

DATED

2018

**WAVENEY DISTRICT COUNCIL (1)**

**And**

**SUFFOLK COUNTY COUNCIL (2)**

**and**

**SAINT FELIX SCHOOLS (3)**

**and**

**BARCLAYS BANK PLC (4)**

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**PLANNING OBLIGATION BY DEED OF AGREEMENT  
UNDER SECTION 106 OF THE  
TOWN AND COUNTRY PLANNING ACT 1990**

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Relating to  
the development of land at Saint Felix School, Halesworth Road, Reydon,  
Suffolk



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**PARTIES:**

- (1) **WAVENEY DISTRICT COUNCIL** of Riverside, 4 Canning Road, Lowestoft, NR33 0EQ ("the Council "); and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich IP1 2BX ("the County Council"); and
- (2) **SAINT FELIX SCHOOLS** (Co. Regn. No. 316883) of Saint Felix School, Halesworth Road, Reydon, Suffolk IP18 6SD ("the Owner"); and
- (3) **BARCLAYS BANK PLC** (Co. Regn. No. 01026167) of Lending Operations, PO Box 299, Birmingham B1 3PF ("the Bank");

**INTRODUCTION**

1. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
2. The County Council is the local highways authority (except for trunk roads) and is also a local planning authority for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
3. The Owner is the freehold owner of the Site which is registered at the Land Registry under title number SK234364
4. The Council's planning committee resolved on 11 July 2017 to grant the Planning Permission subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in the Deed.
5. The Bank has a charge over the Site dated 5 January 2018 registered with the Land Registry under title number SK234364
6. The Council, the County Council, the Owner and the Bank acknowledge that Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to section 106 of the Act the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
7. The Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meets the test set out in Regulation 122 and Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended).

## NOW THIS DEED WITNESSETH AS FOLLOWS:

### 1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings and there are additional definitions set out in the Second Schedule:

**“Accessible Natural Green Spaces Specification”** means the specification for delivery of the Accessible Natural Green Spaces including the specifications plans and drawings showing but not limited to the layout and design of the Accessible Natural Green Spaces, the phasing and timing of the delivery of the Accessible Natural Green Spaces together with details of the proposed future management regime for the Accessible Natural Green Spaces to be agreed in writing by the Council in accordance with Paragraph 5 of Schedule 3;

**“Accessible Natural Green Spaces”** two new green spaces, one in the wooded area at the north end of the Development Land (as shown for indicative purposes only shaded pink on plan ‘Figure 3’ attached to this Deed) and the second on the Retained Land to the south of the Development Land immediately south of the junction between Shepherds Lane and St George’s Lane (the latter to be accessed on a permissive basis for residents of the Development) (also as shown for indicative purposes only shaded pink on plan ‘Figure 3’ attached to this Deed)

**“Act”** the Town and Country Planning Act 1990 as amended;

**“Affordable Housing”** Means affordable housing in accordance with the definition contained within Annex 2 of the National Policy Planning Framework (NPPF) (as amended from time to time) provided to eligible households whose needs are not met by the market

**“Affordable Housing Scheme”** A scheme for the provision of the Affordable Housing to reflect a thirty five per cent (35%) allocation of the total number of Dwellings to be built on the Development Land pursuant to the Planning Permission for onsite provision in accordance with

the Indicative Affordable Housing Matrix (as adjusted to be agreed with the Council) such Affordable Housing Scheme shall include details of

- the tenure of the dwellings; the dwelling type; the plot numbers allocated to the Affordable Housing Scheme
- the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Housing Units;
- full details of the design of the Affordable Housing Units
- the identity of the Registered Provider or such details as the Council requires to satisfy itself that the Affordable Housing Units will be secured as Affordable Housing in perpetuity;
- the number, location, type and size of Affordable Housing Units to be constructed on the Site;
- full details of the Affordable Housing mix (such proposal to reflect the Council's up to date strategic housing market assessment and specific local needs as determined and agreed by the Council) ;
- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme

**“Affordable Housing Units”**

means thirty five per cent (35%) of the Dwellings to be provided as Affordable Housing on the Development Land pursuant to the Application comprising both Affordable Rent Dwellings and Shared Ownership Dwellings or such other tenures as shall be agreed in writing by the Council as part of the Affordable Housing Scheme

**“Affordable Rent”**

means housing made available by a Registered Provider as low cost rental accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% of the equivalent market rent inclusive of service

charges or the local housing allowance rate or as otherwise agreed with the District Council in writing and which shall make up 70% of the Affordable Housing Units

**“Allowable Deductions”**

means the costs reasonably and properly incurred with the sale of the Development Land to include (but not limited to): legal fees; planning costs and disbursements; Professional fees including surveyors, agents, ecology, highways, utilities, sports pitches; administrative costs of the school; and tax

