

DATED

11th June

2013

BROADLAND DISTRICT COUNCIL

- and -

DENNIS JOHN JEANS

-and-

WHERRY HOUSING ASSOCIATION LIMITED

AGREEMENT UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990

relating to the development of land
at rear of Trinity Close, Rackheath, Norfolk

THIS AGREEMENT is made the day of 2013

BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road,
Thorpe St Andrew, Norwich, Norfolk NR7 0DU (the "Council")
2. DENNIS JOHN JEANS of Lonicera House, Norwich Road, Salhouse,
Norfolk, NR13 6PB ("the First Owner")
3. Wherry Housing Association Limited (Industrial & Provident Society Act
1965 Reg No 27604R) C/O Circle House 1-3 Highbury Station Road
London, N1 1SE ("the Second Owner")

WHEREAS:-

- A. The Council is the Local Planning Authority for the purposes of the Act for the
area within which the Site is situated
- B. The First Owner is the freehold owner of part of the Site pursuant to title
number NK 399174
- C. The Second Owner is the freehold owner of part of the Site pursuant to title
number NK 341843
- D. With the full knowledge and consent of the Owner, Dove Jeffery Homes Ltd of
Suite 11, Chalkwell Lawns, 648-656 London Road, Westcliff On Sea, Essex
SS0 9HR ("the Developer") have submitted the Application to the Council and

the parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement

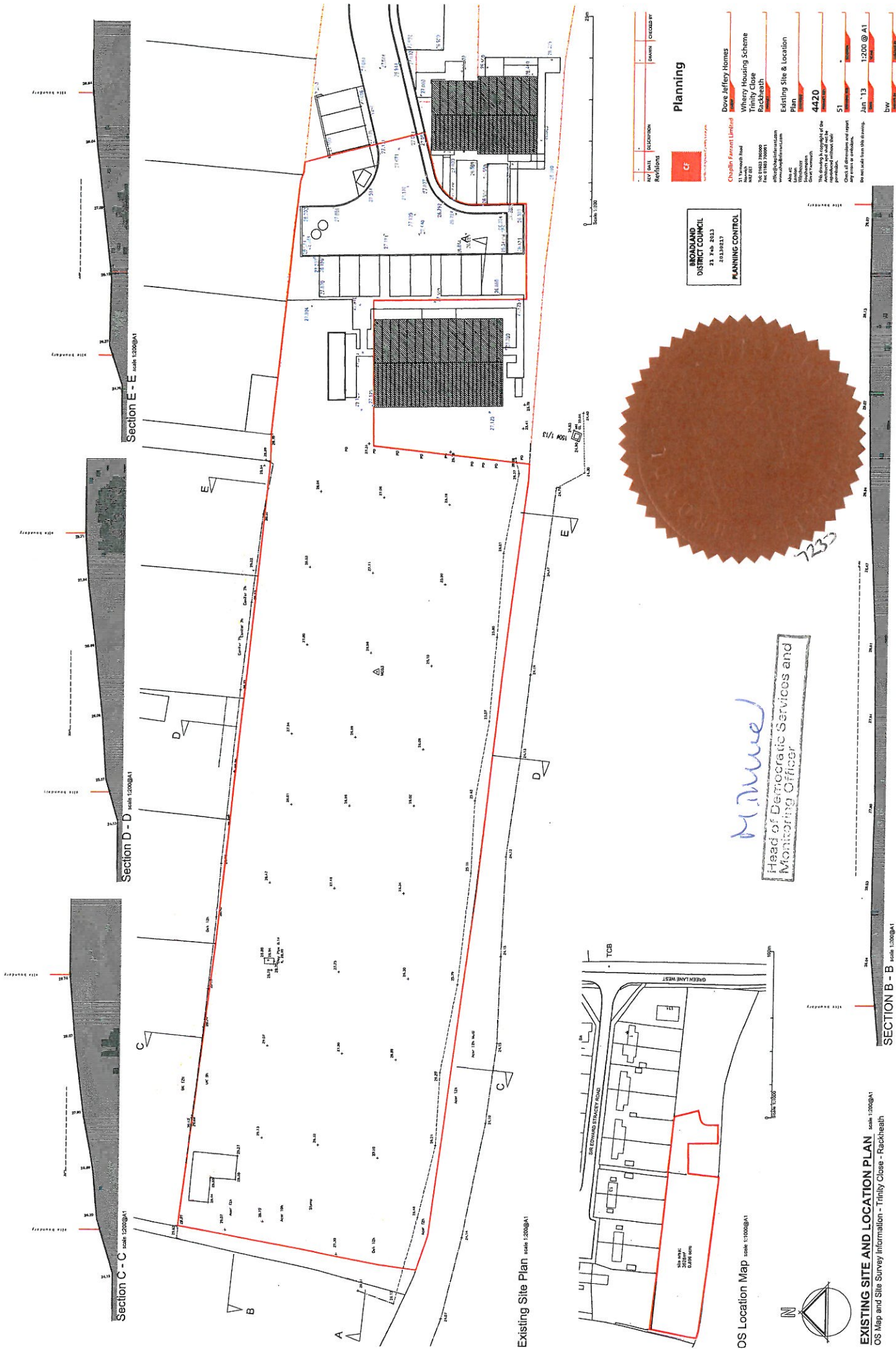
1. INTERPRETATION AND DEFINITIONS

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	housing provided in accordance with the requirements of this Agreement 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 Provider ("AHP")"	either: <ul style="list-style-type: none">(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 Units"	fourteen (14) Dwellings to be constructed or provided on the Site in accordance with the Planning Permission for use as Affordable Rental Units
"Affordable Rental Units"	Affordable Housing Units to be constructed or provided on the Site and to be let by an AHP to households who are eligible for affordable housing and let on a weekly or monthly tenancy at a rent of no more than 80% of the market rent
"Application"	the application for full planning permission dated 19

February 2013 and bearing reference number 20130217 for the development of fourteen (14) dwellings comprising eight (8) x 2 storey houses and six (6) flats all for Affordable Housing on the Site

"Code"	the "Code for Sustainable Homes" published by the Department for Communities and Local Government dated December 2006
"Commencement of Development"	the date on which any Material Operation forming part of the Development begins on the Site pursuant to the Planning Permission to be carried out and "Commence Development" shall be construed accordingly
"Development"	the development of the Site permitted by the Planning Permission
"Director"	the Council's Chief Executive or other officers of the Council acting under his hand
"Dwelling"	any unit of residential occupation being a self-contained house maisonette bungalow or flat constructed as part of the Development and "Dwelling" shall be construed accordingly
"HCA Standards"	the "Housing Quality Indicators" and "Design & Quality Standards" specified by the Homes and Communities Agency
"Local Lettings Policy"	the order in which the Affordable Housing Units are to be allocated and which is set out under the title "Local Lettings Policy" at Appendix 1 to this Agreement as amended from time to time
"Material"	a material operation as defined in Section 56(4) of the Act



BRAND
DISTRICT COUNCIL
31.04.2013
PLANNING CONTROL

Planning

REV	DATE	DESCRIPTION	CHANGED BY	CHANGED AT
1	13/01/13	Revisions	4420	4420

Chadlin Everett Limited 31 Verwood Road Rackheath Norfolk PE36 6JG Tel: 01603 260000 Fax: 01603 260001 www.chadlin.co.uk Email: sales@chadlin.co.uk Alistair J. Chadlin Director This drawing is copyright of the author and is not to be reproduced without written permission. No part of this drawing and report may be used or published without the written permission of the author.	Dove Jeffery Homes Wherry Housing Scheme Trinity Close Rackheath Norfolk PE36 6JG Edging Site & Location Plan 4420 51 Jan '13 1200 @ A1 DW
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M. Murrell
Head of Democratic Services and
Monitoring Officer

