

THIS AGREEMENT is made the 3rd day of December 2004

BETWEEN:

(1) **CLARKE HOMES LIMITED** whose registered office is Harefield House,
High Street, Harefield, Uxbridge UB9 6RH ('the Owner')

(2) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby-
in-Ashfield, Nottinghamshire, NG17 8DA ('the Council')

1. Definitions

IN THIS AGREEMENT the following words and phrases shall have the following meaning:-

1.1 "the Act" means Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Agreement have the meaning ascribed to them in the Act unless a contrary intention appears

1.2 "the Application" means the Planning Application dated 7th April 2004 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2004/0332

1.3 "the Application Site" means the land for which planning permission is sought to carry out the Proposed Development and which is shown for the purposes of identification only edged red on the Plan

1.4 "the Green Land" means the land edged green on the Plan

1.5 "the Obligations" means the planning obligations contained or referred to in the First and Third Schedules to this Agreement

- 2.5 The Council's Local Plan Review adopted in November 2002 contains inter alia Policy HG4 (Affordable Housing), HG6 (Public Open Space) and TR6 (Transport Provision)
- 2.4 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Application Site is situated
- 2.3 The Owner has submitted the Application
- 2.2 The Owner has not charged, disposed of or otherwise alienated the Application Site or any part thereof since taking the transfer referred to in clause 2.1 above
- 2.1 The Application Site (which comprises parts of title numbers NT292990, NT300671 and NT300677) has today been transferred to the Owner with title absolute and is awaiting registration at H.M. Land Registry

WHEREAS:-

2. Recitals

- 1.9 "Affordable Housing Contribution" means a payment to be made by the Owner in accordance with paragraph 2 of the First Schedule and dealt with by the Council in accordance with the Second Schedule
- 1.8 "the Proposed Development" means the erection of 53 houses, roads, infrastructure and landscaping as more particularly described in the Application and the details and specifications in the Owner's drawing 123/01C dated 21st May 2004
- 1.7 "the Planning Permission" means the grant of Planning Permission pursuant to the Application
- 1.6 "the Plan" means the plan attached to this Agreement

- 2.6 The Council resolved on 27th May 2004 to grant planning permission for the Proposed Development in accordance with the Application subject to conditions and subject to the making of this Agreement without which planning permission for the Proposed Development would not have been granted
- 2.7 The Owner has agreed to enter into this Agreement for the purpose of procuring the issue of the Planning Permission
3. **Enabling Powers**
- THE parties hereto enter into this Agreement under and pursuant to Section 106 of the Act.
4. **Planning Obligations**
- 4.1 The Obligations are planning obligations for the purposes of Section 106 of the Act to the intent that the Obligations shall be binding and enforceable without time limit against the Owner and any persons deriving title from him in the manner specified in Section 106 of the Act.
- 4.2 The Council is the Authority entitled to enforce the Obligations.
5. **Conditionality**
- The Obligations are conditional upon the issue of the Planning Permission.
6. **Covenant**
- THE Owner hereby covenants with the Council pursuant to Section 106 of the Act that the Application Site shall be subject to the Obligations and that the Owner will at his own expense duly carry out and perform the Obligations

Agreements and Declarations

7.

It is agreed and declared as follows:

7.1 Any reference to a party to this Agreement shall where the context so admits shall include their successors in title and assigns

7.2 Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa

7.3 No person shall be liable for breach of covenant contained in this Deed after he shall have parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

7.4 If the Planning Permission having been granted shall expire before the Proposed Development is begun, or shall at any time be revoked, this Agreement shall forthwith determine and cease to have effect

7.5 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the one relating to the Proposed Development as specified in the Application) granted after the date of this Agreement

7.6 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually

7.7 The Agreement is a Local Land Charge and shall be registered as such

8. **Costs**

The Owner shall on the execution of this Deed pay the Council's costs incurred in the preparation and settlement of this Deed in the sum of £1,100

