

DATED Twenty sixth of May 2004

BROADLAND DISTRICT COUNCIL

- AND -

NORFOLK COUNTY COUNCIL

- AND -

RANDELL AGRICULTURE LIMITED

- AND -

NATIONAL WESTMINSTER BANK PLC

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AGREEMENT

Made pursuant to Section 106 of the Town  
and Country Planning Act (as amended) 1990  
and any other enabling power relating to the  
development of land at Mill Road Horstead  
Norfolk

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steeles (law) llp  
2 The Norwich Business Park  
Whiting Road  
Norwich NR4 6DJ



THIS AGREEMENT is made the 26<sup>th</sup> day of May Two thousand and Four  
BETWEEN BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road  
Thorpe St Andrew Norwich in the County of Norfolk (hereinafter called “The  
Council”) of the first part and NORFOLK COUNTY COUNCIL of County Hall  
Martineau Lane Norwich Norfolk (hereinafter called “the County”) of the second part  
and RANDELL AGRICULTURE LIMITED of Mill Road Horstead Norfolk  
(hereinafter called “The Owner”) of the third part and National Westminster Bank  
PLC of Norfolk House Exchange Street Norwich NR2 1DD (hereinafter called “The  
Mortgagees”) of the fourth part

#### RECITALS

(A) (1) In this Agreement unless the context otherwise requires the following  
words shall have the following meanings:-

“Application” means the application for planning permission  
to develop the Land and dated 3 January 2003  
submitted to the Council in accordance with the  
Application plans and other materials deposited  
with the Council and bearing reference no  
20030007

“Affordable Dwellings” means the Shared Equity Dwellings and the  
Rental Dwellings to be constructed on the  
Affordable Housing Land and which shall  
comprise twenty nine (29) per cent of the  
dwellings on the Land by or on behalf of a  
Registered Social Landlord or the Council or



	any other party approved by the Council (such approval not to be unreasonably withheld or delayed) and "Affordable Dwelling" shall mean any one of the Affordable Dwelling
"Development"	means the development permitted by the Permission
"Dwelling"	a dwelling forming part of the Development
"Director"	means the Council's Strategic Director (Community Services) or other officers of the Council acting under his hand
"Education Contribution"	means the sum of Thirty Thousand and Six Hundred Pounds (£30600)
"Free Market Dwellings"	means the remaining seventy one (71) per cent of the dwellings on the Land which may be disposed of in the open market
"Inflation Provision"	the increase (if any) in the RICS All In Tender Price Index between the date of this Agreement and the date upon which a payment of money is made
"Library Contribution"	means the sum of Twelve Hundred Pounds (£1200)
"Occupation"	when a Completion Certificate is issued by NHBC or such other competent body



