

DATED 20 March 2008

BROADLAND DISTRICT COUNCIL

- AND -

BROADLAND HOUSING ASSOCIATION LIMITED

AGREEMENT UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990

Relating to the development of land at
rear of 50-64 Fakenham Road, Great Witchingham

THIS AGREEMENT is made the 20th day of March 2008

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the one part and

BROADLAND HOUSING ASSOCIATION LIMITED NR1 1HU ("The Owner") whose registered office is at NCFC Jarrold Stand , Carrow Road, Norwich, NR1 1HU of the other part

1. INTERPRETATION AND DEFINITIONS

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	housing which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market to be owned and/or managed by a Registered Social Landlord
"Affordable Housing Units"	all the Affordable Rental Units and the Shared Ownership Dwellings to be constructed or provided on the Site as part of the Development
"Affordable Rental Units "	eleven Affordable Housing Units to be constructed or provided on the Site as part of the Development and to be let by or on behalf of a Registered Social Landlord for a rent upon either a weekly basis or monthly assured

tenancy basis not exceeding housing corporation target rents (or if such targets cease to be set such other measure of affordable rents as the District Council shall reasonably determine)

"Application"

the application for detailed planning permission for fifteen Affordable Housing Units on the Site in accordance with the plans deposited with the Council bearing reference no. 20071416

"Commencement Date"

the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not including any operations relating to the demolition of any existing buildings or clearance of the Site) and "commence" shall be interpreted in accordance with this definition

"Development"

the development permitted by the Planning Permission

"Director"

the Council's Strategic Director and Chief Planner (Community Services) or other officers of the Council acting under his hand

"Local Lettings Policy"

the order in which the Affordable Housing Units are to be allocated locationally and which is set out under the title "Local Lettings Policy" at Appendix 1 to this Agreement as amended from time to time

"Plan"

the plan annexed to this Agreement

"Planning Permission"	the detailed planning permission to be granted pursuant to the Application
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria as having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally which is reasonably adequate for their needs contained in the Council's policies relating to housing allocation (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1985, 1996 and 2004 and the Homelessness Act 2002) and ranked in accordance with the Local Lettings Policy or where such persons have been exhausted any person on the housing register of the Registered Social Landlord owning or managing the Affordable Housing Units on the Site and which it is entitled to house within its rules
"Registered Social Landlord"	a registered social landlord in the register kept by the Housing Corporation under Part 1 of the Housing Act 1996 (or any statutory re-enactment or modification thereof) as approved by the Council
"Shared Ownership Dwellings"	4 (four) Affordable Housing Units to be let or sub-let on a Shared Ownership Lease to be provided on the Site as part of the Development
"Shared Ownership Lease"	a lease or sub-lease of a Shared Ownership Dwelling granted at a premium whereby up to a

maximum of 50% (fifty per cent) on first purchase of the equitable interest in the Shared Ownership Dwelling is paid by the tenant or sub-tenant upon completion of such lease or sub-lease or raised by mortgage or charge from a bank or building society and which lease or sub-lease shall include arrangements enabling him to acquire up to 80% (eighty per cent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates

“Site” the land at the rear of 50-64 Fakenham Road Great Witchingham shown for the purpose of identification only edged red on the Plan

In this Agreement unless the context otherwise requires:

- (i) references to any party shall include the successors in title and assigns of that party
- (ii) references to clauses and schedules are references to clauses in and schedules to this Agreement
- (iii) 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
- (iv) headings in this Agreement shall not form part of or affect its construction

WHEREAS:

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated
- B. The Owner is the freehold owner of the Site and is a Registered Social Landlord
- C. The Owner has submitted the Application
- D. The Council has resolved to approve the Application subject to the completion of this Agreement

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

- 2.1 This Agreement is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and any other enabling powers
- 2.2 The obligations of the Owner hereunder are planning obligations enforceable by the Council against the Owner and his successors in title
- 2.3 Save for the covenants in Schedule 1 of this Agreement which shall continue to bind the Affordable Housing Units no person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with his 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 which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place
- 2.4 The provisions of this Agreement shall have immediate effect upon completion of this Agreement.
- 2.5 This Agreement shall cease to have effect if:

2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn

2.5.2 the Planning Permission shall expire prior to the Commencement Date

2.6 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges

3. Agreements and Declarations

IT IS HEREBY AGREED AND DECLARED as follows:

3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council were not a party to this Agreement

3.2 Invalidity or Unenforceability of any of the Terms of this Agreement

If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 No Waiver

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

4. Notices

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter or facsimile

4.2 The address for service of any notice or other written communication in the case of each party to this Agreement shall be at their address given at the beginning of this Agreement or such other address for service as shall have been previously notified in writing.