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

M. Baskby

Kirkby-in-Ashfield

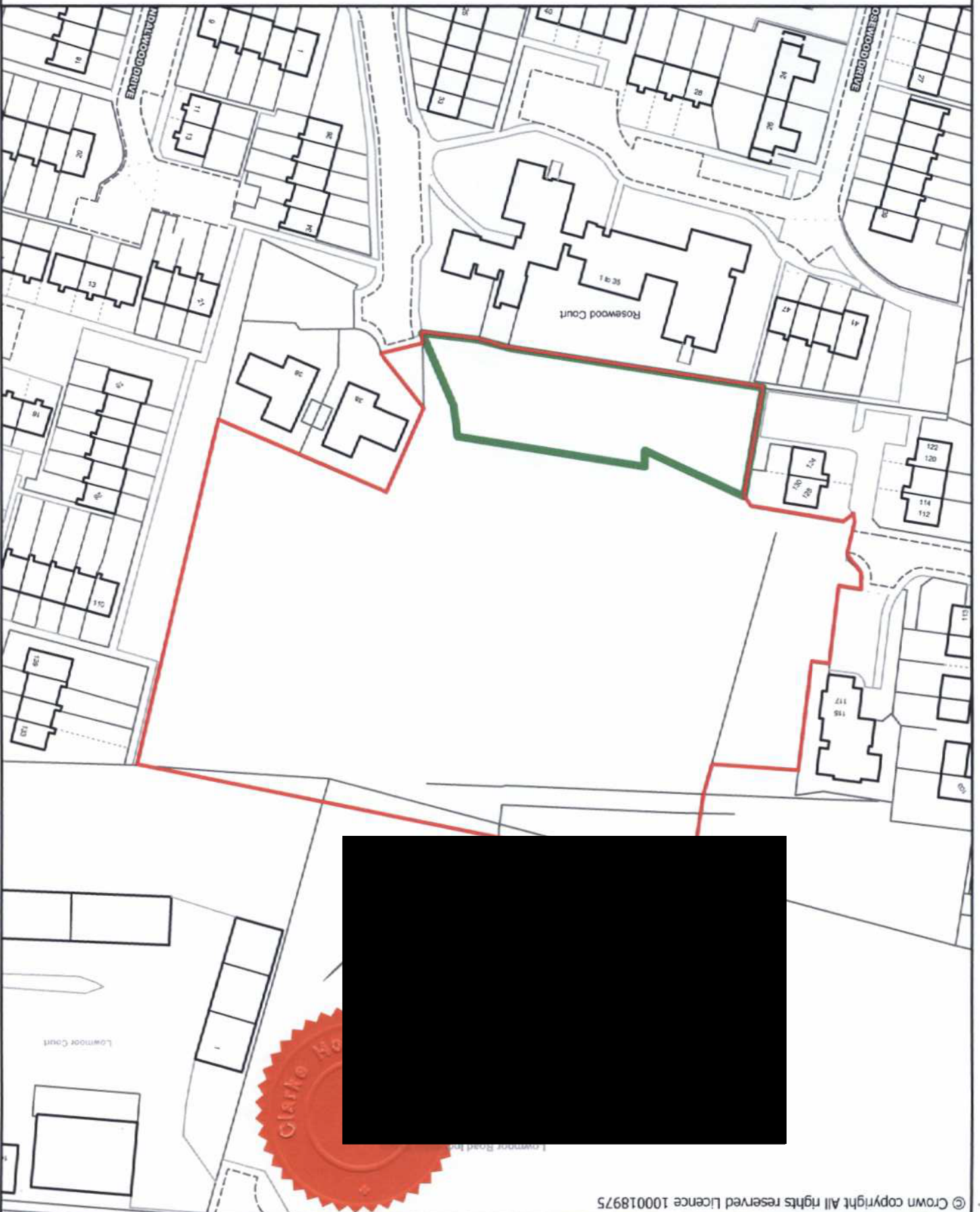
Land at Ashwood Avenue

Map sheet: SK5156NW
Scale: 1 to 1250
Prepared by: CA
02 Nov 2004



Ashfield District Council
Urban Road
Kirkby-in-Ashfield
Nottingham NG17 8DA

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FIRST SCHEDULE

COMPUTED SUMS

Prior to the commencement of the Proposed Development there shall be paid as a commuted sum to the Council:

