

THIS DEED OF AGREEMENT ('this Deed') is made the
of ~~June~~ ~~April~~ 2013

17th

day

BETWEEN;

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Norwich NR7 ODU ("the Council") of the first part;
- (2) NORFOLK COUNTY COUNCIL of Martineau Lane, Norwich, Norfolk, NR1 2DH ("the County Council") of the second part;
- (3) STAVROS STAVRIDIS and LILIAN VIOLET STAVRIDIS both of Oak Lodge, 65 Salhouse Road, Rackheath, Norwich, NR13 6PD (the First Owners) and VALERIE ANN SMITH of The Bungalow, Mousehold Farm, Norfolk (the Second Owner) of the third part (together called "the Owners"); and,
- (4) DENNIS JEANS (DEVELOPMENTS) LIMITED (Company Reg No. 07592444) whose registered office is situated at 96 Norwich Road, Salhouse, Norwich, Norfolk, NR13 6PB ("the Developer") of the fourth part.

1. RECITALS

- 1.1 By virtue of the provisions of the Act, the Council is a Local Planning Authority for the purposes of this Deed for the area within which the land hereinafter defined ("the Land") is situated, and is a Principal Council for the purposes of the Local Government Act 1972
- 1.2 The First Owners are the registered freehold proprietors with absolute title of the part of the Land registered under title number NK409711 shown edged red on the filed plan of such title. The Second Owner is the registered proprietor jointly with Mr Samuel John Smith (deceased) with absolute title of the part of the Land registered at the Land Registry under title number NK407099, and shown edged red on the filed plan for such title. The whole of the Owners' property is shown edged red on the Plan.
- 1.3 The County Council is a Local Planning Authority for the purposes of the Act and the Library Service Provider and the Education Authority for the purposes of this Deed where relevant for the area within which the Land is situated.
- 1.4
 - (a) The Developer has submitted to the Council a planning application registered with the reference number 20130075
 - (b) The Developer has the benefit of respectively (i) an agreement to buy the First Owners' Land dated 11th August 2011 and (ii) an option to buy the Second Owner's Land dated 1st September 2011.

(c) The Developer seeks Permission subject to conditions and to the Completion of this Deed

1.5 The First and Second Owners and the Developer have agreed to enter into this Deed to create planning obligations pursuant to Section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained

2. DEFINITIONS

In this DEED the following words shall have the meaning set out below:-

“Act”	the Town and Country Planning Act 1990; (as amended)
“Affordable Housing”	housing provided which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market
“Affordable Housing Scheme”	a detailed scheme submitted to and approved by the Council for the provision of Affordable Housing within the Development
“Affordable Housing Provider (AHP)”	either; (i) a registered provider as defined by S.80 of the Housing and Regeneration Act 2008; or, (ii) another body whose object is or contains the provision and/or operation of affordable housing and which has been approved by the Council for the provision and/or operation of affordable housing within the administrative area of Broadland or has otherwise been approved by the Council for the purposes of this Agreement.
“Affordable Housing Provision”	the provision of 33% of the total number of Dwellings to be provided within the Development as Affordable Housing Units on the Land
“Affordable Housing Units”	individual units of accommodation constructed or provided as part of the Development as Affordable Housing
“Affordable Rental Unit”	Affordable Housing Units to be constructed and or provided as part of the Development pursuant to the

	Affordable Housing Scheme and to be let for a rent by or on behalf of an AHP either upon a weekly or monthly tenancy basis or monthly tenancy basis not exceeding Homes and Communities Agency (or their successor) target rents for social rental homes
“Application”	the application for outline planning permission dated 16 th January 2013 submitted to the Council for the Development allocated reference number 20130075 for residential development
“Code”	the Code for Sustainable Homes published by the Department for Communities and Local Government dated December 2006
“County Council’s Monitoring Fee”	the sum of £600.00
“Council’s Monitoring Fee”	the sum of £600.00
“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, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements
“Development”	means the development of the Land to be carried out pursuant to the Permission
“Dwelling(s)”	any unit of occupation being house, maisonette, bungalow or flat constructed as part of the Development
“Free Market Dwellings”	the dwellings comprising the Development that are not part of the Affordable Housing
“Green Infrastructure Contribution”	the sum of £50 per Dwelling Index Linked

