

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

relating to the development of land to the rear of 36 Waterloo Road
Hainford

Dated : *27th April* 2011

NORFOLK COUNTY COUNCIL (1)

SHEILA LILIAN BROWN AND ALEXANDER GEORGE SEXTON (2)

STANLEY JAMES WASSELL AND MARY PATRICIA WASSELL (3)

AVIVA EQUITY RELEASE UK LIMITED (4)

THIS DEED is made the 27th day of April 2011

BETWEEN

- (1) Norfolk County Council of County Hall Martineau Lane Norwich NR1 2UA ("County Council")
- (2) Sheila Lilian Brown of Hazeldene Cottage 36 Waterloo Road Hainford Norwich Norfolk NR10 3AX and Alexander George Sexton of 6 St Mary's Terrace Pulham St Mary Diss Norfolk IP21 4RB ("the First Owner")
- (3) Stanley James Wassell and Mary Patricia Wassell of 32 Waterloo Road Hainford Norwich Norfolk NRX ("the Second Owner")
- (4) Aviva Equity Release UK Limited (company number 3286484) whose registered address is 2 Rougier Street, York, YO90 1UU ("the Mortgagee")

WHEREAS

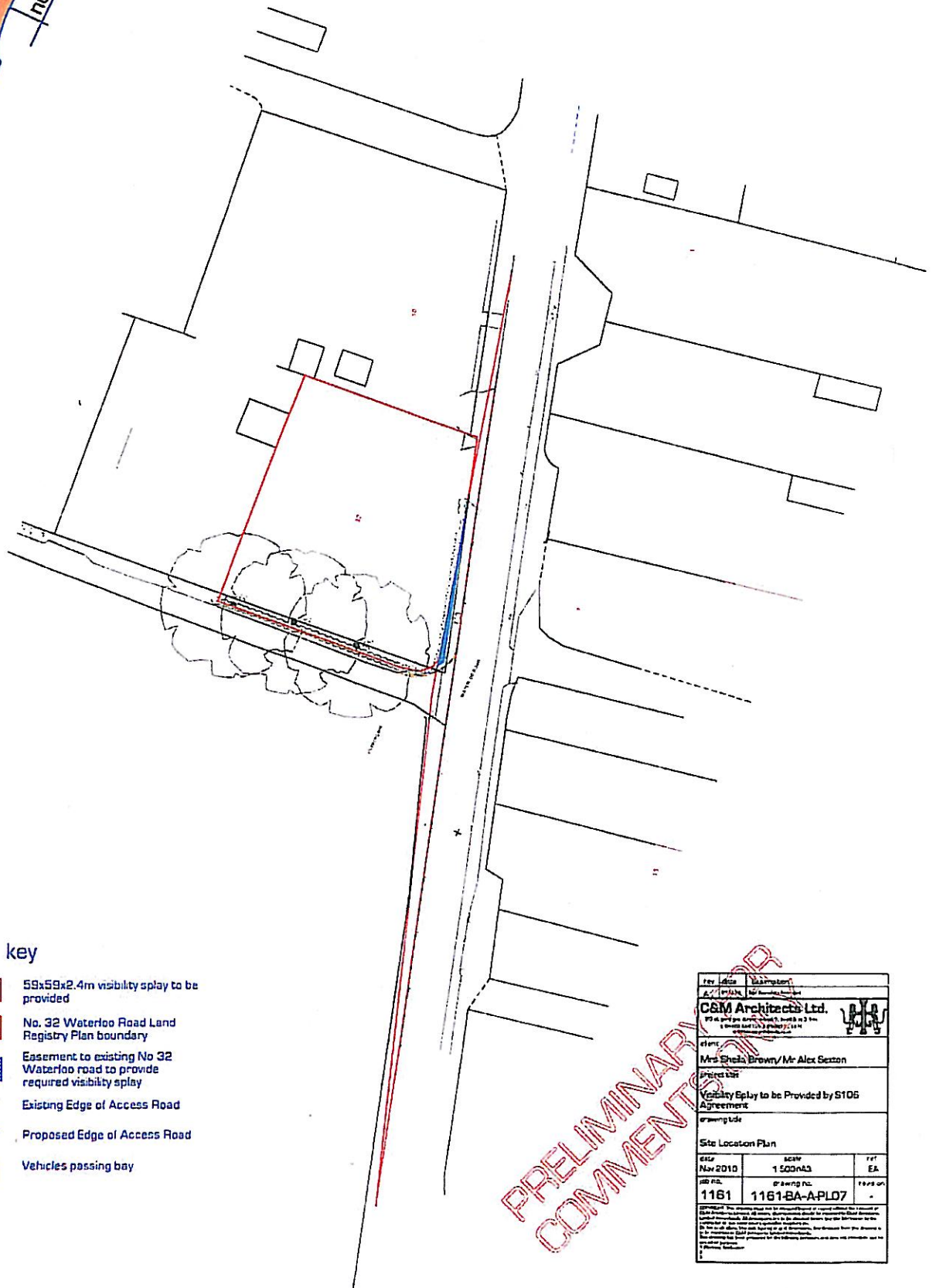
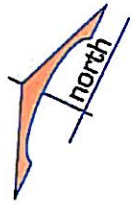
- 1 The County Council is a Local Planning Authority for the purposes of Section 106 of the Act for the area in which the Site is situated.
- 2 The County Council is the highway authority for the area in which the Site is situated.
- 3 The First Owner is the freehold owner of the land shown edged red on the plan numbered 1161-BA-A-PL06 attached ("Plan 1") and registered at HM Land Registry under Title Number NK386310
- 4 The Second Owner is the freehold owner of the land shown edged and hatched blue on the plan numbered 1161-BA-A-PL07 attached ("Plan 2") and registered at HM Land Registry under Title Number NK187816 and subject to a registered charge in favour of the Mortgagee
- 5 The First Owner has submitted the Application to the Broadland District Council (the "Council") for the Site and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 6 The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:







