

DATED

7th March

2001

BROADLAND DISTRICT COUNCIL

- AND -

JAMES DESMOND BUXTON

- AND -

ANNABELLA BUXTON

AGREEMENT

relating to the development of land at St.
Faiths Road Old Catton Norfolk made
pursuant to Section 106 of the Town and
Country Planning Act 1990 (as amended)
and any other enabling power

Steele & Co
2 The Norwich Business Park
Whiting Road
Norwich NR4 6DJ
Ref: EP.4349.688.2

THIS AGREEMENT is made the 7th day of March Two thousand and one **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 **JAMES DESMOND BUXTON** and **ANNABELLA BUXTON** both of 23 Murrayfield Road Edinburgh EH12 6EP (hereinafter called "The Owner") of the second 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 dated 21st December 1999 submitted to the Council in accordance with the application plans and other materials deposited with the Council and bearing reference number 991488
"Development"	means the development permitted by the Permission
"Director"	means the Council's Director of Planning and Community Services or other officers of the Council acting under his authority
"The Inflation Provision"	means the increase (if any) in the Retail Prices' Index between the date of this Agreement and the date upon which a payment of money is made or play equipment is provided in

accordance with any of the requirements of this agreement

“Permission” means the outline planning permission granted pursuant to the Application together with any renewal or modification thereof

“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 schedules are references to clauses in and schedules to this Agreement
- (vii) where a party or any officer or employee of any party is required to give its consent approval or agreement in any specific provision in this Agreement such consent 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

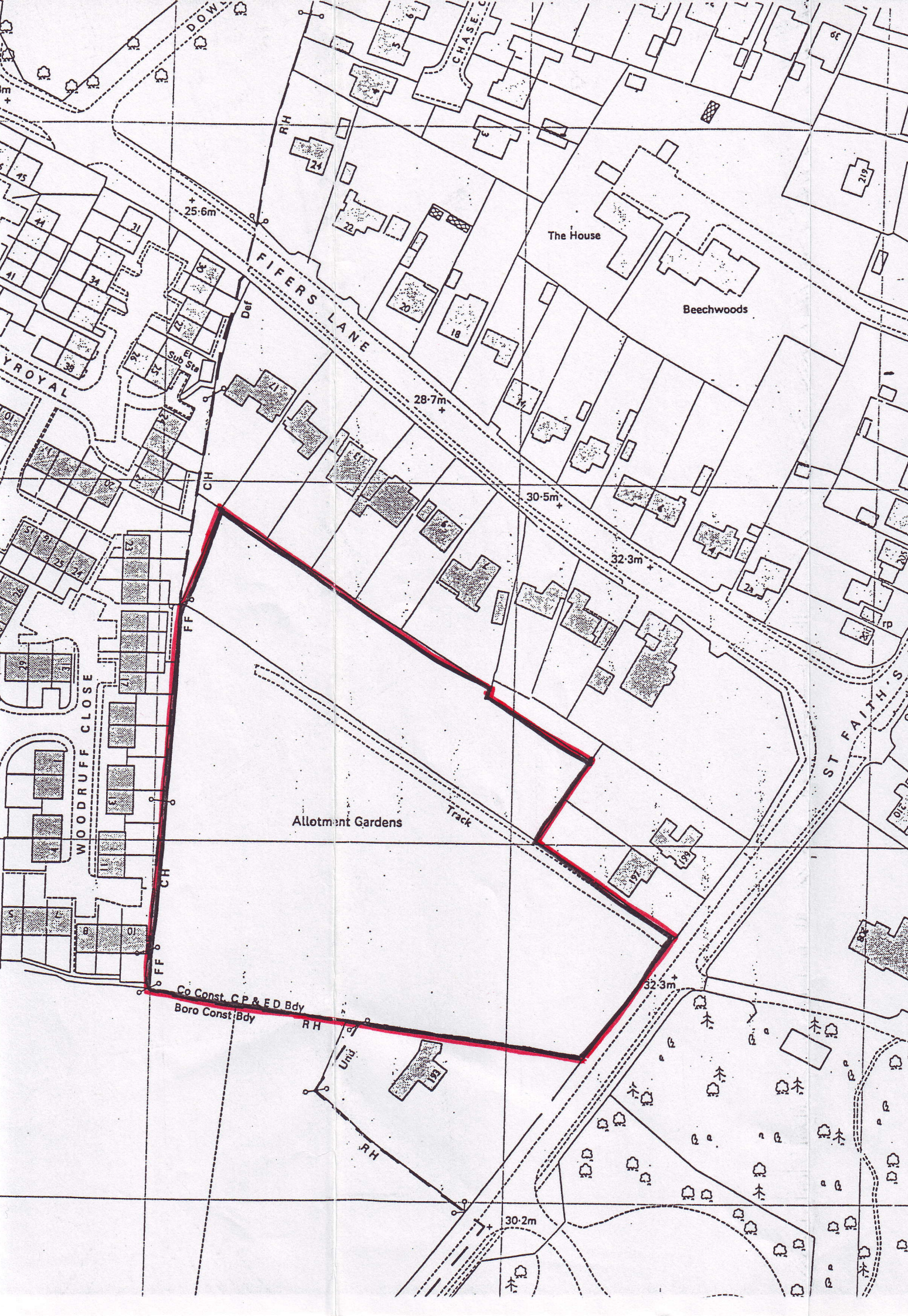
(B) The Council is a Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated

(C) The Owner is registered as proprietor with absolute title of the land (hereinafter called "the Land") shown for the purpose of identification only edged red on the plan annexed hereto as the same is registered with Title Number NK 124180 subject to the matters contained in the Charges Register for that Title Number but otherwise free from encumbrances

(D) Having regard to the development plan and other material considerations the Council considers 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
- 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 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
- 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 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 recorded delivery post to the address of the party concerned as nominated in sub-clause 1.10.2

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 Director of Planning and Community Services Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich
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The Owner	James Desmond Buxton and Annabella Buxton 23 Murrayfield Road Edinburgh EH12 6EP
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1.10.3 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 this 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 Owner and at no cost to the Council
- 2.3 Any consideration on supplies made under this Agreement are inclusive of VAT

3. ARBITRATION

- 3.1 Any dispute or difference arising between the parties as a result of this Agreement shall be referred to the arbitration of a single arbitrator to be agreed upon between the parties, or failing agreement within fourteen days after either of the parties has given to the other party a written request requiring the appointment of an arbitrator, to a person to be appointed at the request of either 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 Either of the parties 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 party 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

The Owner hereby covenants and undertakes with the Council 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

6. THE OBLIGATIONS

Affordable Housing

- 6.1 Not to commence construction of any houses on the Land without first having submitted to the Director for approval a scheme for the construction and long term management of the three affordable housing units required to be provided as part of the Development

- 6.2 Not to permit the occupation of more than five houses on the Land until such time as the affordable housing units have been constructed and are ready for occupation

Open Space and Play Equipment

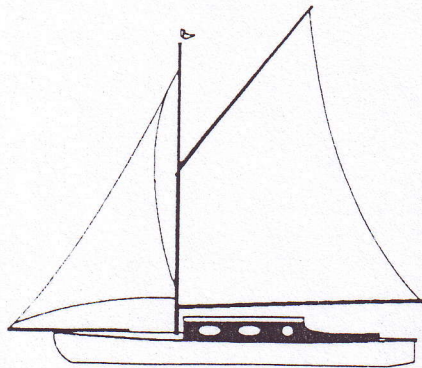
- 6.3 Prior to the commencement of Development the Owner shall pay to the Council a sum as increased by the Inflation Provision as calculated in accordance with the provisions of the Council's Policy Note No. 4 a copy of which is annexed hereto

THE SCHEDULE

The Council's Policy Note No 4

And

The Permission



POLICY NOTES

Broadland District Council Planning Information

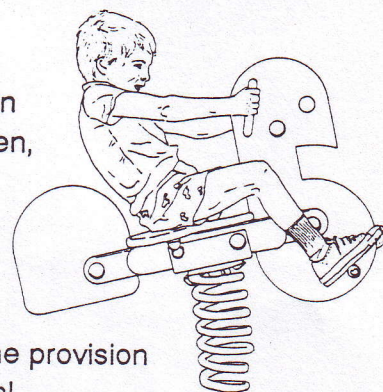
No. 4

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

- 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.

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

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 7.7m^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 700m^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 700m^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.

