
ASHFIELD DISTRICT COUNCIL MEMORANDUM

TO: HEAD OF LAND AND PROPERTY

FROM: DEVELOPMENT AND BUILDING CONTROL ADMIN
MANAGER

SUBJECT: LAND OFF LYNTON DRIVE, SUTTON-IN-ASHFIELD

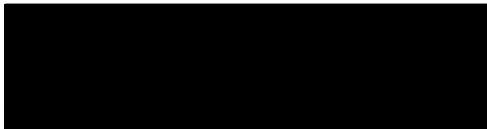
DATE: 19/11/2010 **REF:** V/2008/0017

Would you please register the above Section 106 Agreement (Town & Country Planning Act 1990) between:

- i) David Wilson Homes (Yorkshire) Limited
- ii) Nottinghamshire County Council
- iii) Jelson Limited

and

Ashfield District Council as a Local Land Charge



Sally Needham
Development and Building Control Administration Manager

RECEIVED ON

19 NOV 2010 p.m.

LAND CHARGES

THIS AGREEMENT is made the 17th day of November 2010

BETWEEN:

- (1) **DAVID WILSON HOMES (YORKSHIRE) LIMITED** (registered number 01390360) whose registered office is at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ('DWH')
- (2) **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall, West Bridgford, Nottingham, NG2 7QP ("the County Council")
- (3) **JELSON LIMITED** (registered number 00571641) whose registered office is at 370 Loughborough Road, Leicester, LE4 5PR ('Jelsons') (together "the Owner")

AND

- (4) **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 "Affordable Housing" means housing which can be accessed by households with an income that is on or below the median income for the District of Ashfield and such households whose income or employment status prevents them from accessing open market housing

- 1.3 "Affordable Housing Units" means the Dwellings to be constructed on the Application Site which are designated as the affordable housing units and which shall be provided by the Owner in accordance with the terms of Clause 6 and the Third Schedule
- 1.4 "the Application" means the planning application dated 10th January 2008 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2008/0017
- 1.5 "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 Layout Plan
- 1.6 "Commencement of the Proposed Development" or cognate terms means the point at which the Owner has implemented the Planning Permission (or as the case may be the detailed consent pursuant to a Subsequent Application) by carrying out a material operation as defined in Section 56(4) (a)-(d) of the Act other than the carrying out of development comprising trial holes bore pits or other ground investigation works or any other works relating to archaeology ground surveys decontamination works or demolition or the erection of advertisement hoardings or temporary enclosures for site security
- 1.7 "the Council's Obligations" means the obligations contained or referred to in the Second and Fourth Schedules to this Agreement
- 1.8 "Dwelling(s)" means a separate residential unit(s) and shall include both Affordable Housing Units and Open Market Units
- 1.9 "the Green Land" means that part of the Application Site for the purposes of identification shaded green on the Plan
- 1.10 "the Layout Plan" means the plan bearing drawing number H2312-0106 dated April 08 produced by the Owner as part of the Application and which is attached to this Agreement at Appendix 1 and any reference to numbered Dwellings in the Third Schedule is to the corresponding plot number(s) on the Layout Plan

- 1.11 "Occupation" means the beneficial occupation for the purpose for which the Dwelling was granted planning permission but shall exclude occupation for the purposes of fit out or marketing
- 1.12 "Open Market Units" means the dwellings for sale lease or other disposal on the open market other than the Affordable Housing Units comprising the proposed Development
- 1.13 "Open Market Value" means the best price at which the sale of the freehold interest in the Affordable Housing Unit concerned (together with any rights easements provisions covenants and other matters benefiting it but subject to any incumbrances restrictions stipulations or covenants which may affect it and which still subsist and are capable of taking effect) would have been completed unconditionally for cash consideration by private treaty at the date of the valuation with vacant possession on completion of the sale assuming:
- 1.13.1 a willing seller
- 1.13.2 that prior to the date of the valuation there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest the agreement of price and terms and the completion of the sale
- 1.13.3 that no account is taken of any additional bid by a buyer with a special interest
- 1.13.4 that both parties to the transaction had acted knowledgeably prudently and without compulsion
- but disregarding the existence of any rights or obligations created by or in consequence of this Agreement
- 1.14 "the Owner's Obligations" means the planning obligations contained or referred to in the First ,Third and Fourth Schedules to this Agreement

- 1.15 "the Plan" means the plan attached to this Agreement marked Land Purchase Plan
- 1.16 "the Planning Permission" means the grant of planning permission numbered 2008/0017 issued pursuant to the Application
- 1.17 'the POS' means any and all land designated as public open space on the Layout Plan which is laid out as public open space pursuant to Condition 10 the Planning Permission and which is shaded green on the Layout Plan
- 1.18 'the POS Maintenance Payment' means a payment to be made pursuant to paragraph 2 of the First Schedule and paragraph 9 of the Fourth Schedule
- 1.19 "the Proposed Development" means the erection of 159 dwellinghouses with associated garaging and parking and construction of roads and footpaths as more particularly described in the Application
- 1.20 "the Purple Land" means that part of the Application Site for the purposes of identification shaded purple on the Plan
- 1.21 "the Registered Social Landlord" means a registered social landlord as defined by the Housing Act 1996
- 1.22 "Shared Ownership Dwellings" means a dwelling which is provided for occupation by way of a shared ownership lease where the initial share purchased shall not exceed 75% and with the ability to staircase to full ownership
- 1.23 "the Specification" means the scheme of hard and soft landscaping to be submitted to and approved by the Council pursuant to Condition 10 of the Planning Permission insofar as the same affects and applies to the POS

- 1.24 "the Transport Contribution" means the payment to be made pursuant to paragraph 1 of the First Schedule
- 1.25 "the Yellow Land" means that part of the Application Site for the purposes of identification shaded yellow on the Plan
- 1.26 Any reference to a Dwelling number is to the house type and curtilage thereof of that number as shown and designated on the Layout Plan

2. **Recitals**

WHEREAS:-

- 2.1 The County Council is registered at H.M. Land Registry as the proprietor of the Yellow Land with title absolute under title number NT432994 and DWH is registered at H.M. Land Registry as the proprietor of the Green Land with title absolute under title number NT304228 and Jelsons are registered at H.M. Land Registry as the proprietor of the Purple Land with title absolute under title number NT218276
- 2.2 DWH and Jelsons have submitted the Application
- 2.3 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Application Site is situated
- 2.4 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)
- 2.5 On 19th March 2008 the Council granted conditional full planning permission for the Proposed Development subject in particular to Condition 14 thereof that no development may take place pursuant to the planning permission until the Council has given written approval that a scheme has been submitted for the provision and delivery of affordable housing as shown on the Layout Plan, for the adoption and

maintenance of the proposed Public Open Space and for a contribution towards integrated transport