1 DEFINITIONS

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

"1980 Act" the Highways Act 1980

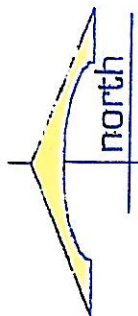


key

- | | |
|---|---|
|  | 59x59x2.4m visibility splay to be provided |
|  | No. 32 Waterloo Road Land Registry Plan boundary |
|  | Easement to existing No 32 Waterloo road to provide required visibility splay |
|  | Existing Edge of Access Road |
|  | Proposed Edge of Access Road |
|  | Vehicles passing bay |

[illegible]

PLAN 1



BROADLAND
DISTRICT COUNCIL
02 JUL 2010
20100977
PLANNING CONTROL

rev	date	description
C&M Architects Ltd. 8th st. george street, norwich, norfolk, nr3 1dn t: 01603 608151 f: 01603 621478 e: info@cmandmarchitects.co.uk		
client Mrs Sheila Brown/Mr Alex Sexton		
project title Housing Development at Waterloo Road Hainford		
drawing title Site Location Plan		
date	June 2010	scale 1:1250@A4
job no.	1161	drawing no. 1161-BA-APL06
<small>COPYRIGHT: This drawing must not be reproduced or copied in any form without the written permission of C&M Architects Limited. All errors, inaccuracies and omissions are to be checked before any copy is made. This drawing is to be used for the purpose of planning only and is not to be used for any other purpose. Any dimensions shown are approximate and should be checked on site. This drawing is to be used for the purpose of planning only and is not to be used for any other purpose. Any dimensions shown are approximate and should be checked on site.</small>		
1 Drawing Application		



"Act"	the Town and Country Planning Act 1990 (as amended)
"Application"	the application for full planning permission dated 2 nd July 2010 submitted to the Council for the Development and allocated reference number 20100977
"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, 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 the Site pursuant to the Planning Permission
"Dwelling"	a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission
"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.
"Owners"	means the First Owner and the Second Owner and their respective successors in title
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application
"Site"	means the land against which this Deed may be enforced as shown edged red and edged and hatched blue on the Site Plans.
"Site Plans"	the plans marked Plan 1 and Plan 2 attached to this Deed showing the Site edged red and the Visibility Land edged and hatched blue
"Visibility Land"	means the land edged and hatched blue on Plan 2
"Visibility Splay"	means a visibility splay measuring 59 metres by 2.4 metres by 59 metres to be provided across the Visibility Land in accordance with specifications approved by the County Council

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 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 interchangeable 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 against each individually 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 deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the County Council against the Owners and their successors in title.