“HCA Standards”	the Housing Quality Indicators and Design and Quality Standards specified by the Homes and Communities Agency
“Index”	the All Items Index of Retail Prices issued by the Office for National Statistics
“Index Linked”	index linked from the Permission date until such time that payment of any sum specified in this Deed is made such index linking to be equivalent to any increase or decrease in such sums in proportion to the increase or decrease in the Index save that in respect of the Library Contribution the index shall be the Building Cost Information Service Index
“Interest”	interest at 4% over the base lending rate of Barclays Bank from time to time
“Intermediate Housing”	Dwellings made available at prices and rents above those of social rent, but below market price of rents. These can include shared equity products and other low cost homes for sale and intermediate rent
“Land”	land off Salhouse Road, Rackheath, Norwich as shown edged red on the Plan for identification purposes only
“Library Contribution”	the sum of £60 per Dwelling Index Linked as a contribution towards the provision or improvement of library facilities at a library/libraries which would ordinarily be expected to be used by residents of the Development
“Occupation”	occupation of the Land for the purposes as authorised by the Permission excluding occupation for the purposes of construction, internal and external refurbishment, decoration, filling-out, marketing or any other activity preparatory to the use of Land for the purposes as authorised by the Permission. The words “Occupy” and “Occupied” shall be construed accordingly
“Permission”	the outline planning permission to be granted pursuant to the Application
“Play Space” and “Open Space”	an area of land to be provided of such area and on

	such terms and conditions as agreed between the Council and the Owners, to be transferred to the Council or a person specified in writing by the Council
“Open Space Scheme”	a scheme including plans, drawings and specifications, showing but not limited to the layout and design of the Open Space
“Open Space Maintenance Contribution”	The sum of £54,665.28
“Play Space Scheme”	a scheme including plans, drawings and specifications, showing but not limited to the layout and design of the Play Space, including details of any proposed equipment, landscaping, paths and access arrangement, street furniture and fencing
Play Area Maintenance Contribution”	The sum of £19,971.53
“Plan”	the plan attached to this Deed, marked as such, and showing for identification purposes only the Land which is to be used for the Development
“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 accommodation locally on the open market 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) or where such persons have been exhausted any person as nominated by the Council on the Broadland Housing Register that the AHP owning or managing the Affordable Housing Units on the Land is entitled to house within its rules together with any partner or dependant of any such person
“Off-Site Recreational Facilities	The sum of £130,000. for the provision of off-site recreational facilities within the parish of Rackheath

Contribution”

- “Shared Ownership Dwellings” Affordable Housing Units to be constructed or provided as part of the Affordable Housing Scheme, and to be let on a Shared Ownership Lease.
- “Shared Ownership Lease” a lease of a Shared Ownership Dwelling granted at a premium whereby up to 50% (fifty per cent) on first purchase of the equitable interest in the Shared Ownership Dwelling is acquired by the tenant upon completion of such lease and allows an annual rent to be charged on the remainder of the equitable interest not exceeding 2.75% of the value of such remainder and which lease shall include arrangements enabling the lessee to purchase the freehold of a Share Ownership Dwelling by instalments at some future date or dates
- 2.1 Clause headings are for reference only and shall not affect the construction of this Deed.
- 2.2 Where more than one person is included in the expression “the Council”, “the County Council” and “the Owners”, agreements and obligations expressed to be made or assumed by such parties are made or assumed, and are constructed to be made or assumed, by all such persons jointly and each of them severally.
- 2.3 Any covenant by the Owners not to do any act or thing shall be deemed to include a covenant not to cause, permit or suffer the doing of that act or thing.
- 2.4 Covenants and obligations made or assumed by any party shall be binding and enforceable against his, her or its successors in title, heirs and assigns, agents, servants, and those deriving title under it, provided that no person shall be liable for any breach of an covenant or obligation contained in this Deed after it has parted with all of its interest in the Land, save in relation to any antecedent breach prior to parting with such interest.
- 2.5 The masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa.
- 2.6 A reference to an act of parliament refers to that act as it applies at the date of this Deed, any later amendment or re-enactment of it, and any regulations or statutory instrument made under it.
- 2.7 A reference to a clause or schedule is a reference to a clause or schedule contained in this Deed.