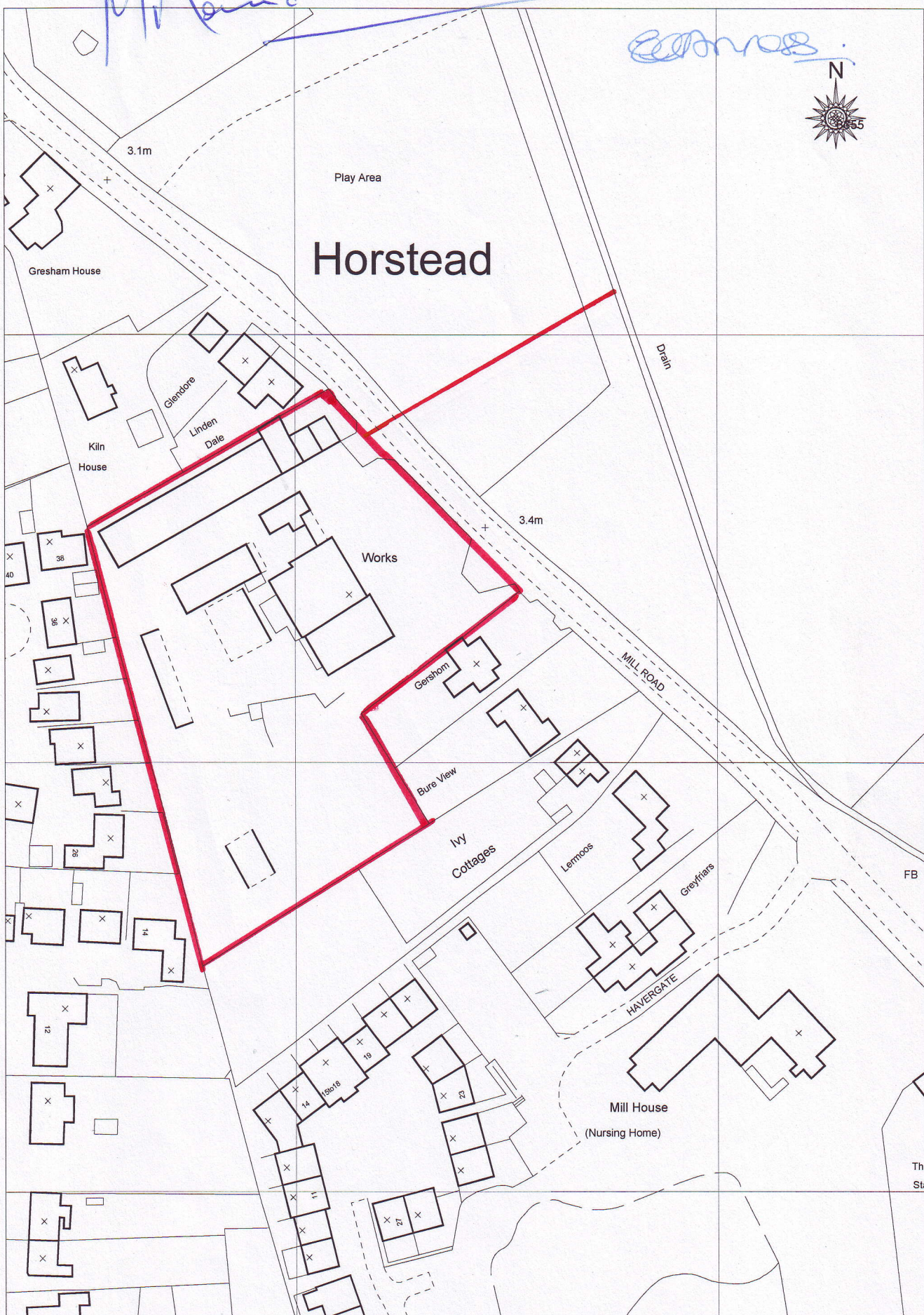
“Permission”	means the outline planning permission granted pursuant to the Application together with any renewal or modification thereof
“Registered Social Landlord”	means a Housing Association or other non profit making body, either of which being a Registered Social Landlord within the meaning of the Housing Act 1996
“Rental Dwellings”	means eighty six (86) per cent of the Affordable Dwellings or such other percentage as the parties may agree to be let by or on behalf of a Registered Social Landlord or the Council in accordance with its objects and “Rental Dwelling” shall mean any one of the Rental Dwellings
“Shared Equity Dwellings”	means fourteen (14) per cent of the Affordable Dwellings or such other percentage as the parties may agree where the purchaser pays for a percentage of the leasehold equity with the remaining percentage of the leasehold equity being retained by the Registered Social Landlord or the Council or any other party approved by the Council ("the Landlord") and to be disposed of in the first instance on a shared equity leasehold basis at no more than 75% of the open market to a person or persons with a




ETH Randall

Edmos

Memo



Drawn By	Reference 20030007	 <b>Broadland District Council</b> <small>This material has been reproduced from Ordnance Survey digital data with the permission of the Controller of Her Majesty's Stationery Office, © Crown copyright. Licence No.LA077321</small>
Date June 2003	Location Randall Ltd, Mill Road, Horstead	
Scale 1:1250	OS Reference	



Housing Need unable to acquire similar  
property in the open market and "Shared Equity  
Dwelling" shall mean any one of the Shared  
Equity Dwellings

"1990 Act" means the Town and Country Planning Act  
1990 (as amended)