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 7.1, 14, 15 and 16, legal costs clause, jurisdiction and delivery clauses (and any other relevant provisions) which shall come into effect immediately upon completion of this Deed.

5 THE OWNERS' COVENANTS

The Owners hereby covenant with the County Council as set out in the Schedule to this Deed.

6. MORTGAGEE CONSENT

The Mortgagee consents to the Second Owner entering into this Deed and acknowledges that this Deed binds its interest in the Visibility Land provided that the Mortgagee shall not be liable for any breach of this Deed unless it shall enter into the Visibility Land as mortgagee in possession.

7. MISCELLANEOUS

- 7.1 The First Owner shall pay to the County Council on completion of this Deed the legal costs of the County Council incurred in the negotiation, and execution of this Deed
- 7.2 Save as otherwise indicated in this Deed no provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.3 This Deed shall be registrable as a local land charge
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given by the Director of Planning and Transportation and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.5 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.
- 7.6 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 consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they shall have parted with their entire interest in the Site or the First Property or the Second Property as appropriate but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 7.8 The County Council shall not be liable to any person under this Agreement after that person has parted with all interest in the land but without prejudice to any liability arising prior thereto.
- 7.9 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 7.10 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) granted (whether or not on appeal) after the date of this Deed.
- 7.11 The Second Owner hereby grants the First Owner or its agents licence at all reasonable times to enter the Visibility Land with or without machinery for the purposes of complying with the obligations contained in the Schedule

8. TITLE

The First Owner hereby covenants that they are the freehold owners of the land edged red on Plan 1 and the Second Owner hereby covenants that they are the freehold owners of the land edged and hatched blue on Plan 2 and further the First Owner and the Second Owner have full power to enter into this Agreement and that the Site is free from mortgages charges or other encumbrances save for the registered charge in favour of the Mortgagee and that there is no person having any interest in the Site other than as notified in writing to the County Council's Head of Law prior to the date hereof.

9. WAIVER

No waiver (whether expressed or implied) by the County Council or the Owners 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 County Council or Owners from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. CHANGE IN OWNERSHIP

The Owners agree with the County Council to give the County Council immediate written notice of any change in ownership of any of its interests in the Site including details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the property purchased or transferred by reference to a plan.

11 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

13 DISPUTE RESOLUTION

- 13.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.
- 13.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution.
- 13.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR Procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties.
- 13.4 Nothing in this Clause shall apply to the recovery of ascertained or ascertainable sums or prevent the parties from commencing or continuing court proceedings.

14 JURISDICTION

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

15 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.

16 COUNTERPARTS

This agreement may be executed and delivered in any number of counterparts each of which is an original and which, together, have the same effect as if each party had signed the same document.

THE SCHEDULE

1. The Owners hereby jointly and severally covenant with the County Council as follows:
 - 1.1 to submit to the County Council a scheme for the provision of the Visibility Splay such scheme to include all drawings designs and specifications as required by the County Council ("the Scheme")
 - 1.2 to lay out the Visibility Splay in accordance with the Scheme to the satisfaction of the County Council ("the Works")
2. The Owners further covenant that the Site shall not be used for the purposes of the Development unless the Owners shall thereafter maintain the Visibility Splay free from obstruction including any hedge plant tree shrub or wall exceeding 0.6 metres above the level of the adjacent highway carriageway in perpetuity
3. In the event that the Owners fail in the reasonable opinion of the County Council to comply with the obligations contained in this Schedule the County Council or its agents or contractors may enter into the Visibility Land and carry out the Works or such other works as the County Council consider necessary for the provision of the Visibility Splay and maintain the Visibility Splay in accordance with paragraph 2 above at the cost of the Owners which shall be a debt due to the County Council