**“Application”**

Outline application for planning permission to enable improvements to Saint Felix School to include residential development, public open space and associated infrastructure on the former playing field at Saint Felix School validated by the Council on 8 September 2015 and allocated reference number DC/15/3288/OUT

**“BCIS Index - Linked”**

means index-linked from the date of this Deed until such time that payment of any sum specified in this Deed is made such index linking to be equivalent to any increase in such sums in proportion to the increase in the BCIS All-In Tender Price Index or in the event this index is no longer published or the calculation method is substantially altered then an appropriate alternative index nominated by the Council or the County Council (as appropriate)

**“Chargee’s Duty”**

the tasks and duties set out in paragraph 1.9 of the Third Schedule

**“Chargee”**

any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 by such mortgagee or chargee or any other person appointed by a mortgagee or chargee under any security documentation to enable such mortgagee or chargee to realise its security or any administrator

(howsoever appointed) including a housing administrator

**“Commencement”**

the date on which any material operation (as defined in Section 56(4) of the Act) begins to be carried out on the Site 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, erection of hoardings, the temporary display of site notices or advertisements and “Commence” and “Commence” shall be construed accordingly;

**“Community Use Agreement”**

An agreement to be entered into by the Owner substantially in the draft form attached at Appendix 1 to this Deed which shall specify and detail arrangements for use of the Sports Facilities by the local community and sports clubs on terms agreed by the Owner and outside of normal school use.

**“Community Users”**

Members of the public who hire the New Sports Changing Facilities and the Sports Facilities in accordance with the Community Use Agreement

**“Cost of the School Works”**

means the costs reasonably and properly incurred in obtaining the Planning Permission and carrying out the School Works to date which for the avoidance of doubt shall include all design, build costs, land value, finance borrowing and bridging finance costs and repayment and legal and professional costs;

**“Development Land”**

The land to be sold by the Owner for the Development as shown for indicative purposes only cross-hatched yellow on plan A.44.267.i attached to this Deed;

**“Development”**

improvements to Saint Felix School to include residential development, public open space and associated infrastructure on the former playing field

	at Saint Felix School as set out in the Application;
<b>“Dwelling”</b>	a dwelling (including a house, flat, bungalow or maisonette) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly;
<b>“Escrow Account”</b>	Means a separate interest bearing bank account in the name of the Owner and with a commercial bank or building society and opened for the purposes of receiving the Sale Proceeds;
<b>“Financial Assessment”</b>	A submission by the Owner to the Council on the Review Date or the Longstop Date detailing the Cost of the School Works and the Sale Proceeds for the purpose of ensuring that the Sale Proceeds have been spend exclusively on the School Works;
<b>“Habitat Mitigation (Natura 2000) Contribution”</b>	The full “per-dwelling” payment in accordance with the agreed tariff under the Suffolk Coast RAMS Such payment will be BCIS Index Linked and payable to the Council towards wardening/monitoring of the Minsmere,-Walberwick SPA and the Benacre-Easton Barents SPA to provide for mitigation for the in-combination effect of the Development on these areas
<b>“Homes England”</b>	Homes England or such other organisation as may from time to time be the Regulator of Social Housing within the meaning of Section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers
<b>“Highways and Public Transport Contribution”</b>	a contribution of £22,000 (twenty two thousand pounds) BCIS Index-Linked
<b>“Indicative Affordable Housing Matrix”</b>	The table appended under Appendix 4 in this Deed indicating the percentages types and tenures of Affordable Housing Units to be included in the Affordable Housing Scheme
<b>“Interest”</b>	interest at 4% per cent above the base lending rate of the Bank of England from time to time;



**“Local Lettings Cascade”**

The list of categories of eligible persons for Affordable Housing in priority order used by the Council to allocate Rental Dwellings set out in the Fifth Schedule

**“Management Company”**

a company or body who will take over responsibility for the future maintenance of the Open Space and which definition may include a Parish Council, a residents association established for this purpose or a private limited company

**“Market Housing Units”**

those Dwellings which are general market housing for sale or rent on the open market and which are not Affordable Housing Units

**“New Footpath Access Network”**

a network of new permissive footpaths and entrance points into the Development Land to include as shown coloured orange on plan A44.2667.i attached to this Deed:

1. Access onto St George’s Lane through to Shepherds Lane as a permissive route for residents of the Development;
2. Access along the frontage on Halesworth Road within the woodland areas (part of the Development Land’s public open space)
3. Access onto the public footpath which runs along the eastern fringe, from the Development Land; and
4. Two access points into a new Accessible Natural Green Spaces on the southern fringe of the Retained Land adjacent to Shepherds Lane/south of St George’s Lane

**“New Sports Changing Facilities”**

new sports changing facilities (approximate site area of 100 sqm, and no more than 250 sqm in total) to be constructed on the Retained Land and made available to both Saint Felix School and Community Users in accordance with this Deed and the Community Use Agreement

**“Nominations Agreement”**

means an agreement in a form provided by the Council a draft of which is appended to this Deed at Appendix 3 entered into by the Council and the Registered Provider in respect of rights for the Council to nominate persons for the Affordable Housing Units from the Council’s housing register

**“Notice of Actual Commencement”**

Notice in writing to advise of the actual Commencement Date

**“Occupation” and “Occupied” and “Occupy”**

occupation of a Dwelling for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

**“Open Space ”**

the areas of open space and onsite playing areas within the Development Land shown on the Open Space Plan.