(2) In this Agreement unless the context otherwise requires:

- (i) words importing the masculine gender shall where appropriate include the feminine gender and the neuter gender or vice versa as the case may be and words importing the singular number shall where appropriate include the plural number and vice versa
- (ii) "party" or "parties" means a party or parties to this Agreement
- (iii) references to any party shall include the successors in title and assigns of that party
- (iv) where a party includes more than one person any obligations of that party shall be joint and several
- (v) headings in this Agreement shall not form part of or affect its construction
- (vi) references to clauses and schedule are references to clauses in and schedules to this Agreement
- (vii) where a party or any officer or employee is required to give its consent approval or agreement in any specific provision in this Agreement such approval or agreement shall not be unreasonably withheld or delayed



- (viii) 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
- (B) The Council and the County are Local Planning Authorities for the purposes of the 1990 Act for the area within which the Land is situated
- (C) The Owner is seised of land situated at and known as Land at Mill Road Horstead in the County the County of Norfolk (hereinafter called "The Land") shown for the purpose of identification only edged red on the plan annexed hereto (hereinafter called "The Plan") for an estate in fee simple absolute subject only to the matters set out in a conveyance dated 7 August 1980 between Mrs H M Buck and M Pumphrey but otherwise free from encumbrances
- (D) The Land is charged by way legal mortgage by a Legal Mortgage dated the 29th day of January 1981 in favour of National Westminster Bank Plc
- (E) Having regard to the Development Plan and other material considerations the Council and the County consider it expedient in the interests of the proper planning of their area that provision should be made for regulating or facilitating the Development of the Land in the manner hereinafter appearing and the Council is satisfied the



Permission can only be granted subject to and upon completion of this Agreement

NOW THIS DEED WITNESSETH as follows:-

- 1.1 This Agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and any other enabling power
- 1.2 The covenants that appear hereinafter are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County
- 1.3 This Agreement is a Deed and may be modified or discharged in part or in total at any time after the date of this Agreement by agreement between the parties in the form of a Deed
- 1.4 This Agreement is a local land charge and upon completion shall be registered by the Council as such
- 1.5 No waiver (whether express or implied) by the Council or the County of any breach or default by the Developers 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
- 1.6 Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or



unenforceability be deemed severable and shall not affect any other provision of this Agreement

1.7 This Agreement shall be governed by the laws of England

1.8 No party shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement after that party has parted with its interest in the Land or the part of the Land in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any party's interest in the Land or any part thereof in respect of which any such breach has taken place

1.9 This Agreement shall cease to have effect if either:-

1.9.1 the Permission is quashed revoked or otherwise withdrawn; or

1.9.2 planning permission on the Land is granted subsequently and implemented for proposals incompatible with the Development

#### 1.10 NOTICES

1.10.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be deemed to have been validly served or given if received by facsimile, delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is addressed and delivered or sent by facsimile or by recorded delivery post to the address of the party concerned as nominated in sub-clause



1.10.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council	The Strategic Director (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich
The County	County Hall Martineau Lane Norwich Norfolk
The Owner	Randell Agriculture Limited Mill Road Horstead Norfolk
The Mortgagee	National Westminster Bank Plc Norfolk House Exchange Street Norwich NR2 1DD

1.11.3 Any notice or other written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer

## 2. GENERAL

2.1 The Owner HEREBY FURTHER AGREES that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Land under the terms of the Agreement are hereby waived