- 2.8 Reference to any statute includes any statutory extension, modification, amendment, or re-enactment of such statute, and any subordinate instruments, regulations, or orders made pursuant to it.
- 2.9 Any notice, approval, consent, certificate, direction, authority, agreement, action, or expression of satisfaction required to be given, reached, or taken by any party under this Deed, or any response requested to such notice, approval, consent, certificate, direction, authority, agreement, action, or expression of satisfaction shall not be unreasonable or unreasonably withheld or delayed.
- 2.10 Nothing in this Deed shall fetter prejudice or affect the Council's or the County Council's powers to enforce any specific obligation or term or condition in this Deed, nor shall anything contained in the Deed fetter prejudice or affect any provisions, rights, powers, duties, and obligations of the Council or the County Council in the exercise of its functions as a local planning authority for the purposes of the Act or otherwise as a local authority.
- 2.11 No waiver (whether express or implied) by the Council or the County Council or any breach or default of the Owners or its agents, servants, successors in title, or assigns in performing or observing any of the covenants or obligations contained in this Deed shall constitute a continuing waiver, and no such waiver shall prevent the Council from enforcing any such covenant or obligation, or from acting upon any subsequent breach thereof.

3. OPERATIVE PROVISIONS

- 3.1 This Deed is made pursuant to section 106 of the Act, and the Council, the Owners, and the County Council are satisfied that the covenants, restrictions, and obligations contained herein and given by the parties are planning obligations for the purposes of section 106 of the Act insofar as they fall within the terms of section 106(1) of the Act, and insofar as they do not they are entered into pursuant to the Local Government Act 1972, the Local Government Act 2000, and any or all other enabling powers.
- 3.2 The covenants contained in clause 5 shall be enforceable by the Council, and the covenants in clause 6 by the County Council.
- 3.3 The covenants contained within this Deed will bind the Land and each and every party thereof.

4. LIABILITY

- 4.1 The Owners' covenants contained herein are made with the intent that each of the covenants given by the Owners will bind the Land and be binding on and

enforceable against the respective successors in title or assigns and, subject to clause 4.3, those deriving title under the Owners PROVIDED THAT without prejudice to the enforcement of covenants against successors in title, no person shall be liable for any breach or non-performance of the covenants contained herein, or for the performance of any obligations which arise from the carrying out of the Development on and in respect of any land of which he is no longer seized, save in respect of any prior subsisting breach.

- 4.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission as defined herein or any renewal thereof or any reserved matters approval with respect thereto) granted (whether or not on appeal) after the date of this Deed in respect of which development this Deed will not apply PROVIDED THAT the obligations in this Deed can be applied to any planning permission granted subsequent to the grant of the Permission as herein defined by agreement between the Owner and the Council and the County Council as evidenced by a memorandum endorsed on this Deed.
- 4.3 In the event that the Owners dispose of their interest in the Land or any part thereof he shall, within twenty-eight days of such disposal, give written notice of the name and address of its successors in title to the Council and the County Council together with sufficient details of the land included in the disposal to allow its identification.
- 4.4 In the event of the Permission expiring and not being renewed without the Development having been begun, or in the event of the revocation of the Permission, the obligations under this Deed shall cease absolutely and the Council shall immediately procure that any entry referring to this Deed in the Register of Local Land Charges shall be removed forthwith PROVIDED THAT this clause shall be subject to the obligations in this Deed being applied to another planning permission in accordance with clause 4.2.
- 4.5 It is agreed between the parties that any of the periods specified in this Deed may only be altered by agreement in writing between all the parties hereto, and any party to this Deed who requires time to be of the essence in any period altered shall serve notice on any other relevant party stating that time is of the essence in relation to any time period so extended.
- 4.6 Save for the provision of clause 10.1 (Exclusion of Third Party Rights) and clause 10.2 (Legal Costs) which shall come into effect on the date hereof, the provisions of this Deed shall be conditional upon the issuing of the Permission.
- 4.7 The covenants contained in clause 5 and clause 6 shall be conditional upon the commencement of the Development.

- 4.8 The County Council shall not be liable to any person under this Deed after that person has parted with all interest in the Land, but without prejudice to any liability arising prior thereto.

