

Dated 6 March

2019

Broadland District Council

-and-

Sally Cooper

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

relating to land at Pyehurn Farm, Pyehurn Lane, Horsford

THIS DEED is dated

6 March

2019

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, NR7 0DU (referred to as "the Council")
- (3) SALLY COOPER, Pyehurn Farm, Pyehurn Lane, Horsford, Norwich, NR10 3DY (referred to as "the Owner")

together referred to as 'the Parties'

INTRODUCTION

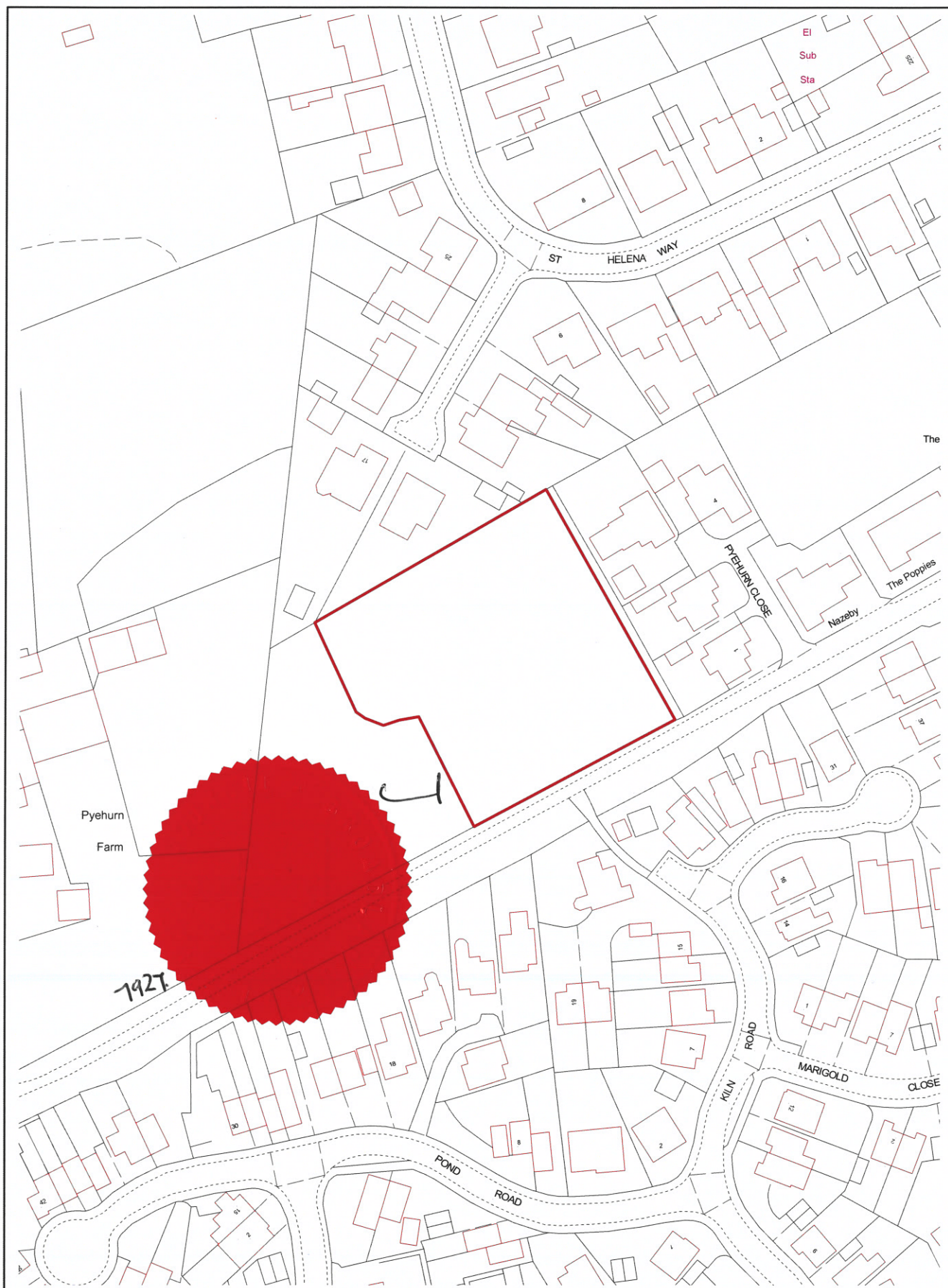
- (A) The Council is a local planning authority for the purposes of this deed for the area within which the Site is located.
- (B) The Owner has made the Application to the Council and the Council has refused the Application which is now subject to the Appeal.
- (C) The Owner owns the freehold of the Site which is registered at the Land Registry under title number NK244568 and held free from encumbrances other than the matters referred to below.