2.2 All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Developers and at no cost to the Council or the County

2.3 All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not presently been charged in respect of that supply the



person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

### 3. ARBITRATION

- 3.1 Any dispute or difference arising between the parties as a result of this Agreement shall be referred to the arbitration or a single arbitrator to be agreed upon between the parties, or failing agreement within fourteen days after any of the parties has given to the other parties a written request requiring the appointment of an Arbitrator, to a person to be appointed at the request of any of the parties by the President of The Institution of Civil Engineers for the time being
- 3.2 Any reference to arbitration shall be undertaken in accordance with and subject to the provisions of the Arbitration Act 1996 save as follows:-
- (a) the seat of the arbitration shall be at the Council's offices in Norwich
  - (b) where appropriate the Arbitrator may consolidate arbitral proceedings;
  - (c) with the parties agreement the Arbitrator may appoint experts or legal advisers
- 3.3 Any of the parties mentioned in clause 3.1 concerned in any such dispute or difference arising from this Agreement wishing to refer any such dispute or difference to arbitration shall notify the other parties in writing of such intention without delay
- 3.4 The Arbitrator shall act as a referee and not as an expert except in any case where the parties to a dispute or difference agree on the Arbitrator when such parties may also agree that such Arbitrator shall act as an expert
- 3.5 Subject to Sections 67, 68 and 69 of the Arbitration Act 1996, the parties agree to be bound by the decision of the Arbitrator



#### 4. RIGHTS OF THIRD PARTIES

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.

#### 5. COVENANTS

##### The Owner

- 5.1 The Owner hereby covenants and undertakes with the Council and the County so as to bind the Land and each and every part thereof to carry out and comply with the obligations set out in this Agreement

##### The Mortgagees

- 5.2 The Mortgagees hereby acknowledge the terms of this Agreement and agree not to develop pursuant to the Permission any part of the Land in which they have an interest otherwise than in accordance with the terms of this Agreement

##### The Obligations

#### 6. AFFORDABLE HOUSING

- 6.1 Not to commence development on the Land without first having submitted to the Council's Strategic Director (Community Services) for approval a scheme or schemes for the construction and long term management of affordable housing units which shall comprise twenty nine percent of which eighty six percent or such percentage as the parties may agree shall be Rental Dwellings and fourteen percent or such percentage as the parties may agree for Shared Equity Dwellings of all dwellings to be constructed on the Land and upon approval such scheme shall be deemed to be incorporated in the provisions of this agreement



- 6.2 Not to permit the occupation of more than 75% of houses on the Land until such time as the affordable housing units have been constructed and occupied

#### 7. OPEN SPACE AND PLAY EQUIPMENT

- 7.1 Prior to the occupation of the first of the Free Market Dwellings on the Land the Owner shall pay to the Council a sum of money as increased by the Inflation Provision as calculated in accordance with the provisions of the Council's Policy Note 4 a copy of which is annexed hereto
- 7.2 The Owner shall also pay to the Council within 21 days of a written demand therefor a sum equal to fifteen per cent of the Play Equipment Sum as increased by the Inflation Provision towards the costs and expenses of the Council in inspecting and supervising the works for the construction of the play equipment

#### 8. LIBRARY OBLIGATION

- 8.1 The Owner hereby covenants with the County that prior to the Occupation of any Dwellings on the Land the Owner shall pay to the County Council the Library Contribution as increased by the Inflation Provision
- 8.2 The County agrees to apply the Library Contribution only towards the provision of library facilities serving the Development and to repay the Owner any part of the Library Contribution which has not been utilised within 10 years following receipt
- 8.3 The Owner shall pay interest at 4% above the base rate of the Co-operative Bank Plc on any part of the Library Contribution not paid within fourteen days of the date upon which it becomes due in accordance with Clause 8.1

#### 9. EDUCATION OBLIGATION



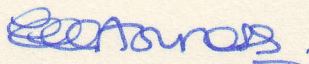
- 9.1 The Owner hereby covenants with the County that prior to the Occupation of the twelfth (12<sup>th</sup>) Dwelling on the Land the Owner shall pay to the County Council the Education Contribution as increased by the Inflation Provision
- 9.2 The County agrees to apply the Education Contribution only towards the provision of educational facilities serving the Development and to repay to the Owner any part of the Education Contribution which has not been utilised within 10 years following receipt
- 9.3 The Owner shall pay interest at 4% above the base rate of the Co-operative Bank Plc on any part of the Education Contribution not paid within fourteen days of the date upon which it becomes due in accordance with Clause 9.1 above (whether formally demanded or not)

#### 10. THE COUNCILS OBLIGATIONS

- 10.1. The Council undertakes with the Owner that the Play Equipment sum shall be applied for the provision of new recreational play facilities or the improvement of existing facilities in the Parish of Horstead