Operation"	<p>save that for the purposes of this Agreement the following shall not constitute a material operation:-</p> <ul style="list-style-type: none"> (a) site clearance (b) demolition of existing buildings (c) archaeological investigation (d) assessment of contamination (e) remedial action in respect of contamination (f) the erection of fences or other means of enclosure for site security (g) the diversion and laying of services (h) the erection of a site compound or site office or temporary buildings or structures
"Occupation"	<p>occupation of a building as a Dwelling (but not including occupation by contractors or for construction (and ancillary purposes) or fitting out purposes or for marketing including as a showroom or sales office) and "Occupy" "Occupied" and "Occupier" shall be construed accordingly</p>
"Owner"	Means the First Owner and the Second Owner together
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the full planning permission to be granted pursuant to the Application
"Qualifying Occupiers"	<p>in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria 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) and as having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally which is reasonably adequate for their needs</p>

"Site" the land at the rear of Trinity Close, Rackheath, Norfolk
which is shown for the purposes of identification only edged
red on the Plan

1.2 In this Agreement unless the context otherwise requires:

- a) references to any party shall include the successors in title and assigns of that party
- b) covenants given or made by any party which includes more than one person (whether natural or artificial) shall be deemed to be given or made jointly and severally
- c) references to clauses and schedules are references to clauses in and schedules to this Agreement
- d) 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
- e) headings in this Agreement shall not form part of or affect its construction
- f) A covenant not to do something includes a covenant not to permit or suffer that thing to be done

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

- 2.1 This Agreement is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and any other enabling powers
- 2.2 The covenants, restrictions, requirements and obligations arising hereunder are planning obligations pursuant to Section 106 of the Act and are enforceable by the Council against the Owner and their respective successors in title and assigns
- 2.3 The provisions of this Agreement are conditional upon the grant of the Planning Permission and the Commencement of Development save for the provisions of clauses 6 (costs) and 9 (jurisdiction) which shall come into effect immediately upon completion of this Agreement
- 2.4 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.5 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges
- 2.6 In the event that this Agreement comes to an end the Council if so requested by the Owner will execute a deed of release (or partial release) from the relevant provisions of this Agreement and procure that a note thereof shall be registered on the Council's Register of Local Land Charges
- 2.7 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement

3. AGREEMENTS AND DECLARATIONS

IT IS HEREBY AGREED AND DECLARED as follows:

3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of their functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council was not a party to this Agreement

3.2 Invalidity or Unenforceability of any of the Terms of this Agreement

If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 No Waiver

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

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

4. Notices

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter or facsimile

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

The Council	Thorpe Lodge 1, Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0DU
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The Owner	Lonicera House Norwich Road, Salhouse Norfolk NR13 6PB
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4.3 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

5. Third parties

5.1 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

6. Costs

6.1 The Owner shall on completion of this Agreement pay the Council's reasonable legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

7. Payment of Interest

7.1 The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received

8. VAT

8.1 All consideration given in accordance with the terms of this Agreement shall be inclusive of all VAT (if any)

8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

9. Jurisdiction

9.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales

10. Title Warranty

10.1 The Owner hereby warrants to the Council that he is the freehold owner of the Site and has full power to enter in to this Agreement and that the Site is free from all mortgages charges or other encumbrances and that there is no person having any interest in the Site other than as notified in writing to the Council's Head of Law prior to the date hereof

11. Jurisdiction

11.1 This Deed is subject to and will be construed in all respects in accordance with the provisions of English law.

12. Disputes

12.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same

12.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution

12.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR Procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties

12.4 Nothing in Clauses 12.1 12.2 and 12.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

13. Covenants

13.1 The Owner hereby covenants with the Council to carry out and comply with the obligations and restrictions on its part set out in this Agreement and set out in Schedule 1 hereto which are expressed to be given to or to be for the benefit of the Council

14. Owners Indemnity

14.1 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Agreement are hereby waived

15. Issue of Approvals

15.1 Where any approval, consent, agreement or the like is required to be given by the Council pursuant to the terms of this Agreement it shall be in writing and shall not be unreasonably withheld or delayed