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

Act	The Town and Country Planning Act 1990
Appeal	The planning appeal submitted to the Planning Inspectorate and bearing reference number APP/K2610/W/18/3218798
Application	The planning application submitted to the Council for residential development and allocated reference number 2017/2132
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"> site clearance demolition archaeological investigations ground surveys removal of contamination or other adverse ground conditions erection of temporary fences 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 Appeal
Dwelling	A dwelling to be built on the Site as part of the Development
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"> construction internal and external refurbishment decoration fitting-out marketing <p>and 'Occupy' and 'Occupied' will be construed accordingly</p>
Plan	The plan attached to this Deed
Site	The land known as Pyehurn Farm, Pyehurn Lane, Horsford, Norwich, NR10 3DY and registered at H M Land Registry under title number NK244568 shown



3. CONDITIONALITY

This Deed is conditional upon:

- 3.1 The grant of planning permission subject to the Appeal; and
- 3.2 The Commencement of Development.

The obligations shall be enforceable upon confirmation from the Secretary of State for Housing, Community and Local Government's Inspector in his decision letter on the Appeal that the obligations in this Deed are to take effect. Insofar as the Inspector considers that any obligation contained in this Deed fails the tests contained in CIL Regulations 122 or 123, it shall be struck from this Deed and clause 6.5 will apply

Save for the provisions of this clause and clauses 6.3, 6.13, 7 and 9 which shall come into effect immediately on completion of this Deed.

4 COVENANTS

- 4.1 The Owner covenants with the Council for herself and her successors in title to observe and perform the obligations and stipulations contained in this Deed.
- 4.2 The Council covenants with the Owner to comply with their respective requirements contained in this Deed.

5 Use of Contributions and Interest

- 5.1 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.
- 5.2 In the event of any delay in paying the contributions specified in the Schedules then from the due date of payment:
 - 5.2.1 the contributions are a debt due to the Council and are recoverable by action by the Council; and
 - 5.2.2 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.
- 5.3 All payments under this Deed are exclusive of value added tax (VAT) and any

VAT due must also be paid.

- 5.4 Any money from time to time held by the Council in respect of any payment made to the Council by the Owner 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 if that party:
- 5.4.1 becomes bankrupt or has a winding-up petition or a petition for an administration order presented against it, or
 - 5.4.2 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
 - 5.4.3 enters into any arrangement scheme compromise moratorium or composition with its creditors or any of them but shall continue to be held by the Council under the terms of this Deed.
- 5.5 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 (unless the breach occurred before he disposed of his interest).
- 6.2 The Owner confirms that she 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.
- 6.3 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed.
- 6.4 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.5 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions.
- 6.6 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.

- 6.7 If the planning permission granted following the Appeal is quashed revoked or expires before Commencement then, save for clause 6.3, this Deed will cease to have effect (insofar only as it has not already been complied with).
- 6.8 Subject to clause 6.9, 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 Appeal planning permission) granted after the date of this Deed.
- 6.9 If the planning permission granted following the Appeal is subject to an application under Section 73 of the Act for the removal or amendment of any condition attached to the Appeal then the obligations in this deed shall also apply to the new planning permission resulting from such application if so agreed by the Council (acting in its absolute discretion).
- 6.10 This Deed is registrable as a local land charge.
- 6.11 Following the performance and satisfaction of all the obligations contained in this Deed the Council will, upon the written request of the Owner, cancel all relevant entries contained in the Register of Local Land Charges.
- 6.12 An agreement, approval, consent or expression of satisfaction required by the Owner 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 function 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 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 Owner 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 Owner disposes of her interest in all or part of the Site she 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

