kerb will be dropped to NCC specification, the damaged barrier replaced and the first 20m resurfaced in tarmac or concrete to a width of 1.5m*





**Existing junction of FP 2 with the  
Havaker**

*This arrangement will remain unchanged*



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 hereunto affixed

Authorised Signatory:

*M. Mullen*  
Head of Democratic Services and  
Monitoring Officer



7700

Signed as a Deed by  
**CHRISTOPHER JOHN CHARLES MUTTEN**  
in the presence of:

*Ch*

Signature

Witness

*Glen*

Executed as a deed by  
**BADGER BUILDING (E.ANGLIA) LIMITED**  
acting by a sole director In the presence of:

Director:

*S. D. GEORGE*

Signature of Director:

*[Signature]*

Name of Witness (in BLOCK CAPITALS):

*KERRY NEWTON*

Signature of witness

*[Signature]*

Address of Witness:

*PEBBLE VIEW*

AK/SB/48548  
(2015/1061)

*BEACH ROAD*

*KESSINGLAND*

*SUFFOLK 23*

*N233 7RW*