Play Spaces on Small Developments

35-90 Child Bedspaces

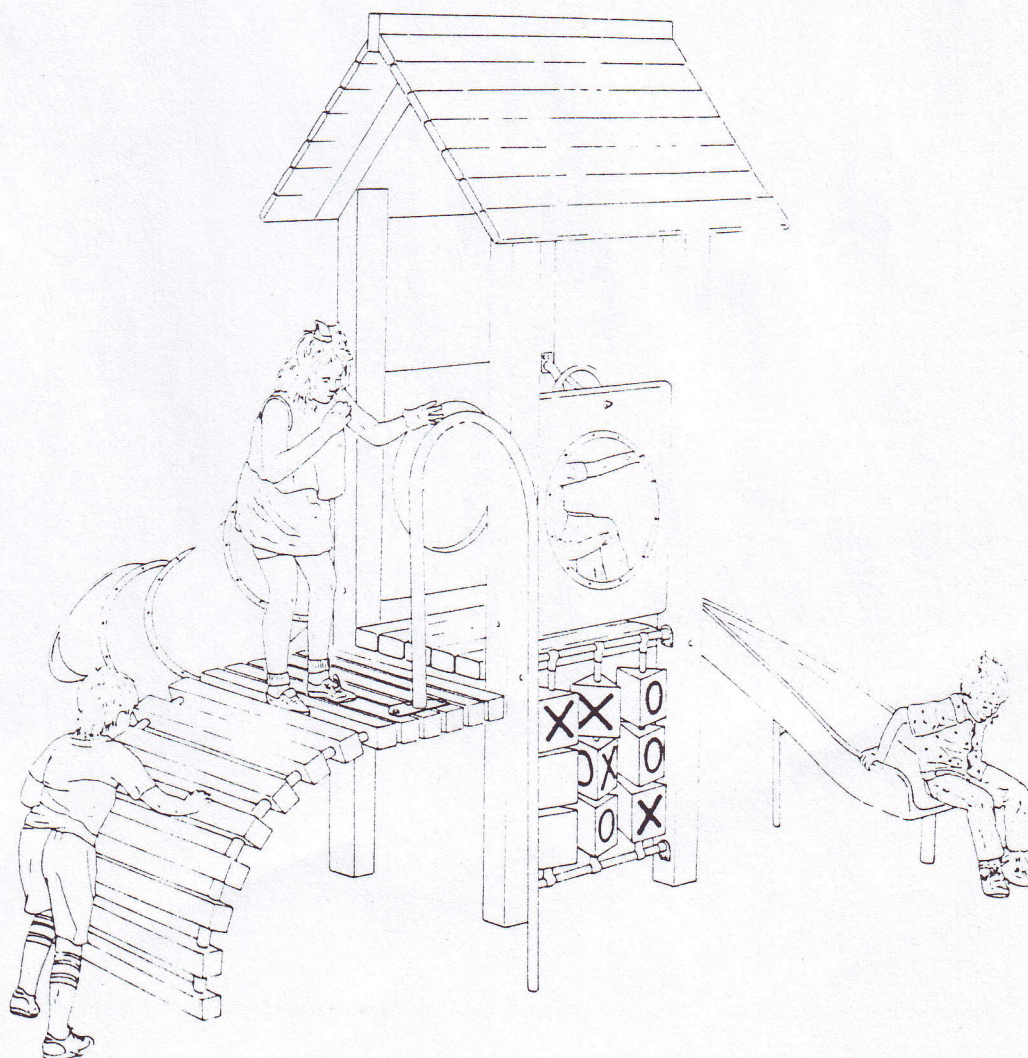
provision

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.

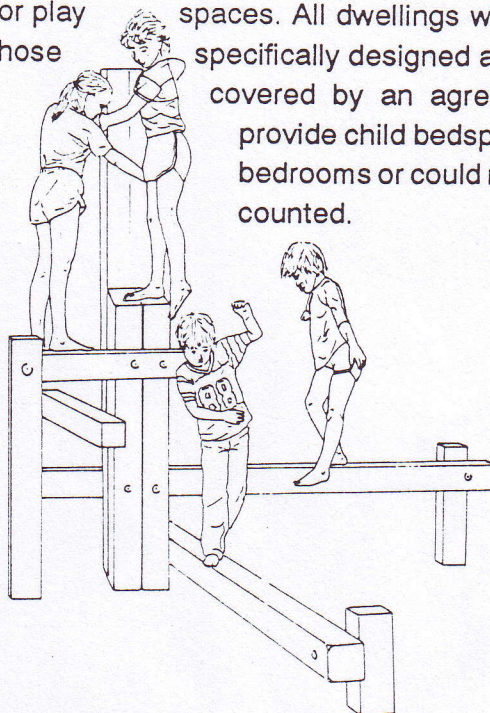


Costs

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	0
	<u>100</u>

Total requirement for play space equals $7.7 \text{ m} \times 100 = 770 \text{ m}$ + commuted sum for 10 years maintenance.