5. Third Parties

5.1 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

6. Costs

6.1 The Owner shall on completion of this Agreement pay the Council's legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

7. Payment Of Interest

7.1 The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this

Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received

8. Value Added Tax (VAT)

8.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable

8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

9. Jurisdiction

9.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales

10. The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Agreement are hereby waived

11. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council to carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement

SCHEDULE 1

1. AFFORDABLE HOUSING

- 1.1 To construct or procure the construction of the Affordable Housing Units in accordance with the Planning Permission and the current NHBC standards and building regulations in force at the time of building and to the Housing Corporation's Scheme Development Standards and to meet eco-home rating 'very good' and the following Schedule

3 x 2 bed houses for shared ownership

1 x 3 bed houses for shared ownership

2 x 2 disabled person bungalows for rent

4 x 2 bed bungalows for rent

3 x 2 bed houses for rent

2 x 3 bed houses for rent

or as subsequently modified and agreed in writing by the Council

- 1.2 Not to use or permit the Affordable Housing Units to be occupied for any purpose other than for Affordable Housing

- 1.3 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers

- 1.4 The Owner shall not dispose of its interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Social Landlord

- 1.5 Paragraphs 1.2 1.3 and 1.4 above shall not be binding upon any mortgage in possession of the Affordable Housing Units or part thereof nor any receiver or manager (including an administrative receiver) for such mortgagee and shall cease to apply to any of the Affordable Housing Units where the Registered

LOCAL LETTINGS POLICY

Nominations Rights Policy

The Policy will apply to all categories of properties on the basis of 100% of all vacancies for the first 80 years (in perpetuity).

The policy will apply to the rented and New Build Homebuy affordable housing on the site.

The Council and the Association are both committed to the Common Housing Register with a direct nomination system where one household is nominated in priority order for any vacancy. All properties will be advertised through the Choice Based Lettings Scheme – Home Options.

Criteria for Selecting Nominations

In the case of general needs accommodation the Council will make nominations in line with its current allocation policy and lettings plan based on the following allocation criteria:

1) Allocations will be made to people living in the parish of Great and Little Witchingham, working in Great and Little Witchingham or with a need to move to Great and Little Witchingham in order to give or receive support to/from close family members as defined in our current allocation policy.

2) Priority will then be given to people living in, working in, or with a need to move to the following areas in order to give or receive support to/from close family members as defined in our current allocation policy.

Weston Longville
Alderford
Brandiston
Booton
Morton on the Hill
Reepham

3) Priority will then be given to people living in, working in, or with a need to move to the following areas in order to give or receive support to/from close family members as defined in our current allocation policy.

Honingham
Ringland
Attlebridge
Swannington
Cawston
Salle
Wood Dalling
Themelthorpe

4) Priority will then be given to people living in, working in, or with a need to move to Great and Little Witchingham from within Broadland District or for the purpose of giving or receiving support to/from close family members as defined in our current allocation policy.

The Council will consult the Association in the event of considering changes to its relevant policies.

Administrative Procedure for nominations

The administrative procedure for nominations shall be in accordance with the operational procedures of the Common Housing Register as amended from time to time or in accordance with such alternative procedures as the Council and the Association shall agree between them.

Social Landlord shall be required to dispose of such Units pursuant to a right to buy under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable

EXECUTED by the parties hereto as a deed on the date written above

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



5933

[Signature]

HEAD OF CORPORATE SERVICES
& MONITORING OFFICER

~~Head of Corporate Services~~

THE COMMON SEAL of)
BROADLAND HOUSING)
ASSOCIATION LIMITED)
was hereunto affixed in the)
presence of)



[Signature]
[Signature]

SEAL REGISTER
08 17 94P