5. OBLIGATIONS (TO THE COUNCIL)

The Owners and Developer hereby covenant and undertake 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 Deed:

5.1 Affordable Housing

- 5.1.1 Not to commence the Development unless and until the Affordable Housing Scheme for the Development has been submitted to and approved by the Council, which Scheme shall include a timetable and programme for its implementation, the location and mix of tenure and dwelling types of the Affordable Housing Units, and thereafter the provision of the Affordable Housing Scheme shall be implemented and complied with in full, unless the Council agrees otherwise in writing and, upon approval, such Scheme shall be deemed to be incorporated within the provisions of this Agreement.
- 5.1.2 The Affordable Housing Units provided shall be constructed to HCA Standards and the regulatory level of the Code prescribed for the purposes of building regulations approval.
- 5.1.3 No Affordable Housing Unit shall be occupied for any purpose other than as an Affordable Rental Unit, a Shared Ownership Dwelling, or an Intermediate Dwelling.
- 5.1.4 The Affordable Housing Units shall not be occupied otherwise than by Qualifying Occupiers.
- 5.1.5 The Owners shall not dispose of their freehold interest in the Affordable Housing Units other than to an AHP.
- 5.1.6 No more than 75% of the Free Market Dwellings shall be occupied until the Affordable Housing Units within the Development are available for Occupation and have been transferred to an AHP, unless the Council agrees otherwise in writing.
- 5.1.7 Paragraphs 5.1.3, 5.1.4, and 5.1.5 above shall not be binding upon any mortgagee in possession or exercising its powers of sale of the Affordable Housing Units or part thereof, nor any receiver or manager of such mortgagee, and shall cease to apply to any of the Affordable Housing Units where the Owners shall be required

to dispose of such Units pursuant to a right to buy under Part V of the Housing Act 1985 or s.16 of the Housing Act 1996.

5.2 Play Space and Open Space

5.2.1 The Owners shall, prior to Commencement of the Development (or such later period as the Council shall agree in writing), submit to the Council for approval and have approved the Open Space Scheme and Play Space Scheme, and upon approval the plan specification and programme shall be deemed to be incorporated in the terms of this Deed as if the same had been fully set out herein, such consent for approval not to be unreasonably withheld or delayed by the Council.

5.2.2 The Owners shall commence, and thereafter complete in accordance with the approved Open Space Scheme and Play Space Scheme, the works for the completion of the Open Space and Play Space.

5.2.3 The approved Open Space and Play Space will be transferred to the Council or a person specified in writing by the Council and the Owners shall pay the Open Space Maintenance Contribution and the Play Space Maintenance Contribution upon Occupation of the 40th Dwelling

5.3 Off-Site Recreational Facilities

5.3.1 The Owners shall prior to the Occupation of the 40th Dwelling pay to the Council the Off-Site Recreational Facilities Contribution

6. OBLIGATIONS (TO THE COUNTY COUNCIL)

6.1 Library Contribution

6.2.1 To pay the Library Contribution to the County Council prior to Occupation of the 40th Dwelling; and,

6.2.2 Not to cause, permit or allow Occupation of the 40th Dwelling prior to payment of the Library Contribution to the County Council.

6.2 Green Infrastructure Contribution

6.3.1 To pay the Green Infrastructure Contribution to the County Council prior to the occupation of the 50th Dwelling.

7. COUNCIL'S COVENANTS

The Council covenants and undertakes as follows:

- 7.1 In respect of payments other than the Off-Site Recreational Facilities to repay to the Owners such amount of any payment made to the Council by the Owners under this Deed which has not been expended in accordance with the provision of this Deed within five years of the date of receipt by the Council of such payment or, where payments are made in instalments, within five years of receipt of the final instalment;
- 7.2 In respect of the Off-Site Recreational Facilities Contribution to repay to the Owners the whole contribution if works have not commenced within three and a half years from the date of receipt by the Council of such payment
- 7.3 To pay to the Owners interest on any payment made pursuant to 6.1 above at the base lending rate of Barclays Bank Plc from time to time; and,
- 7.4 To provide to the Owners such evidence as the Owners shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

8. COUNTY COUNCIL'S COVENANTS

The County Council covenants and undertakes as follows:

- 8.1 Upon receipt to pay the Library Contribution into an interest bearing account;
- 8.2 To apply the Library Contribution only for the purposes for which the same were paid and not to use the contribution other than for such purposes;
- 8.3 In the event that, after ten years from the payment of the Library Contribution, any sum has not been spent by the County Council, to repay the sum unspent and any interest accrued to the Owners; and,
- 8.4 To provide information to the Owners as to the application of the Library Contribution upon reasonable request.

9. TITLE COVENANTS

The Owners hereby jointly and severally covenant with the council and the County Council as follows:

- 9.1 The Owners are the freehold owners of the Land and have the power to enter into this Deed; and,
- 9.2 That there is no other person having an interest in the Land save for the Developer.