2.6 The Owner has agreed to enter into this Agreement for the purpose of discharging the said Condition 14 and the execution by the Council of this Agreement shall operate as the written approval that the submitted scheme has satisfactorily complied with Policies HG4, HG6 and TR6 as required by the said Condition 14

2.7 The Owner has agreed to enter into this Agreement for the purpose of discharging Condition 14 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 Owner's 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 Owner's Obligations

5. **Covenants**

5.1 THE Owner hereby covenants with the Council pursuant to Section 106 of the Act that the Application Site shall be subject to the Owner's Obligations and that the Owner will at his own expense duly carry out and perform the Owner's Obligations

5.2 The Council hereby covenants with the Owner to comply with the Council's Obligations

6. **Agreements and Declarations**

It is agreed and declared as follows:

- 6.1 Any reference to a party to this Agreement shall where the context so admits include their successors in title and assigns
- 6.2 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
- 6.3 No person shall be liable for breach of covenant contained in this Agreement 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
- 6.4 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
- 6.5 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
- 6.6 The provisions of the Second Schedule shall apply to any Transport Payment made pursuant to paragraph 1 of the First Schedule
- 6.7 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

6.8 Any notice to be provided by the Owner to the Council pursuant to the terms of this Agreement may be served in writing by either DWH or Jelsons individually

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

6.10 The obligations in this Agreement will not be enforceable against:

6.10.1 the buyers or occupiers of a single Dwelling erected on the Application site pursuant to the Planning Permission; or

6.10.2 a statutory undertaker after a transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker

7. Termination of This Agreement

7.1 This Agreement will come to an end if, in so far as it has not already been complied with:

7.1.1 the Planning Permission is quashed or revoked; or

7.1.2 the Planning Permission expires without having been implemented.

7.2 Where the Agreement comes to an end under clause 7.1:

7.2.1 The Council shall vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise record the fact that it has come to an end and no longer affects the Application Site

7.3 Where the Agreement is released in part by a future agreement, the Council will place a note against the entry made in the Local Land Charges Register stating which obligations no longer have effect.

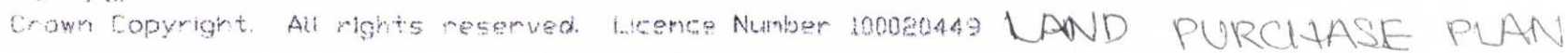
7.4 If the Owner makes a request in writing for the Council to place a note against the entry made in the Local Land Charges Register stating

which obligations under this Agreement have been discharged and complied with, the Council will place such a note against the entry.

8. **Costs**

The Owner shall on the execution of this Agreement pay the Council's costs incurred in the preparation and settlement of this Agreement in the sum of £2950.

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



FIRST SCHEDULE

LUMP SUM PAYMENTS

1. Prior to first Occupation of any of the Dwellings there shall be paid to the Council for integrated transport improvements and initiatives within the administrative district of Ashfield the sum of Seventy Thousand Six Hundred and Fifty Pounds (£70,650.00)
2. There shall be paid by the Owner to the Council the POS Maintenance Payment in the sum of FORTY-ONE THOUSAND SEVEN HUNDRED POUNDS (£41,700) on the date as provided in Paragraph 9 of the Fourth Schedule
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 April 2008

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 pursuant to the relevant paragraphs as the case may be shall nevertheless be paid in full without reduction

PROVIDED ALWAYS that :

- (a) if the sum or any part thereof referred to in paragraph 1 of this Schedule has not be paid prior to the first Occupation it shall carry interest at 12% per annum from the date of first Occupation until actual payment and no dwellinghouse to be built upon the Application Site shall be Occupied whilst such sum or any part thereof (including interest as aforesaid) remains unpaid.

SECOND SCHEDULE

TREATMENT OF TRANSPORT CONTRIBUTION

The following provisions shall apply to any Transport Contribution paid pursuant to the First Schedule:-

1. The Transport 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 proposed herein specified.
2. The Transport Contribution shall only be spent for the purposes mentioned in Policy TR6 of the Council's Local Plan Review
3. If the Transport Contribution or any part thereof has not been used by the Council by the fifth anniversary of the date on which it was made or by the date on which the planning permission is quashed or revoked then upon receipt by the Council of written notice by the Owner requiring that the unspent Transport Contribution 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 Transport Contribution spent by the Council after the fifth anniversary of the payment or by the date on which the planning permission is quashed or revoked but before the Council is served with written notice pursuant to this paragraph shall not have to be repaid to the Owner
4. At any time prior to the fifth anniversary of the making of the Transport Contribution the Council shall upon written request by the Owner supply to the Owner reasonable short particulars of any expenditure from the Transport Contribution made by the Council pursuant to the provisions of this Schedule provided that the Council shall be under no further obligation to answer any such request after they have given sufficient particulars pursuant to this paragraph showing that the whole of the Transport Contribution as the case may be has been expended in accordance with policy TR6 of the Council's Local Plan Review.

5. For the purposes of this Schedule 'Owner' shall mean the Owner by whom the payment is actually made and not their successors in title

THIRD SCHEDULE

AFFORDABLE HOUSING OBLIGATIONS

1. Subject to the provisions of this Schedule the Owner shall construct on the Application Site a total of 10 Affordable Housing Units as part of the Proposed Development such units to be constructed in accordance with the plans submitted with the Application and approved pursuant to the Planning Permission and being Dwelling numbers 05 and 06, 68 - 70 and 155 - 159 inclusive and the Owner may not dispose of such units save in accordance with the following terms of this Third Schedule
2. All Affordable Housing Units shall be provided with a vehicular access foul and surface water sewers and water gas electricity and telecommunication service systems linking in each case to the estate roads sewers and service systems to be constructed and laid as part of the remainder of the Proposed Development and connected ultimately (unless that the relevant authority shall refuse (except for reasonable cause) to accept their adoption) to highways and sewers maintainable at the public expense
3. Subject to the provisions of paragraph 6 of this Third Schedule the Owner shall not permit the first Occupation of more than 50% of the Open Market Units to be built on the Application Site until unconditional contracts to transfer the Affordable Housing Units have been exchanged with a Registered Social Landlord drawn from a list of Registered Social Landlords as may be approved by the Council such approval not to be unreasonably withheld or delayed and proper evidence (or confirmation from the Owner's solicitors) of such exchange of contracts has been produced to the Council
4. The transfer to the Registered Social Landlord shall be on terms that will ensure that Dwellings numbered 05, 06, 70 and 156 - 159 inclusive are made available on a rental basis with the Shared Ownership Housing comprising Dwellings numbered 68, 69 and 155 on the Layout Plan being provided by way of shared ownership leases