Open Space

Part 1 Owner Obligations

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

"Inflation Provision"	The increase (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service All in Tender Price Index from the date of this Deed until the date any payment is made pursuant to this Deed (or if such index ceases to be published such other index as the Council shall reasonably determine)
"Green Infrastructure Contribution"	Means that part of the Off-Site Open Space Contribution allocated to the provision and maintenance of green infrastructure as detailed in Part 3 of this Schedule
"Off-Site Open Space Contribution"	A sum in lieu of any deficiency in the amount or type of Open Space being provided compared to that required in accordance with the Councils current Open Space Policies at the date of this Deed such sum to be calculated in accordance with Part 3 of this Schedule and increased in line with the Inflation Provision and applied towards the provision of childrens' play, formal recreation and allotments serving the development in the parish of Horsford and Green Infrastructure Contributions to be used in line with projects identified in the Council's Green Infrastructure Project Plans, or other such projects that meet the aims of policy EN3.
"Open Space"	Land to be set aside and used as public open space which may include areas for sports, play, allotments, green infrastructure and other recreational facilities in line with Open Space Policies
"Open Space Policies"	Means the policies contained in the Council's Development Management Development Plan Document including policy EN1 biodiversity & habitats, EN3 green infrastructure & RL1 provision of formal recreation space or such replacement policies or documents as the Council may specify (or any amendment or revision therefore) relating to the provision of open space, recreation, sport,

allotments, green infrastructure and other similar types of amenity land and facilities

The Owner hereby covenants with the Council as follows:

1. OFF-SITE OPEN SPACE CONTRIBUTION

- 1.1 Prior to Occupation of 60% of the Dwellings to pay the Off-Site Open Space Contribution in full to the Council

Part 2

Council Obligations

The Council covenants with the Owner as follows:

- 2.1 to hold any contribution received under this Schedule in an interest bearing account and apply the same (together with any interest accrued) towards the purposes for which they were paid and in the event that the contributions have not been committed (by way of contract or expenditure of the monies) within 5 years of receipt of the total amount of the relevant contribution (or in the case of the Green Infrastructure Contribution within 10 years of receipt) to repay the unspent balance to the payer together with any interest accrued

Part 3

Extract from Open Space policies detailing the cost per dwelling for the provision and maintenance of Open Space

The figures below are correct as of January 2019 (321)

Purchase of Off Site Open Space

A. Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£300	£61	£29	£713	£1,103
2 bed	£399	£81	£38	£951	£1,469
3 bed	£499	£101	£48	£1,189	£1,837
4 bed	£599	£121	£57	£1,427	£2,204
5 bed +	£699	£141	£67	£1,664	£2,571

Equipping of Off Site Open Space

B. Property	Sports	Play	Allotments	Green Infrastructure	Total
1 bed	£342	£106	£18	£510	£976
2 bed	£458	£141	£23	£680	£1,302
3 bed	£572	£176	£29	£850	£1,627

4 bed	£686	£212	£34	£1,020	£1,952
5 bed +	£801	£246	£40	£1,190	£2,277

Maintenance of Off Site and On Site Open Space


C. Property	Sports	Play		Green infrastructure	Total
1 bed	£360	£36		£301	£697
2 bed	£480	£49		£402	£931
3 bed	£599	£61		£502	£1,162
4 bed	£719	£73		£602	£1,394
5 bed +	£841	£86		£703	£1,630

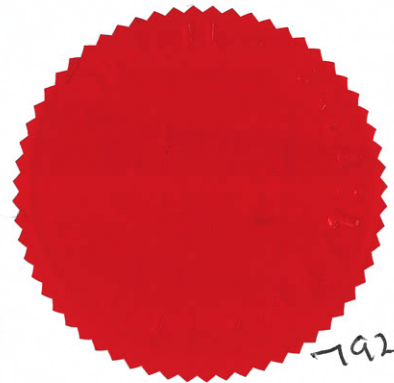
IN WITNESS whereof the parties hereto have executed this document as a Deed on the day and year first before written.

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

Authorised Signatory:

Sally Cooper


Deputy Monitoring
Officer.



1927-

EXECUTED AS A DEED by Sally Cooper

in the presence of:

Witness Signature: M. J. Keeler

Witness Name: MICHAEL JOHN KEELER

Witness Address:

130 Holt Road Horsford.