**“Open Space Plan”**

Means a plan to be submitted to the Council as part of the reserved matters application showing the Open Space

**“Open Space Specification”**

means the specification for delivery of the Open Space on the Development Land including the specifications plans and drawings showing but not limited to the layout and design of the Open Space, the phasing and timing of the delivery of the Open Space including details of any proposed play areas and equipment landscaping, paths and access arrangements, street furniture and fencing together with details of the proposed future management regime for the Open Space to be agreed in writing by the Council in accordance with Paragraph 2 of Schedule 3

**“Open Space Transfer”**

A transfer of the Open Space to be approved of in writing by the Council and which inter alia shall contain the following provisions:

The Owner shall transfer the fee simple estate free

from encumbrances save those set out in the title;

All easements and rights necessary in relation to access for the benefit of the Open Space;

Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;

All easements and rights necessary in relation to access for the benefit of the Retained Land and/or the Development Land;

Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Retained Land and/or the Development Land;

Restrictive covenants by the Management Company;

Not to use or permit the Open Space to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open space;

Not to use or permit the Open Space to be used in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of the Development.

**“Path Margins and Gorse Areas”** Means:

(A) The area of gorse north of the public right of way running around the south side of the Retained Land as shown shaded pink on plan A.44,267.i attached to this Deed; and

(B) the area of gorse west of the public right of way running along the eastern edge of the Retained Land as shown coloured purple on plan A.44.267.i attached to this Deed

**“Plan”** the plan attached to this Deed reference A44.267.f;

**“Planning Permission”**

the planning permission for the Development subject to conditions to be granted by the Council pursuant to the Application

**“Practical Completion”**

the issue of a certificate of practical completion by the Owner’s architect or project manager or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect or project manager and “Practically Complete” shall be construed accordingly;

**“Protected Person”**

A person who has, in respect of any Affordable Housing Unit:

(a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

(b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

(c) any person who has staircased the equity in their Affordable Housing Unit to 100%;

(d) any mortgagee or successor in title to paragraph (a) – (c) above.

**“Registered Provider”**

means a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by Homes England under Chapter 3 of that Act

**“Rental Dwelling”**

means an Affordable Housing Unit which is to be let at an Affordable Rent and is let on the Registered Provider’s standard form of letting in accordance with the terms of this Deed by a Registered Provider

**“Reserved Matters Application”**

means a reserved matters application pursuant to the Planning Permission

<b>“Retained Land”</b>	The land retained by the Owner as shown for indicative purposes only edged red on plan A.44.267.i not including the Development Land
<b>“Review Date”</b>	shall mean the 30th April each year in relation to the preceeding financial year (1 April to 31 March) until the Sale Proceeds have all been utilised in relation to the School Works in accordance with this Deed ;
<b>“Sale Proceeds”</b>	shall mean the net sale receipts realised by the sale of the Development Land after the Allowable Deductions to include any deposit received on exchange of contracts for the sale of the Development Land to a developer;
<b>“School Works”</b>	Means the works to be carried out to the Saint Felix School as set out in Appendix 1 of the Bidwells Financial Viability Assessment dated 28 April 2017 as appended to this Deed at Appendix 2.
<b>“Section 106 Officer”</b>	the officer so designated by the Council and any notice required to be served on the Section 106 Officer must be sent or delivered to the Council at the address aforesaid marked for the attention of the Section 106 Officer (unless otherwise agreed with the Council);
<b>“Shared Ownership Dwelling”</b>	Affordable Housing Units to be let on a Shared Ownership Lease to a household for which the household income does not exceed Sixty thousand pounds (£60,000) per annum or such other household income for the time in force in accordance with the terms as set out in Homes England’s capital funding guide and which shall make up 30% of the Affordable Housing Units
<b>“Shared Ownership Lease”</b>	a lease or sub-lease using the Homes England standard lease for Shared Ownership Dwellings granted at a premium subject to an initial tranche sale of no less than 25% and no greater than 75% of the value of the property with rent payable to the Registered Provider on the remaining share of the equity not to exceed 2.75% per annum and which lease shall include arrangements enabling the tenant

to acquire up to 100% (one hundred percent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates. Any capital receipt received from staircasing to 100% to be recycled for affordable housing investment within the area of Waveney District Council