IN WITNESS whereof this Agreement has been executed and delivered as a Deed on the date first written above

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



Head of Corporate Services and Monitoring Officer





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

*Keir Munn*

Head of Law  
~~Director of Corporate Services~~



THE COMMON SEAL of )  
RANDELL AGRICULTURE LIMITED )  
was hereunto affixed in the presence of )

Director

*M. Munn*

Secretary

*E.H. Randell*



Signed and delivered as a deed )  
for and on behalf of the )  
National Westminster Bank Plc )  
by a duly authorised attorney in the presence of:- )

*S. HOWARTH*

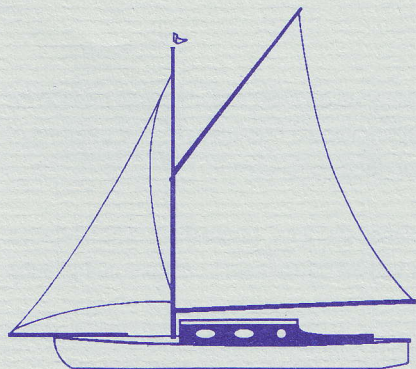
*Stacy*

Witness

*[Signature]*

Witness





# POLICY NOTES

## Broadland District Council Planning Information

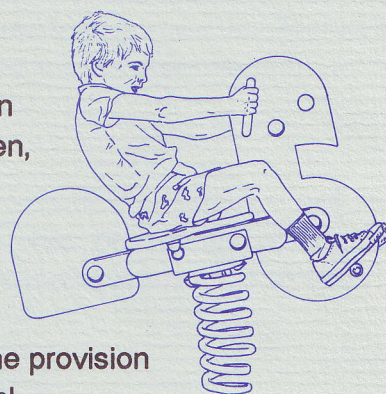
### No. 4

#### Introduction

### *Planning for Children's Play*

This leaflet deals specifically with children's play areas. These are only one element of the overall open space requirements of a community. The play areas are intended to provide play opportunities for both pre-school and school age children.

The importance of providing play areas within residential areas, for even very young children, is acknowledged as being very great. They provide not only opportunities for play but also for social integration.



The District Council adopted standards for the provision of Children's play areas within new residential developments in 1989. Previously open space areas and equipped playgrounds were provided either by developers, as a requirement of an allocation in a Local Plan, or on an ad hoc basis by Parish Councils. These standards were adopted to ensure a minimum level of provision throughout the District.

In some cases it may be appropriate to locate the play areas in conjunction with playing fields or large amenity spaces. However, it is important that they be provided close to the dwellings they are intended to serve and well away from roads.

Where a planning application relates to only part of a larger development, by one or more developers on adjacent or nearby sites, then the play requirements of the whole development will be taken into account in considering each individual application.

#### Type of Provision

***If you require further information  
about this leaflet please  
telephone Norwich 431133.***

- i) All new developments providing 90 child bedspaces or more will be required to include physical provision for Children's play within the development. [See page 4 for explanation of how to calculate child bedspaces]
- ii) Developers of smaller estates, of between 35 and 90 child bedspaces, will not be expected to include a play area within their development. However, there is a requirement for them to contribute to the improvement or provision of a play area elsewhere in the immediate locality. This could take the form of providing play equipment on part of an existing playing field.



## Play Spaces on Large Developments

### *criteria*

- iii) There is no requirement for developments providing less than 35 child bedspaces to provide for or contribute to publicly available play spaces. Developers should however provide gardens of adequate size to provide for the immediate recreational needs of children.
- iv) Developers applying for outline permission on sites in excess of 0.2 ha, where there is no limitation as to the number of dwellings, will be required to enter into an agreement to ensure compliance with the play policy.

The land required for a play area within a large development, outlined in i) page 1, is calculated at  $7.7\text{m}^2$  per child bedspace. The developer will be required to provide and equip such an area in agreement with the District Council and usually the Parish Council.