5. Beginning not later than the date of Commencement of the Proposed Development the Owner shall enter into negotiations with a Registered Social Landlord or Landlords drawn from the Council's approved list or such other Registered Social Landlord(s) as may be approved in writing by the Council for the transfer to that Registered Social Landlord or Landlords of the Affordable Housing Units herein specified and the negotiations shall be pursued by the Owner in good faith and details shall be supplied to the Council upon written request
6. Provided always that the Owner shall have complied with paragraph 5 in respect of the Affordable Housing Units but no Registered Social Landlord has been approved by the Council or no Registered Social Landlord is willing to take a transfer of the Affordable Housing Units by the date when the 50th Open Market Unit has been first occupied the restrictions on transfer of the Affordable Housing Unit (but not the restrictions on Occupation of the Open Market Units) contained in paragraph 3 may be varied by the Owner giving written notice to the Council that with effect from the date of such notice the provisions of paragraph 7 following shall apply instead of the said paragraph 3
7. From the date of a notice given pursuant to paragraph 6 the Owner may transfer the Affordable Housing Units to any Registered Social Landlord and upon such terms as the Council may agree (such agreement not to be unreasonably withheld or delayed) and upon the making of such a transfer the restrictions on occupation of the Open Market Units shall cease
8. If not less than three months have elapsed from the giving of a notice pursuant to paragraph 6 and the Owner shall have been unable to transfer the Affordable Housing Units to a Registered Social Landlord pursuant to paragraph 7 the Owner shall then be free to make first disposal of such units to
 - 8.1. a Registered Social Landlord on such terms as may be agreed between the Owner and the Registered Social Landlord; or
 - 8.2. the Council; or

- 8.3. any other organisation or body whose principal business is the provision of Affordable Housing on such terms as may be agreed between the Owner and that body; or
- 8.4. in respect of each individual Affordable Housing Unit a person or persons approved by the Council as being on its housing register for the time being or in need of housing accommodation of the type which it is proposed to transfer to him and provided always that the restrictions contained in paragraph 4 of this Third Schedule shall not apply and that any transfer made pursuant to this sub-paragraph 8.4 is of the freehold interest on the following terms:
- 8.4.1. the maximum price payable to the Owner in respect of the sale of an Affordable Housing Unit shall not exceed 75% of the Open Market Value as certified by a Surveyor drawn from a list prepared by the Council or in default of preparing or maintaining such a list who practices within a 15 mile radius of the Application Site
- 8.4.2. the transfer to a person specified in this sub-paragraph 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of thirty years from the date of the first transfer by the Owner that
- 8.4.2.1. no subsequent transfer shall take place within the said period of thirty years save a disposal of the freehold or leasehold interest in the Affordable Housing Unit at a price or premium which does not exceed 75% of the market value of the said Unit at the date of disposal as certified by a Valuer or Surveyor in the manner described in 8.4.1, and
- 8.4.2.2. no letting of the Affordable Housing Unit shall take place within the said period except at a rental not exceeding 75% of the market rental income for a property of that type as certified by a Valuer or Surveyor in the manner above described

8.4.3. the transfer to a person specified in this sub-paragraph 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of thirty years from the date of the first transfer by the Owner that the transferee and any future transferees of the Affordable Housing Unit will procure a direct covenant from each successive transferee in favour of the Council to observe and perform all of the covenants specified in this sub-paragraph 8.4

8.4.4. the transfer to a person specified in this sub-paragraph 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of thirty years from the date of the first transfer by the Owner that the transferee and any future transferees of the Affordable Housing Unit will on each transfer of the Affordable Housing Unit apply to the Chief Land Registrar for the following Restriction to be entered in the Register of the title in the property:-

"Except under an order of the Registrar no transfer, assent or other dealing by the Proprietor of the property is to be registered without the transferee's solicitor producing to the Land Registry a Certificate confirming that the purchase price for the property does not exceed 75% of the Open Market Value as determined in accordance with an Agreement dated [DATE] and made under Section 106 of the Town and Country Planning Act 1990 between David Wilson Homes (Yorkshire) Limited (1), Nottingham County Council (2), Jelson Limited (3) and Ashfield District Council (4)"

8.4.5 nothing in the Transfer shall operate to restrict delay limit or prevent the immediate occupation or disposal of any Affordable Housing Units to or by a person and those living with him where such occupation or disposal arises as a result of a Court Order or any other statutory provision or presumption or will or intestacy but subject always to the strict compliance by any transferee of the legal estate with the provisions of this sub-paragraph 8.4 before any further disposal for value of the legal estate takes place

- 8.5 If all the Affordable Housing Units shall have been transferred pursuant to the provisions of this paragraph 8 the restrictions on Occupation of the Open Market Units shall cease
9. If not less than twelve months have elapsed from the giving of a notice pursuant to paragraph 6 the Owner may dispose of the freehold interest in any of the Affordable Housing Units to any person (whether or not that person qualifies with the requirements of sub-paragraph 8.4) provided that the terms of the transfer to him comply in all respects with the requirements of the said sub-paragraph 8.4
10. If at any stage the Owner and the Council so agree in writing any of the Affordable Housing Units may be sold on the open market without restriction and the Owner shall be entitled to retain the proceeds of sale therefrom save that the Owner shall pay to the Council not later than 14 days from the date of the legal completion of the relevant sale a sum equal to 40% of the agreed Open Market Value of the Unit inclusive of standard fixtures and fittings but disregarding the value of any additions made thereto or extras included by the Owner as part of the sale and always provided that
- 10.1 any sums paid to the Council pursuant to paragraph 10 shall be held by them in an interest bearing account and shall be applied solely for the purpose of providing Affordable Housing be it for rental shared ownership or discounted market sale within the District of Ashfield
- 10.2 if any of the sums paid to the Council for the purpose of providing Affordable Housing have not been spent within 5 years of the date of the last such payment then those such sums shall be repaid together with interest to the person who paid the sums to the Council and where there is more than one such person the sums paid by each shall be clearly identifiable whether held in the same account or not
11. If all the Affordable Housing Units constructed pursuant to the Planning Permission shall have been transferred pursuant to the provisions of paragraphs 8, 9 or 10 the restrictions on Occupation of the Open Market Units shall cease

12. Once the Affordable Housing Units have been transferred to a Registered Social Landlord none of the obligations imposed by this Schedule in relation to the Affordable Housing Units shall apply to: -

12.1. Any mortgagee or chargee of the Affordable Housing Units pursuant to any mortgage or charge granted to it by a Registered Social Landlord; or