10. MISCELLANEOUS

Third Party Rights

- 10.1 No provisions of this Deed shall be construed as creating any rights enforceable by a third party as defined by the Contracts (Rights of Third Parties) Act 1999, and any third party rights as may be implied by law or are deemed to be enforceable by the Contracts (Rights of Third Parties) Act 1999 are hereby excluded to the fullest extent permitted by law

Legal Costs

- 10.2 Upon completion of this Deed the Owners shall pay the Council's and the County Council's reasonable legal costs properly incurred in connection with the negotiation, preparation and completion of this Deed on the date hereof.

Interest

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

Notices

- 10.4 Save as provided for below, any notice or communication to be given pursuant to this Deed shall be in writing and shall either be delivered personally, sent by registered post, or sent by recorded delivery service. The address for service on the parties shall be those stated in this Deed, or such other address in England for service as the party to be served may have previously notified in writing.

Void Provisions

- 10.5 If any provision of this Deed is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions of this Deed shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality, provided that any party may seek the consent of the other or others to the termination of this Deed on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties.

Notification of the Commencement of Development

- 10.6 The Developer agree to notify the Council of the Commencement of Development within 30 working days of the occurrence or the same PROVIDED THAT default

in giving notice or confirming the date by exchange of correspondence shall not prevent the Commencement of Development occurring and for the purpose of triggering obligation contained herein.

Disputes

10.7 WHEREVER there is a dispute between the Council, County Council and Owners or Developer or other owners of the Land or any relevant part thereof at the time any dispute may arise under or arising from the terms of this Deed which shall not be resolved within two months of any such party having notified the other that any such dispute exists then the Council, the County Council, and the Owners or an owner may require the dispute to be determined by a professional person having at least ten years professional standing in a relevant professional discipline ("the Professional"), which professional shall be agreed between the parties or in default of agreement appointed by the President for the time being of the Chartered Institute of Arbitrators which Professional shall:

10.7.1 Act as an expert;

10.7.2 Afford the parties to the dispute an opportunity promptly to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;

10.7.3 Be able to stipulate periods of time for the making of such submissions and representations;

10.7.4 Be bound to have regard to the said submissions and representations;

10.7.5 Have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the Professional shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;

10.7.6 Be limited in his findings to the proposals put by either party;

10.7.7 Be required to issue his decision as soon as reasonably practicable; and,

10.7.8 The findings of the Professional shall, save in the case of manifest material error, be final and binding on the Owners, the, the County Council, and the Council, save that the parties retain the right to refer to the Courts on a matter of law.

10.8 If for any reason the Professional shall fail to make a decision and give notice thereof within the time and in the manner herein provided, either party may apply to the President or the Vice President for the time being of the Royal Institution of

Chartered Surveyors for a substitute to be appointed in his place, which procedure may be repeated as many times as necessary.

10.9 For the avoidance of doubt;

10.9.1 No party shall be obliged by virtue of this clause 10 to engage in the resolution envisaged by this clause where the issue relates to the non payment of financial contributions; and nothing shall prevent the parties from commencing or continuing court proceedings

10.9.2 The parties to the dispute shall comply in full with any award decision or direction made by the Professional, including any as to costs.

Monitoring Costs


10.10 Immediately prior to commencement of Development the Owners shall pay the Council's Monitoring Fees and the County Council's Monitoring Fees

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

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


Head of Democratic Services and
Monitoring Officer


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

authorised to sign
on behalf of: 

EXECUTED AS A DEED by)
STAVROS STAYRIDIS in the presence)
of )


MR. GLENN CATH POLE
S. WARNETT ROAD
NORWICH NR7 9XB

EXECUTED AS A DEED by
LILLIAN VIOLET STAVRIDIS in
the presence of


MR GLENN CATCHPOLE.
S. WARNETT ROAD
NORWICH NR7 9XB

)
) L V Stavridis
)


EXECUTED AS A DEED by
VALERIE ANN SMITH in the
presence of


MR GLENN CATCHPOLE.
S WARNETT ROAD
NORWICH.
NR7 9XB

)
) V. A. Smith
)

EXECUTED AS A DEED by
DENNIS JEANS (DEVELOPMENTS)
LIMITED acting by a Director and its
Secretary

)
) 
)
)
) Director

Secretary 
Acting Secretary.