Example 2

Development comprising	No of child bedspaces
10 4 bed houses	30
5 2 bed houses	5
	<u>35</u>

Requirement to pay commuted sum equivalent to $(35 \times £117.50) + 10$ years maintenance

SMITH-WOOLLEY
8 OXFORD STREET
WOODSTOCK
OXON
OX20 1TP

Application Number:

991488

Date of Decision: 23 AUG 2000

Description: ERECTION OF 12 DWELLINGS WITH NEW VEHICULAR ACCESS (OUTLINE)

Location: AMENITY LAND OFF, ST FAITHS ROAD, OLD CATTON.

Applicant: D G BUXTON WILL TRUST

Town and Country Planning Act 1990

The Council in pursuance of powers under this Act GRANTS PLANNING PERMISSION for the development referred to above, in accordance with the submitted plans and application forms, and subject to the following conditions.

- 1(a) Application for approval of the reserved matters shall be made to the Local Planning Authority, before the expiration of 3 years from the date of this permission.
- (b) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
2. Approval of the details of the siting, design and external appearance of the buildings and the landscaping of the site hereinafter called 'the reserved matters' shall be obtained from the Local Planning Authority in writing before any development is commenced.
3. Full details of all external materials to be used in the development shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced.
4. Before development commences on the site a plan should be submitted to the Local Planning Authority indicating details of the position, height and construction of boundary fences/walls/hedges for their approval. Following written approval the work shall be carried out before the dwellings are occupied or within such other period as may be specified in writing by the Local Planning Authority.

5. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping which shall include indications of all existing trees and hedgerows (the majority of which are to be retained) on the land and details of any to be retained together with measures for their protection in the course of development and arrangements to be made for the permanent maintenance of the landscaped areas.
6. The landscaping scheme, including surfacing and boundary treatments as submitted and approved shall be carried out in so far as it affects individual plots before the dwellings on those plots are first occupied unless otherwise agreed in writing by the Local Planning Authority.
7. Any tree or shrub which dies within five years of the planting of the first tree or shrub shown in that position on the approved landscaping scheme shall be replaced to the satisfaction of the Local Planning Authority.
8. No dwellings shall be occupied until such time as a road and footway have been constructed from the dwelling to the adjoining county road to a standard to be agreed in writing with the Local Planning Authority.
9. No work shall commence on site until such time as detailed plans of roads, footways, foul and 'on site' surface water drainage have been submitted to and approved by the Local Planning Authority.
10. No work shall be carried out on roads, footways, foul and surface water sewers otherwise than in accordance with the specifications of the Local Planning Authority.
11. The development hereby permitted shall not be carried out otherwise than in accordance with Drawing No. SK2010/00/2/B which provides details of the proposed single vehicular access point to the site.

The reasons for the conditions are:-

1. Required to be imposed pursuant to Section 92 of the Town and Country Planning Act, 1990.
2. To ensure the satisfactory development of the site.
3. To ensure the satisfactory development of the site.
4. To ensure the proper development of the site without prejudice to the amenities of the area.
5. In the interests of visual amenity and to enhance the amenity of the locality.
6. To ensure the proper development of the site without prejudice to the amenities of the area.
7. To ensure the proper development of the site without prejudice to the amenities of the area.
8. In the interests of highway safety.

9. To ensure the satisfactory development of the site without prejudice to the amenity of the site or to road safety.
10. To ensure the satisfactory development of the site without prejudice to the amenity of the site or to road safety.
11. To ensure the permission relates to the application, as amended.

INFORMATIVE

The Council has gone against Highway objections due to the limited number of dwellings on the site.

NOTES

1. If this development involves any works of a building or engineering nature, please note that before any such works are commenced it is the applicant's responsibility to ensure that, in addition to planning permission, any necessary consent under the Building Regulations is also obtained. Advice on this point can be obtained from the Building Control Section of the Planning and Community Services Directorate.

Signed

P. C. KIRBY

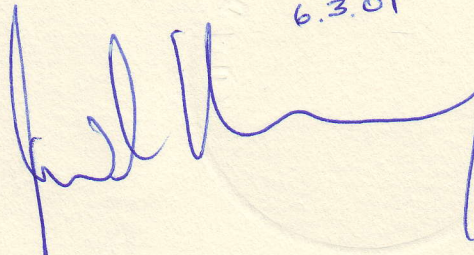
Director of Planning & Community Services

Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, NR7 0DU

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

)
)
)

5210
6.3.01


SIGNED AS A DEED BY JAMES
DESMOND BUXTON in the presence
of

)
)
)

JD Buxton
Beryl Knox
BERYL KNOX
11 Stanhouse Place West
Edinburgh
EH11 3TW
Cleaner

SIGNED AS A DEED BY
ANNABELLA BUXTON in the
presence of

)
)
)

Annabella Buxton
Beryl Knox
(as above)