12.2. Any person who having been granted a long lease of the Shared Ownership Dwellings exercises the right to and completes final staircasing under the terms of such lease; or

12.3. The mortgagee or chargee of any person who has been granted a lease of Shared Ownership Dwellings; or

12.4. The Registered Social Landlord or any tenant in circumstances where any tenant exercises a right to buy, or right to acquire under the Housing Acts 1985 or 1996 or any statutory modification or extension amendment or re-enactment thereof or any regulations or orders made thereunder; or

12.5. Any purchaser from or successor in title to any person specified in sub-paragraphs 12.1 to 12.4 above.

FOURTH SCHEDULE

OPEN SPACE PROVISION

1. No more than 80 Dwellings on the Application Site may be Occupied for the first time until the POS has been laid out and the Owner has offered to transfer it to the Council in accordance with the provisions of the following paragraphs of this Fourth Schedule provided always (and for the avoidance of doubt) once the POS has been laid out by the Owner in accordance with paragraph 2 of this Schedule and the Owner has made the offer as referred to in this paragraph then the restriction on occupation of the Dwellings shall not apply
2. The Owner shall lay out the POS in accordance with Condition 10 in the Planning Permission and the Specification ('the Conditions')
3. At any time after the Owner shall in its opinion have complied with the Conditions it shall invite the Council in writing to make an inspection of the POS for the purposes of this Fourth Schedule and the Council shall within 28 days of receipt of that notice arrange for such inspection to be made by the Council's surveyor
4. The Council's surveyor shall with all reasonable diligence make his inspection within 28 days of the Owner's written notice referred to in paragraph 3 of this Schedule and either
 - 4.1 give his written certificate that the Conditions have been complied with and that the POS is ready to be transferred to the Council, or
 - 4.2 make a written report setting out any respects in which the Conditions have not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and

- 4.3 forthwith serve his certificate pursuant paragraph 4.1 or his report pursuant paragraph 4.2 as the case may be on the Owner and the Council
5. If the Council's surveyor shall have given his certificate pursuant to paragraph 4.1 then the Owner shall proceed to transfer the POS to the Council in accordance with paragraphs 7 - 10 following but if the Council's surveyor shall have given a report pursuant to paragraph 4.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the POS whereupon the Council shall within 28 days of receipt of that notice arrange for such further inspection to be made by the Council's surveyor and so on as often as may be necessary (*mutatis mutandis*) until the Council's surveyor shall give his certificate pursuant to paragraph 4.1
6. For the avoidance of doubt the Council's surveyor shall act as an expert and not an arbitrator and his opinion shall be binding on the parties
7. The Owner shall pay as a debt to the Council the reasonable costs of the Council's surveyor incurred in making any inspection of the POS for the purposes of this Fourth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's surveyor's invoice
8. Not later than two months after the Council's surveyor shall have given his certificate pursuant to paragraph 4.1 the Owner shall offer to transfer the freehold interest with Title Absolute of the POS to the Council such transfer to contain covenants to the following effect:-
- 8.1 Not to use the POS other than for the sole purpose of providing recreation and amenity space for use by the general public.
- 8.2 The Council shall take reasonable steps to ensure that use of the POS shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

8.3 No development shall take place on the POS other than that which would constitute permitted development under the General Permitted Development Order 1995 Schedule 2 Part 4 Class B or Part 12 Class A in connection with its use for recreation and amenity purposes

and if at the date of transfer the POS 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 POS from the nearest public highway.

- 9 On the date of transfer the Owner shall pay to the Council the POS Maintenance Payment
- 10 The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the POS

EXECUTED AS A DEED by

DAVID WILSON HOMES (YORKSHIRE) LIMITED

acting by its attorney
having affixed its **COMMON SEAL**

to this deed in the presence of

Witness

Address

c/o 2 Orchard Place
Nottingham Business Park
Nottingham NG8 6PX

Director

Director Secretary

EXECUTED AS A DEED by
NOTTINGHAMSHIRE
NOTTINGHAM COUNTY COUNCIL

having affixed its **COMMON SEAL**

to this deed in the presence of

Chairman

Authorised Officer

EXECUTED AS A DEED by

JELSON LIMITED

having affixed its **COMMON SEAL**

to this deed in the presence of

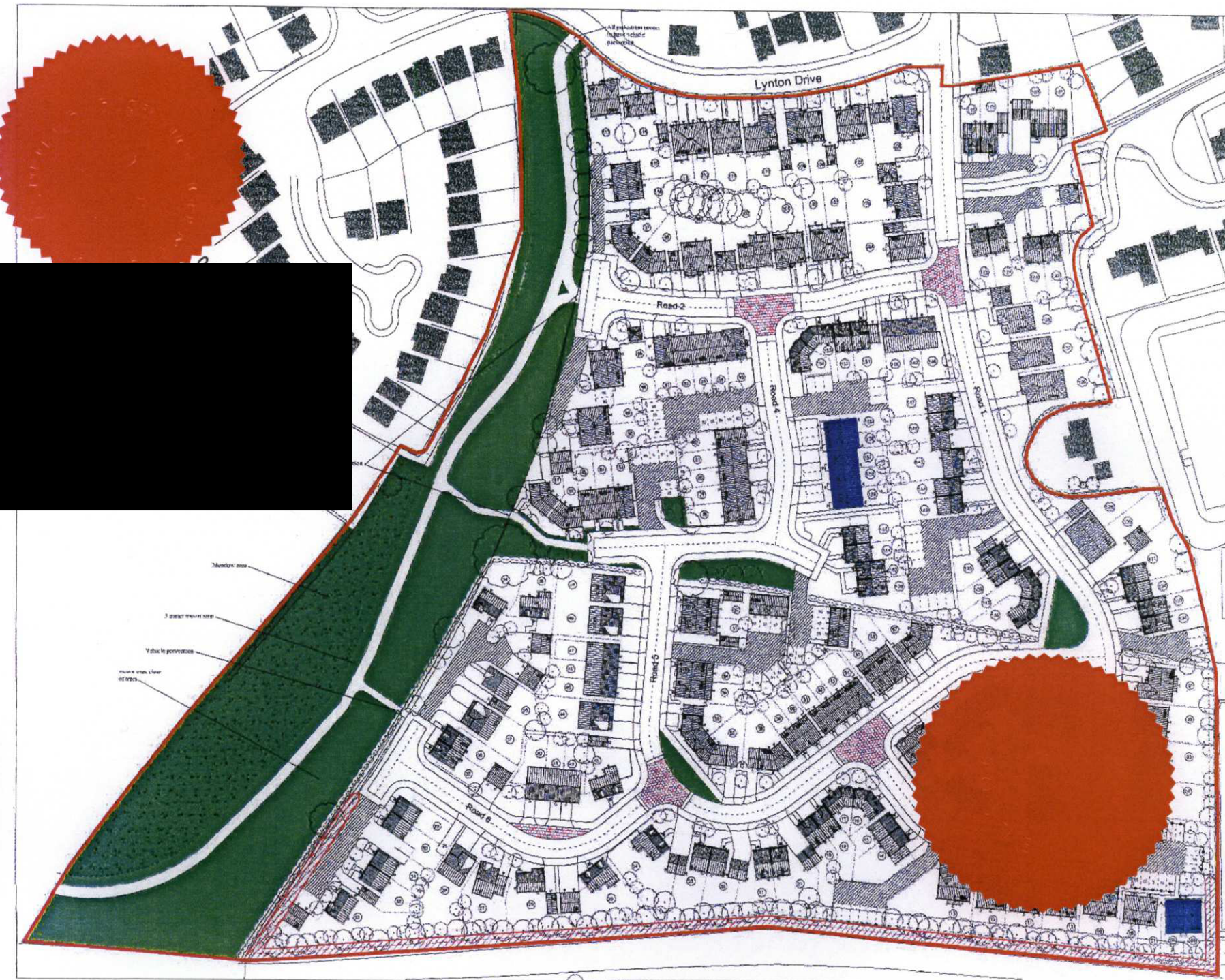
EXECUTED AS A DEED by
ASHFIELD DISTRICT COUNCIL
having affixed its **COMMON SEAL**
to this deed in the presence of