35979
authorised to sign
on behalf of:

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NOTES

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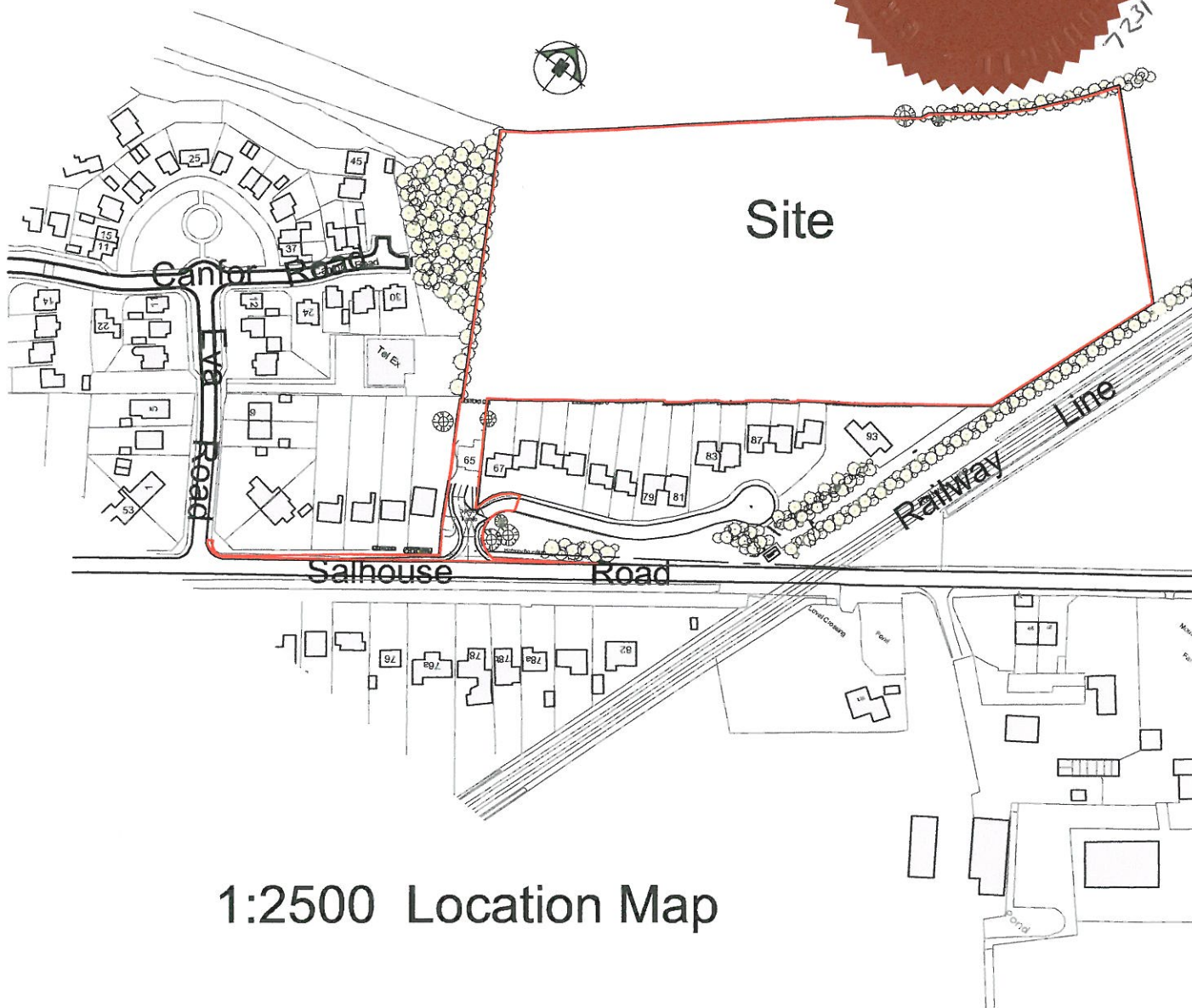
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M. Murrel
Head of Democratic Services and
Monitoring Officer



1:2500 Location Map

C

Cycle Track added.

Apr 13

rev:

date:

Dennis Jeans Developments Ltd.

Land off Salhouse Road
Rackheath, Norfolk

Scale:

1:2500

Date:

June 2011

architects and consulting
engineers



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