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

THE COMMON SEAL OF NORFOLK COUNTY COUNCIL)
was affixed in the presence of:)

Head of Law

Vick N



30459

EXECUTED AS A DEED by)
SHEILA LILIAN BROWN)
in the presence of:)

EXECUTED AS A DEED by)
ALEXANDER GEORGE SEXTON)
in the presence of:)

EXECUTED AS A DEED by)
STANLEY JAMES WASSELL)
in the presence of:)

EXECUTED AS A DEED by)
MARY PATRICIA WASSELL)
in the presence of:)

EXECUTED as a DEED by
AVIVA EQUITY RELEASE UK LIMITED
acting by its attorney _____
in the presence of:

Witness _____
Name _____
Address _____
Occupation _____

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

THE COMMON SEAL OF NORFOLK COUNTY COUNCIL)
was affixed in the presence of:)

Head of Law

EXECUTED AS A DEED by
SHEILA LILIAN BROWN
in the presence of:

)
) *Sheila Brown*
)

W Signature *M. Howes*

I

T Name (BLOCK CAPITALS) MAUREEN HOWES

N

E Address 13, THE WARREN

S

S HORSHAM ST FAITHS NR103JT

EXECUTED AS A DEED by
ALEXANDER GEORGE SEXTON
in the presence of:

) *Alex Sexton*
)
)

W Signature MAUREEN HOWES *M. Howes*

I

T Name (BLOCK CAPITALS) MAUREEN HOWES

N

E Address 13, THE WARREN

S

S HORSHAM ST FAITHS NR103JT

EXECUTED AS A DEED by
STANLEY JAMES WASSELL
in the presence of:

)
)
)

W Signature

I

T Name (BLOCK CAPITALS)

N

E Address

S

S

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

THE COMMON SEAL OF NORFOLK COUNTY COUNCIL)
was affixed in the presence of:)

Head of Law

EXECUTED AS A DEED by)
SHEILA LILIAN BROWN)
in the presence of:)

W Signature
I
T Name (BLOCK CAPITALS).....
N
E Address.....
S
S

EXECUTED AS A DEED by)
ALEXANDER GEORGE SEXTON)
in the presence of:)

W Signature
I
T Name (BLOCK CAPITALS).....
N
E Address.....
S
S

EXECUTED AS A DEED by)
STANLEY JAMES WASSELL)
in the presence of:)

W Signature *Stanley James Wassell*
I
T Name (BLOCK CAPITALS)..... *SARA SMITH*
N
E Address..... *34 WATERLOO ROAD*
S
S *HALEFORD NORWICH NR13 3AX*

EXECUTED AS A DEED by
MARY PATRICIA WASSELL
in the presence of:

) MP. Wassell

P. Smith

W Signature MP Wassell

I T Name (BLOCK CAPITALS) MARY PATRICIA WASSELL *PETER SMITH*

N E Address 39 WATERLOO ROAD

S HAINFORD, NORWICH NORFOLK NR 10 3 AX

EXECUTED as a DEED by
AVIVA EQUITY RELEASE UK LIMITED
acting by its attorney _____
in the presence of:

Witness _____
Name _____
Address _____
Occupation _____

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

THE COMMON SEAL OF NORFOLK COUNTY COUNCIL)
was affixed in the presence of:)

Head of Law

EXECUTED AS A DEED by)
SHEILA LILIAN BROWN)
in the presence of:)

EXECUTED AS A DEED by)
ALEXANDER GEORGE SEXTON)
in the presence of:)

EXECUTED AS A DEED by)
STANLEY JAMES WASSELL)
in the presence of:)

EXECUTED AS A DEED by)
MARY PATRICIA WASSELL)
in the presence of:)

EXECUTED as a DEED by
AVIVA EQUITY RELEASE UK LIMITED
acting by its attorney SUZANNE CARTER
in the presence of:



Witness

Name NICOLA BGAR

Address SURREY STREET, NORWICH

Occupation CUSTOMER SERVICES REP.