31542

APPENDIX 1

LAYOUT PLAN



Associated Drawings

1.0m High Standard Close Upgraded Fence
1.0m High 21/2mm Thick Stressed Block Wall

- Existing Drains
- Existing Trees
- Indicative Landscaping
- Plot No.
- Shared Area
- Planning Approval
- Development Area
- Allocatable Area

DAVID WILSON HOMES
DAVID WILSON NORTH MIDLANDS LTD
WILSON HOUSE
2 ORCHARD PLACE, NOTTINGHAM BUSINESS PARK
NOTTINGHAM, NG6 6PN
Tel: Nottingham 0115 905 2450

Section 106

Development
Lynton Drive, Sutton-in-Ashfield

Scale:	1:500	Draw No:	H2312-0106
Date:	Apr 98	Rev:	
Drawn by:	CSM		

**ASHFIELD DISTRICT COUNCIL
MEMORANDUM**

TO: LOCAL LAND CHARGES

**FROM: PLANNING AND BUILDING CONTROL SUPPORT TEAM
LEADER**

SUBJECT: LAND OFFLYNTON DRIVE, SUTTON-IN-ASHFIELD

DATE: 08/07/2013

REF: V/2008/0017

Would you please register the above Section 106 Deed of Modification Agreement (Town & Country Planning Act 1990) between:

- i) BDW Trading Ltd**
- ii) Jeslon Limited**
- iii) Nottinghamshire County Council**

and

Ashfield District Council as a Local Land Charge



Freeth
Cartwright
LLP

5th July 2013

- (1) BDW TRADING LIMITED
- (2) JELSON LIMITED
- (3) ASHFIELD DISTRICT COUNCIL
- (4) NOTTINGHAMSHIRE COUNTY COUNCIL

S106A DEED OF MODIFICATION

RELATING TO

LAND AT LYNTON DRIVE, SUTTON IN ASHFIELD

Cumberland Court
80 Mount Street
Nottingham NG1 6HH
United Kingdom

DX 10039 Nottingham 1

Direct Fax: +44 (0)845 050 3270
Switchboard: +44 (0)115 9369369
www.freethcartwright.co.uk

Ref: 1526/PVW/99992C/2457
Direct Tel: +44 (0)845 050 3682
Email: polly.wisner@freethcartwright.co.uk

THIS DEED OF MODIFICATION is made this 5th day of July 2013

BETWEEN

(1) "the Owner"

BDW TRADING LIMITED

(company registration number 03018173)

Whose registered office is situate at Barratt House,
Cartwright Way Forest Business Park, Bardon Hill,
Coalville, Leicestershire, LE67 1UF

(2) "Jelsons"

JELSONS LIMITED (company registration number 571641) whose registered office is situate at 370 Loughborough Road, Leicester, LE4 5PR

(3) "the Council"

ASHFIELD DISTRICT COUNCIL

Of Council Offices, Urban Road, Kirkby in Ashfield,
Nottinghamshire, NG17 8DA

AND

(4) "the County Council"

NOTTINGHAMSHIRE COUNTY COUNCIL

Of County Hall, West Bridgford, Nottingham NG2 7QP

DEFINITIONS

The meanings ascribed to expressions in the Principal Agreement are (except as provided below) to be applicable to those expressions where used in this deed

"the Act"	means the Town and Country Planning Act 1990 as amended
"the Land"	Means the land shown edged red on the Plan as defined in and attached to the Principal Agreement
"the First Agreement"	means the agreement pursuant to Sections 106 and 106A of the Act dated 25 May 2011 and made between Jelsons (1), the Owner (2) and the Council (3)
"the Principal Agreement"	means the agreement pursuant to Section 106 of the Act dated 17 November 2010 made between David Wilson Homes (Yorkshire) Limited (1) the County Council (2) Jelsons (3) and the Council (4) as varied by the First Agreement and the Second Agreement in respect of the Land

“the Second Agreement”

means the agreement pursuant to Sections 106 and 106A of the Act dated 18 January 2012 and made between the Owner, (1) Jelsons (2) and the Council (3)

BACKGROUND

1. The Council is the local planning authority that can enforce the obligations contained in the Principal Agreement as varied by the First and Second Agreements
2. The Owner is registered with absolute title of part of the Land at the Land Registry under title numbers NT471334, NT469525 and NT469524.
3. Jelsons is registered with absolute title of part of the Land at the Land Registry under title number NT471423.
4. The Owner and Jelsons are the only parties against whom the provisions of the Principal Agreement as varied by the First and Second Agreements are enforceable.
5. The Principal Agreement as varied by the First and Second Agreements required the owner of the Land to provide on-site Affordable Housing.
6. The Owner and the Council have agreed to modify paragraph 12 of the Principal Agreement to include receivers of the mortgagees such that receivers are not bound by the affordable housing obligations in the Third Schedule to the Principal Agreement

STATUTORY PROVISIONS

7. This deed of modification:-
 - 7.1. is made pursuant to the provisions of Section 106A of the Act
 - 7.2. is a planning obligation for the purposes of Section 106 of the Act
 - 7.3. is made with the intent to bind the Owner's freehold interest in the Land
 - 7.4. is enforceable by the Council as local planning authority and
 - 7.5. is executed as a deed

VARIATION OF THE PRINCIPAL AGREEMENT

8. The Council and the Owner agree that with effect from the date of this deed the Principal Agreement is modified as follows:-
 - 8.1. paragraph 12.1 of Third Schedule of the Principal Agreement be substituted and replaced with the following paragraph:

“12.1 Any mortgagee or chargee (including their receivers and successors in title) of the Affordable Housing Units pursuant to any mortgage or charge granted to it by a Registered Social Landlord; or”
 - 8.2. paragraph 12.5 of Third Schedule of the Principal Agreement be substituted and replaced with the following paragraph:

“12.5 Any purchaser or successor in title to any person specified in sub-paragraphs 12.1 to 12.4 above and their successors in title.”