The playspace should conform to the following criteria :-

- a minimum size of  $700\text{m}^2$  (within large developments it may be appropriate to provide a number of play areas at least one of which should have a minimum area of  $700\text{m}^2$ )
- not more than 400m from each dwelling it serves
- needs to provide for both pre-school and school age children  
(this will depend to a certain extent on the needs of the area)
- an integral part of the footpath system
- in full view of passers-by and integrated into the development
- away from situations where nuisance may result, e.g. gable walls, old persons dwellings
- easily accessible for maintenance and emergency purposes

### *design guidance*

Guidance on the design, layout, surfacing, fencing and landscaping of play areas can be obtained from the Council's Leisure and Tourism Officer. The following general principles must, however, be adhered to when considering the detailed design and location of play areas :-

- all play space must be fenced or otherwise made capable of excluding dogs
- where the space is designed to be used for ball games it should normally be fenced to a height of 2.75m of a material requiring minimum maintenance
- all play equipment shall be manufactured and installed to B.S. 5696
- safety surfaces to B.S. 5696 and B.S. 7188 will be required around all equipment
- the type and siting of the equipment will be to the approval of the District Council and usually the Parish Council

### *adoption & maintenance of play spaces*

Once the play area has been satisfactorily completed it will be conveyed to the District Council. On conveyance of the area the developer will pay over to the District Council a commuted sum equivalent to 10 years annual maintenance. This sum will be calculated for each site by the District Council.

It is the District Council's intention to hand both the play space and the commuted sum to the relevant Parish Council. If the Parish Council is unwilling or unable to accept, then the District Council will maintain the play space.