16. Statutory Undertakers and Consortium Consent

16.1 the obligations and restrictions in this Agreement shall not be enforceable against any statutory undertaker which acquires any part of the Site for the purposes of its statutory undertaking or function

16.2 The Developer hereby consents to the Site being bound by the provisions of this Agreement provided that the Developer shall have no liability under this Agreement unless and until it shall have acquired a legal interest in the Site

17. Notification

17.1 The Owner agrees to notify the Council of the reaching of any of the occupation or completion thresholds relating to obligations contained in this Agreement such notification to be given within 14 days of reaching such threshold

SCHEDULE 1

Affordable Housing

The Owner covenants with the Council

1. Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission and the Code and to HCA standards.
2. Not to use allow or permit the Affordable Housing Units to be Occupied for any purpose other than as Affordable Rental Units.
3. Not to allow or permit the Affordable Housing Units to be Occupied other than by Qualifying Occupiers and in accordance with the Local Lettings Policy. .
4. That the Affordable Housing Units will be subject to the Local Lettings Policy.
- 5 .That the Owner shall not dispose of its freehold interest in the Affordable Housing Units other than to an AHP.
6. The provisions of this Agreement shall not be binding upon:
 - (a) any mortgagee or chargee (or any successor in title to such mortgagee or chargee) in possession of any Affordable Housing Unit or part thereof
 - (b) any receiver or manager (including an administrative receiver) or any successor in title to such receiver or manager (including administrative receiver) for such mortgagee
 - (c) any individual owner or Occupier of an Affordable Housing Unit who has purchased the Affordable Housing Unit pursuant to a right to buy claim under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable

EXECUTED by the parties hereto as a deed on the date written above

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

M. Murrel

Democracy
Head of ~~Corporate~~ Services
and Monitoring Officer



Signed as a Deed by

DENNIS JOHN JEANS

) *[Signature]*
)

Witnessed by

[Signature]

Name _____

Address _____

**JOHN W S HAY
SPRAKE & KINGSLEY
16 BROAD STREET
BUNGAY
SUFFOLK NR35 1EN
PARTNER**

Occupation _____

THE COMMON SEAL of WHERRY HOUSING
ASSOCIATION LIMITED was hereunto affixed
in the presence of

)
)
)

11295

Authorised Signatory



Authorised Signatory



APPENDIX 1

Local Lettings Policy for Trinity Close, Rackheath

1. Allocations will be made to applicants on the Common Housing Register managed and maintained by the Council on the following priority basis:
 - 1.1 Residents of Rackheath who have lived in the Parish for a total of at least 3 of the last 10 years.
 - 1.2 Former residents of Rackheath who have had their main home in the Parish for 3 of the last 10 years.
 - 1.3 Households who need to move to the parish of Rackheath to give/receive support from family/relatives.
 - 1.4 Residents of the adjacent parishes of Great and Little Plumstead, Salhouse, Crostwick, Beeston St Andrew who have lived in these parishes for the last three years.
 - 1.5 People working in the parish of Rackheath who have done so for a year or more.
 - 1.6 Residents of Rackheath who have lived in the parish for less than three years.
 - 1.7 Residents of the adjacent parishes of Great and Little Plumstead, Salhouse, Crostwick, Beeston St Andrew who have lived in these parishes for less than 3 years.
 - 1.8 Residents of the adjacent parishes of Blofield, Postwick, Woodbastwick, Wroxham, Spixworth who have lived in these parishes for the last three years.
 - 1.9 Residents of the parishes of Blofield, Postwick, Woodbastwick, Wroxham, Spixworth who have lived in these parishes for less than 3 years.

1.10. Residents of the administrative area of the Council

1.11 Any other person

2. Administrative Procedure for Nominations

2.1 The administrative procedure for nominations shall be in accordance with the operational procedures of the Housing List as amended from time to time or in accordance with alternative procedures as the Council and the Owner shall agree between them.