DECLARATIONS

9. Other than as modified by this deed, the Principal Agreement as already varied by the First and Second Agreements shall continue in full force and effect

COSTS

10. The Owner agrees to pay to the Council on the completion of this Agreement the sum of Two Hundred and Fifty Pounds (£250.00) as a contribution to its legal costs in the preparation of this Agreement

EXECUTION AND DELIVERY

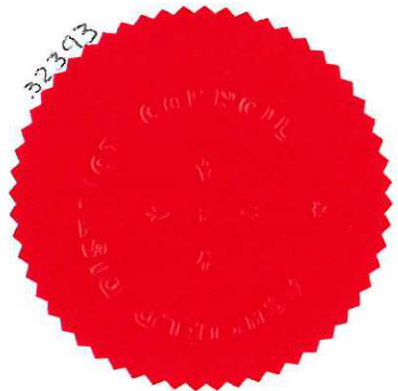
This document is executed as a deed and is delivered on the date stated at the beginning of this deed.

EXECUTED as a **DEED** by
ASHFIELD DISTRICT COUNCIL

having affixed its **COMMON**

SEAL to this Deed

in the presence of



EXECUTED as a **DEED** by

BDW TRADING LIMITED

Acting by two of its attorneys

Appointed under a Power of Attorney

Dated

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



Witness Signature:



Witness Name:

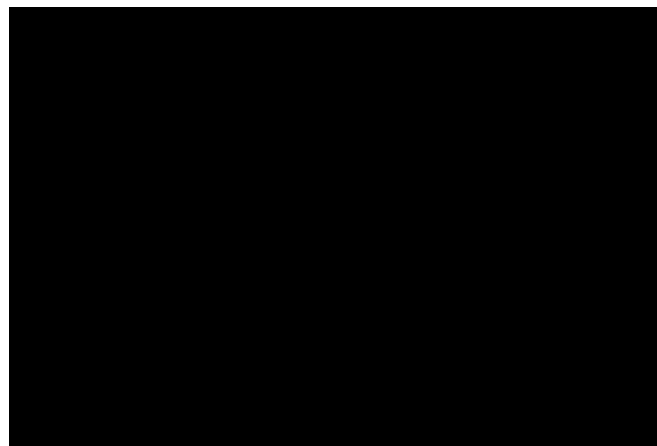
Witness Address: David Wilson Homes
Forest Business Park
Cartwright Way, Bardon Hill
Leicestershire
LE67 1GL

Witness Occupation:

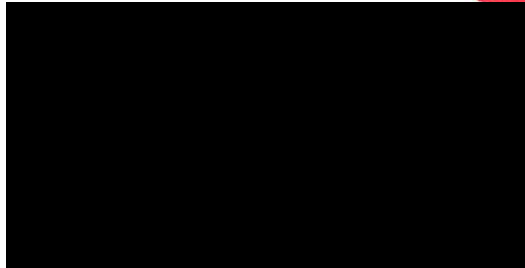
*SERVICES AND
MANAGER*

**THE COMMON SEAL of
JELSON LIMITED**

Was hereto affixed in the
Presence of:



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



SEAL REGISTER
NO - 39036

ASHFIELD DISTRICT COUNCIL
MEMORANDUM

TO: LOCAL LAND CHARGES
FROM: LEGAL DEPARTMENT
SUBJECT: Land at Lynton Drive Sutton in Ashfield
DATED: 26 March 2014

Would you please register the above Deed of Variation re Sec 106 Agreement
between:

1 Jelson Limited

2 BDW Trading Limited

3 Ashfield District Council

AS A LOCAL LAND CHARGE.

I enclose a copy of the deed for your attention.


Robert Hsieh Legal Executive

Legal Department

- 1.9 "the Existing Permission" means the Conditional Planning Permission 2008/0017 issued by the Council on 19th March 2008
- 1.10 "the New Application" means the planning application submitted by or on behalf of the Owner of the Application Site dated 4th February 2014 in respect of the plot revision within the Revised Development to which has been allocated the Council's planning application reference no. V/2014/0061
- 1.11 "the New Planning Permission" means the grant of planning permission pursuant to the New Application
- 1.12 "the Original Consent" means the conditional full planning permission which was granted by the Council under reference 2008/0017 on 19th March 2008 in respect of the Entire Site and to which the Previous Agreement relates
- 1.13 'the Revised Development' means the Approved Development subject to the plot revision details for which approval is sought by the New Application
- 1.14 "the First Agreement" means the agreement pursuant to Sections 106 and 106A of the Act dated 25 May 2011 and made between the Owner (1), BDW (2) and the Council (3)
- 1.15 "the Second Agreement" means the agreement pursuant to Sections 106 and 106A of the Act dated 18 January 2012 and made between BDW (1), the Owner (2) and the Council (3)
- 1.16 "the Third Agreement" mean the agreement pursuant to Section 106 and 106A of the Act dated 5 July 2013 and made between BDW (1), the Owner (2) the Council (3) and Nottinghamshire County Council (4)

2. Recitals

WHEREAS:-

- 2.1 The Owner is registered at H.M. Land Registry as the proprietor with title absolute under title .number NT471423 of the Application Site (together with other land) and being part of the Entire Site
- 2.2 BDW is registered at H.M. Land Registry as the proprietor with title absolute under title numbers NT471334, NT469525 and NT469524 of part of the Entire Site
- 2.3 The Owner and BDW are the only parties against whom the provisions of the Previous Agreement are enforceable
- 2.4 The Owner desires to reposition plots 14 and 15 and revise the parking arrangements for plots 14-17 and 19-21as more particularly described in the New Application

2.5 The Council acting through the delegated powers of its Head of Land and Property has decided to grant planning permission for the Revised Development in accordance with the New Application subject to conditions and subject to the making of this Agreement without which planning permission for the Revised Development would not have been granted

2.6 The Covenantee Owners have agreed to enter into this Agreement for the purpose of confirming the Previous Agreement shall apply to the New Planning Permission

3. Enabling Powers

3.1 The parties hereto enter into this Agreement under and pursuant to Sections 106 and 106A sub-sections 1 (a) and 2 of the Act.