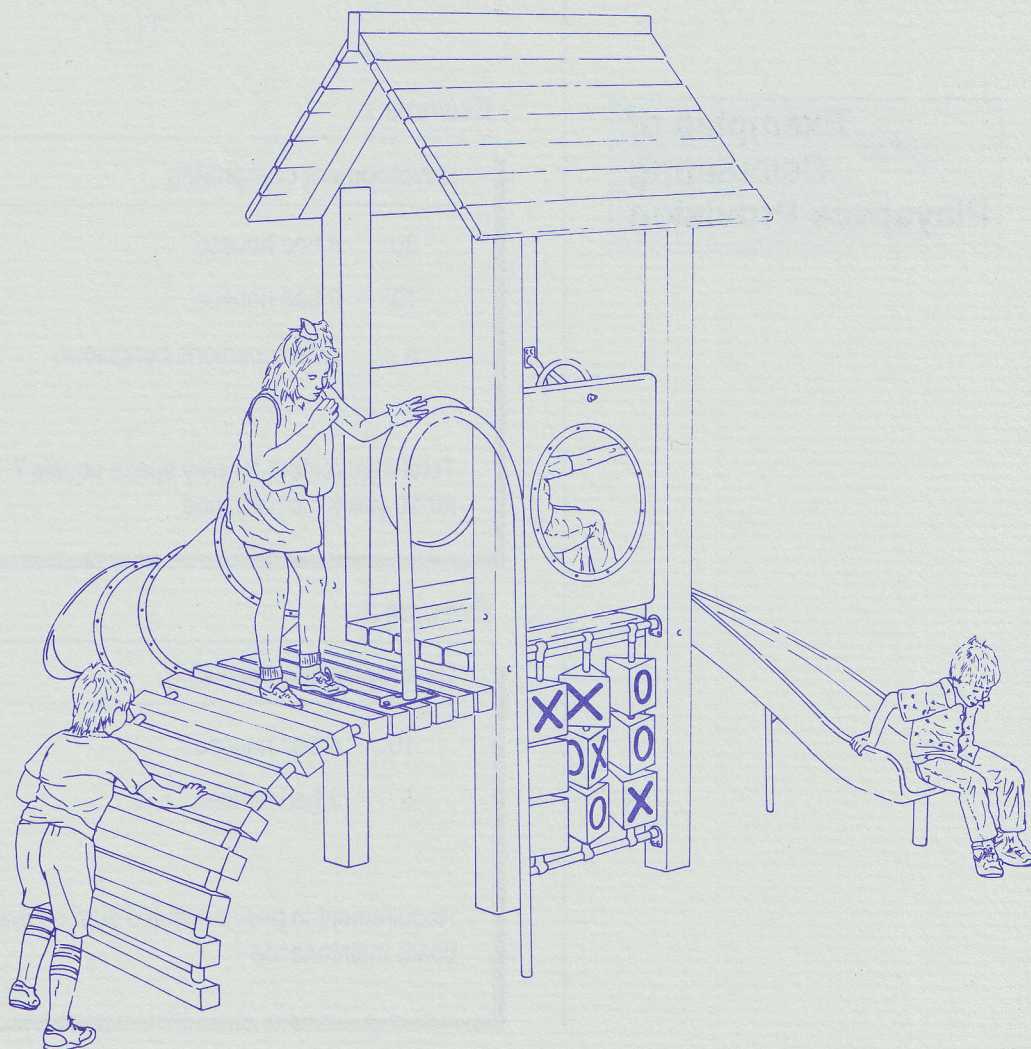
#### *provision*

The provision for small developments takes the form of a commuted sum calculated on the basis of the number of child bedspaces within the development. Arrangements for paying the commuted sum will be made through a legal agreement entered into before planning permission is granted for the development. Payment of the sum will be required either upon commencement of the development or on a pro rata basis on completion of each individual dwelling.

The agreement between the developer, the District Council and usually the Parish Council would require the commuted sum to be spent on providing or upgrading play facilities within a period of 5 years. If the money was not spent on recreational provision for the benefit of children from the new development it would be returned, plus interest, at a rate specified in the agreement, to the developer.

#### *maintenance*

A commuted sum equivalent to 10 years annual maintenance will be calculated on the basis of the number of child bedspaces within the development and paid at the same time as the sum required for the provision.



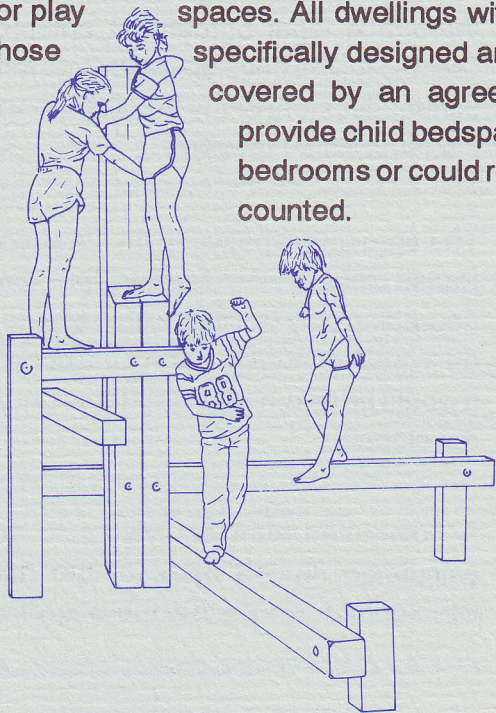


**Costs**

The cost of provision as at 1st April 1992 was £117.50 per child bedspace. The annual cost of maintenance at 1st April 1992 was £12 per child bedspace. These costs will be increased in line with the annual rate of increase in the Index of Retail Prices on 1st April each year.

**Child Bedspaces**

Child bedspaces is used as a measure of assessing the likely level of demand for play spaces. All dwellings with more than one bedroom (except those specifically designed and occupied by elderly persons and covered by an agreement to such) are considered to provide child bedspaces. All rooms which are shown as bedrooms or could reasonably be used as such are to be counted.



Size of dwelling	No. of child bedspaces
2 bedrooms	1
3 bedrooms	2
4 or more	3

**Examples of Calculating Playspace Provision**

**Example 1**

Development comprising		No of child bedspaces
30	4 bed houses	90
10	2 bed houses	10
5	elderly persons bungalows	<u>0</u>
		100
Total requirement for play space equals 7.7 m x 100 = 770 m + commuted sum for 10 years maintenance.		

**Example 2**

Development comprising		No of child bedspaces
10	4 bed houses	30
5	2 bed houses	<u>5</u>
		35
Requirement to pay commuted sum equivalent to ( 35 x £117.50 ) + 10 years maintenance		