1. For the provision of affordable housing within the administrative district of Ashfield in lieu of on-site provision the sum of **£84,000**

2. For integrated transport improvements and initiatives within the administrative district of Ashfield pursuant to adopted policy TR6 the sum of **NINETEEN THOUSAND FIVE HUNDRED POUNDS (£19,500)**

3. Where any amount is payable pursuant to the provisions of this First Schedule the amount to be paid shall be adjusted for inflation in accordance with the following formula :-

$$(P \div A) \times B$$

Where:-

P = the amount payable pursuant to this First Schedule
A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in respect of the month of May 2004
B = the RPI figure for the month in which the relevant payment is made or (if earlier) falls due to be made
But so that if at any time B shall be less than A the amount payable [P] shall nevertheless be paid in full without reduction

PROVIDED ALWAYS that :

(a) if such sum(s) or any part thereof shall not be paid before the actual commencement of the Proposed Development it shall carry interest at 12% per annum from the date of actual commencement until actual payment and no dwellinghouse to be built upon the Application Site shall be occupied whilst such sums or any part thereof (including interest as aforesaid) remains unpaid.

(b) payment of the commuted sums shall not in itself constitute commencement of the Proposed Development for the purposes of implementing the Planning Permission

SECOND SCHEDULE

AFFORDABLE HOUSING CONTRIBUTION

1. Any Affordable Housing Contribution received by the Council shall be ring fenced and be spent only in accordance with the following provisions of this Schedule and shall be kept at all times in an interest bearing account until used for the purposes herein specified
2. The Affordable Housing Contribution shall only be spent for the purposes of an affordable housing development at Slater Street, Sutton-in-Ashfield or such other affordable housing project as may from time to time be agreed between the Council and the Owner and for no other purpose whatsoever
3. If any Affordable Housing Contribution has not been used by the Council by the fifth anniversary of the date on which the Affordable Housing Contribution was made then upon receipt by the Council of written notice by the Owner requiring the Affordable Housing Contribution to be repaid the Council shall repay it (together with interest that has accrued thereon) to the Owner. For the avoidance of doubt, any part of the Affordable Housing Contribution spent by the Council after the fifth anniversary of the payment but before the Council is served with written notice pursuant to this clause shall not have to be repaid to the Owner
4. For the purposes of this Schedule 'Owner' shall mean the Owner by whom the payment is actually made and where such payment is made by 2 or more persons the written notice requiring repayment shall specify the proportions in which the repayment is to be made to each of them.

THIRD SCHEDULE

OPEN SPACE PROVISION

1. The Owner shall at his own cost provide prepare lay out and complete the Green Land as open space in accordance with Conditions 2,3 & 9 of the Planning Permission to the satisfaction of the Council's Head of Development Services and thereafter maintain the same until the transfer of the same pursuant to paragraph 2

2. Not later than 6 calendar months after the Council's Head of Development Services has certified that the provisions of clause 1 have been satisfied the Owner shall transfer the freehold interest in the Green Land to the Council with Title Absolute such transfer to contain covenants to the following effect:-

- (i) The Green Land shall be used solely for this purpose of providing recreation and amenity space for use by the general public.
- (ii) The Council shall take reasonable steps to ensure that use of the Green Land shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development
- (iii) No development shall take place on the Green Land other than for the purpose of facilitating its use for recreation and amenity purposes

and if at the date of transfer the Green Land cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by vehicles to enable public access to the Green Land from the nearest public highway.

3. On the date of transfer the Owner shall pay to the Council the Sum of **FIFTEEN THOUSAND POUNDS (£15,000)** (index linked in accordance with paragraph 4 below) for the sole purpose of maintaining the Green Land as public open space

4. The amount payable under paragraph 3 above shall be adjusted for inflation in accordance with the following formula :-

$$£(15,000 \div A) \times B$$

Where:-

A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in respect of the month of May 2004
B = the RPI figure for the month in which the payment is made

But so that if at any time this calculation falls to be made B is less than A the amount payable shall nevertheless be £15,000

5. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Green Land