4. Planning Obligations

4.1 The Covenantee Owners hereby covenant with the Council that the Previous Agreement shall apply to the New Planning Permission

4.2 The Council is the Authority entitled to enforce the Previous Agreement as herein extended to cover the New Planning Permission.

5. Conditionally

This Agreement is conditional upon the issue of the New Planning Permission.

6. Covenant

6.1 The Covenantee Owners hereby covenant with the Council pursuant to Sections 106 and 106A of the Act that:

6.1.1 the Entire Site shall continue to be bound by the obligations in the Previous Agreement

6.1.2 If (but only if) the New Planning Permission is implemented the Previous Agreement shall apply to the Application Site in accordance with Clause 4.1 above and implemented accordingly

6.1.3 they will at their own expense duly carry out and perform the Previous Agreement

6.2 For the avoidance of doubt the sums due pursuant to the First and Fourth Schedules of the Previous Agreement shall be payable only once, whether pursuant to the Previous Agreement or this Agreement.

7. Agreements and Declarations

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 The Agreement is a Local Land Charge and shall be registered as such
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 7.6 This Deed shall cease to have effect insofar only as it has not already been complied with if the New Planning Permission shall be quashed, revoked or otherwise withdrawn or without the consent of the Owner it is modified by any statutory procedure or expires prior to- the Commencement of Development
- 7.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Entire Site in accordance with a planning permission other than the New Planning Permission granted whether or not on appeal after the date of this Deed

8. Costs

The Owner agrees to pay to the Council on completion of this Deed the sum of Two Hundred and Fifty pounds (£250.00) as a contribution to its legal costs in the preparation of this Agreement.

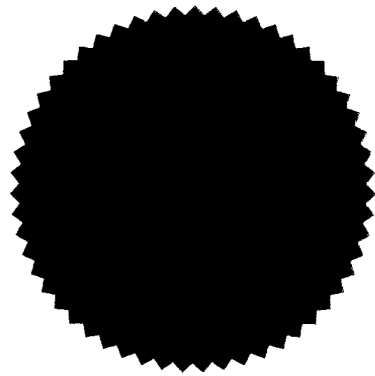
IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written

THE COMMON SEAL of

JELSON LIMITED

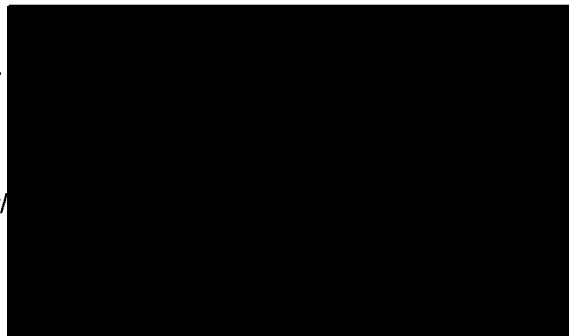
was hereto affixed to this Deed

in the presence of



Director

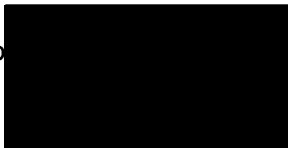
Director/



EXECUTED AS A DEED by

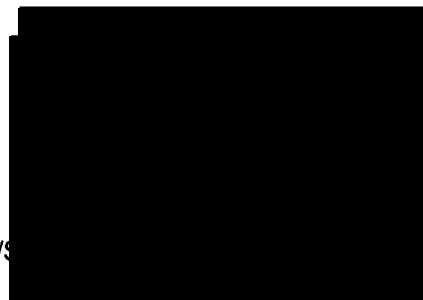
BDW TRADING LIMITED

acting by



Director

Director/

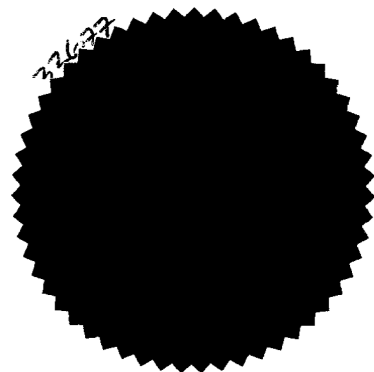
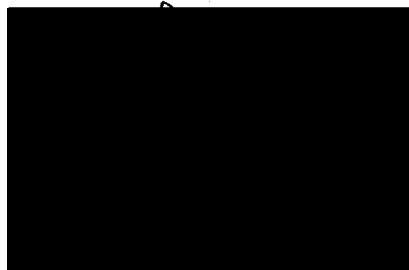


EXECUTED AS A DEED by

ASHFIELD DISTRICT COUNCIL

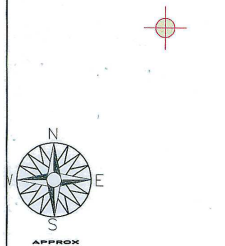
having affixed its **COMMON SEAL**

to this Deed in the presence of

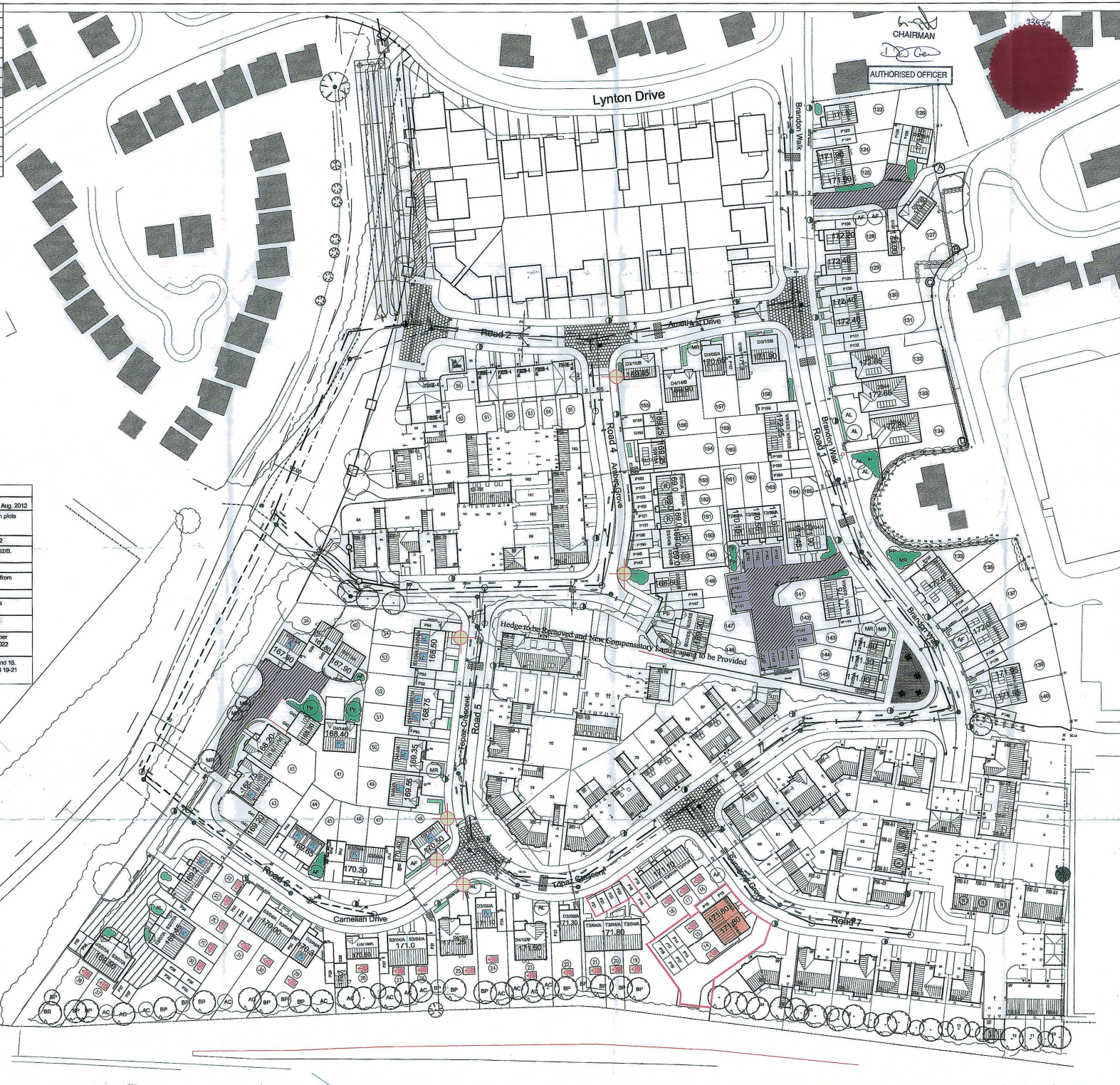


JELSON'S HOUSE TYPE SCHEDULE

House Type	Sq Ft	No.	Total Sq Ft	Bed No.
T201	647.47	3	1942.41	2
T202	739.90	12	8878.80	2
T304	788.90	3	2366.70	3
S202	739.90	2	1479.80	2
S304	788.90	26	20511.40	3
2B40	784	1	784	2
2B42	625	2	1250	2
2B44	1062	2	2124	2
S307	796.24	8	6369.92	3
D306	820.25	9	7382.25	3
D310	882.32	4	3529.28	3
D313	930.20	4	3720.80	3
D411	1462.82	2	2925.64	4
D412	1114.53	2	2229.06	4
D414	1059.90	4	4239.60	4
Totals	84		69733.66	



- Revisions:**
- L. typo error corrected for parking space to plot 131. Aug. 2012
 - M. PV removed from plots 14-54. Levels amended on plots 53-54. Minor boundary revision to P127. 28/08/2012
 - N. Pressure test symbols added to layout. 08/10/2012
 - O. Plots 139 & 136 house type code changed to B2026. 31/01/2013
 - P. Pressure test plots amended. 11/03/2013
 - Q. Plot 140 boundary amended. Chimneys removed from plots 42 and 43. 15/03/2013
 - R. Plots 49 & 50 boundary amended. 22/05/2013
 - S. Highway trees added to layout plan in front of Plots 149-145. 22/05/2013
 - T. Private drive and parking amended for Plots 34-37. 28/08/2013
 - U. Private drive and parking amended for Plot 38 as per Non-Material Amendment Decision No. NMA2013/0022 06/01/2014
 - V. Amendment to position of properties on plots 14 and 15. Revision to parking arrangements for plots 14-17 and 19-21 04/02/2014



- Housing Association**
- Surfacing**
- Black tarmac surface**
- new properties requiring additional sound attenuation measures as part of their construction.**
- Denotes plots pressure tests**
- Landscaping Scheme**
- Tree planting:**
- 1) Private garden areas
 - AF. Acer negundo flammar
 - AL. Almond cherry lamar
 - MR. Malus rostrata
 - PP. Prunus pandora
 - 2) Ac. Acer composite
 - BP. Betula pendula
- All trees to be 8-10cm girth**
- All front gardens to be grass except where shown as shrub/hedge**
- Shrub planting (to be selected from):**
- Berberis darwinii
 - Colonnades dammeri
 - Evergreen emerald gold
 - Hebe 'midsummer beauty'
 - Hypericum calycinum
- Typical size 300x400mm high planted at a density of 4 plants per sq. metre.**
- Hedge planting:**
- Escallonia apple blossom - planted a 3 plant linear metre in 2 staggered rows 750mm wide
- Street Lighting Key**
- 1** Proposed new 6m tubular steel column installed with a post top mounted 45w white Cosmopolis lantern. As per Nottinghamshire County Council road lighting specification 6/10/09. Designed using a Urbis ZXU1/CTG/1101/30 lantern.
- Key**
- Denotes PV panels**
- HIGHWAY TREE DETAILS.**
- Highway trees on block paved area outside of plots 143-145 to be Carpinus Betulus Frans Fontaine semi-mature 30-35 cm girth with square tree grill, and root barrier/director (by Greenleaf).

Jelson

Jelson Ltd
370 Loughborough Road. Tel: 0116 266541
Leicester LE4 5PR. Fax: 0116 266589

- Drawing Title:**
- Planning Layout
 - Land Off Lynton Drive
 - Sutton in Ashfield
- Drawing No:**
- 767.04
- Drawn by:**
- Tony Sibson
- Checked by:**
-
- Scale:**
- 1:500
- Revision:**
- V
- Date:**
- 18/11/10
- Amendments:**
- A. Red line boundary amended 20/12/2010
 - B. Affordable unit codes added to plots 149-153 11/03/2011
 - C. Change codes added 04/05/2011
 - D. Plots 42 & 43 house elevation code amended from B to E. 24/05/2011
 - E. PV panels added to layout. 13/09/2011
 - F. Street lighting added. 06/12/2011
 - G. DWL details deleted. 17/05/2012
 - H. External materials, landscaping & road names added to layout. 31/05/2012
 - I. Internal house type coding changes to properties on plots 16-18, 32-34 and 44-45. 11/06/2012
 - K. Additional sound attenuation symbol added to plots 14-38. 18/06/2012