**“Site”**

the land against which this Deed may be enforced as shown edged red on the Plan;

**“Sports Facilities”**

Means those facilities as shown edged red on Plan A.44.267.g attached to this Deed

**“the Replacement Playing Pitches”**

replacement playing pitches of at least equivalent quality and quantity (16,000 sqm) to the existing playing pitches on the Development Land in accordance with details set out in the Feasibility Study prepared by Total Turf Solutions Limited dated 28 March 2017 to be provided on the Retained Land. The location of the replacement playing pitches to be to the south of the existing rugby pitch on the Retained Land as shown on plan at precise location(s) to be agreed with the Council as part of the planning permission/consent for such pitches or if no formal consent is required, then as agreed in writing with the Council.

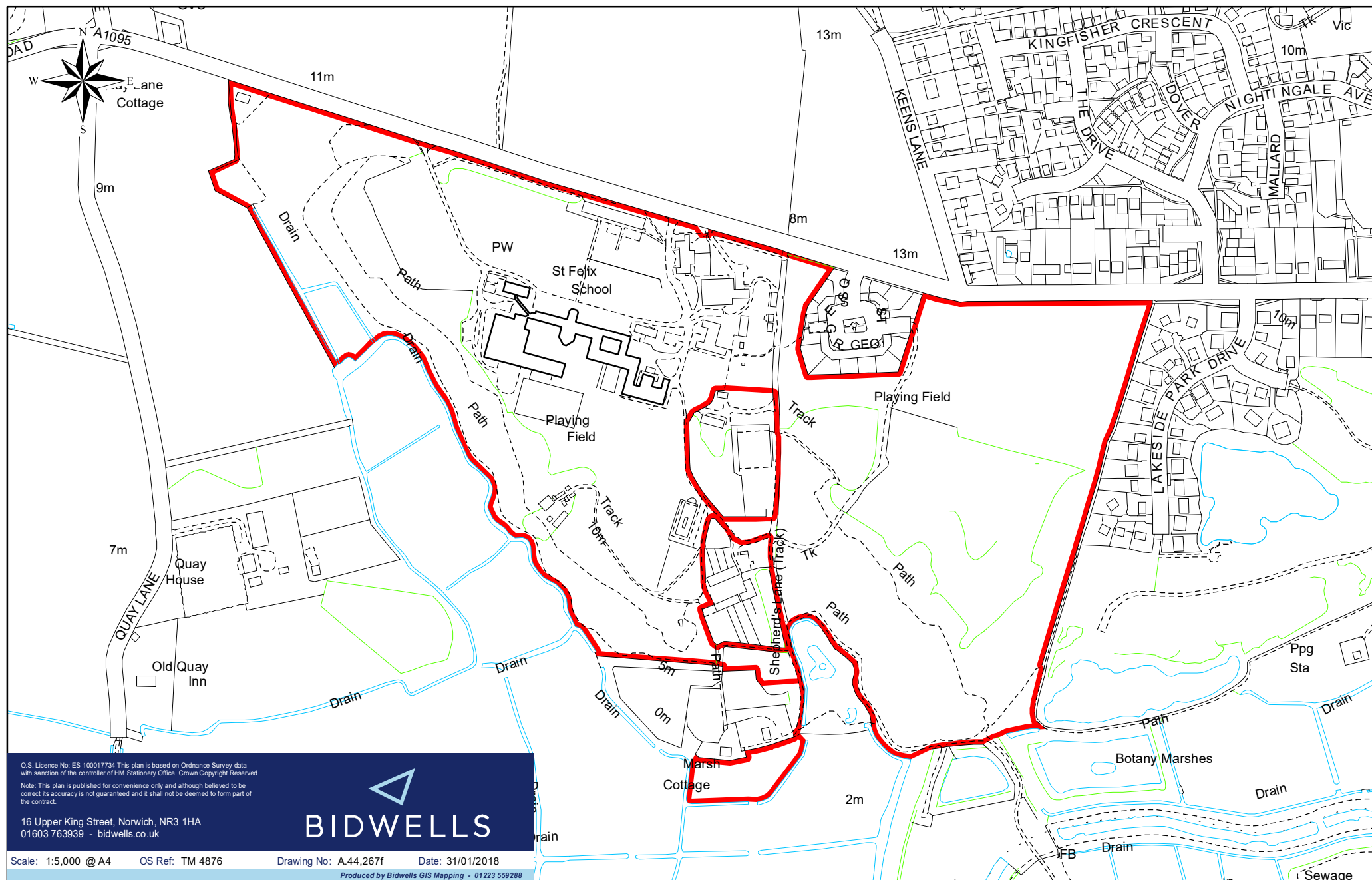
**“Working Days”**

Monday to Friday (inclusive) except public holidays in England.

**5. CONSTRUCTION OF THIS DEED**

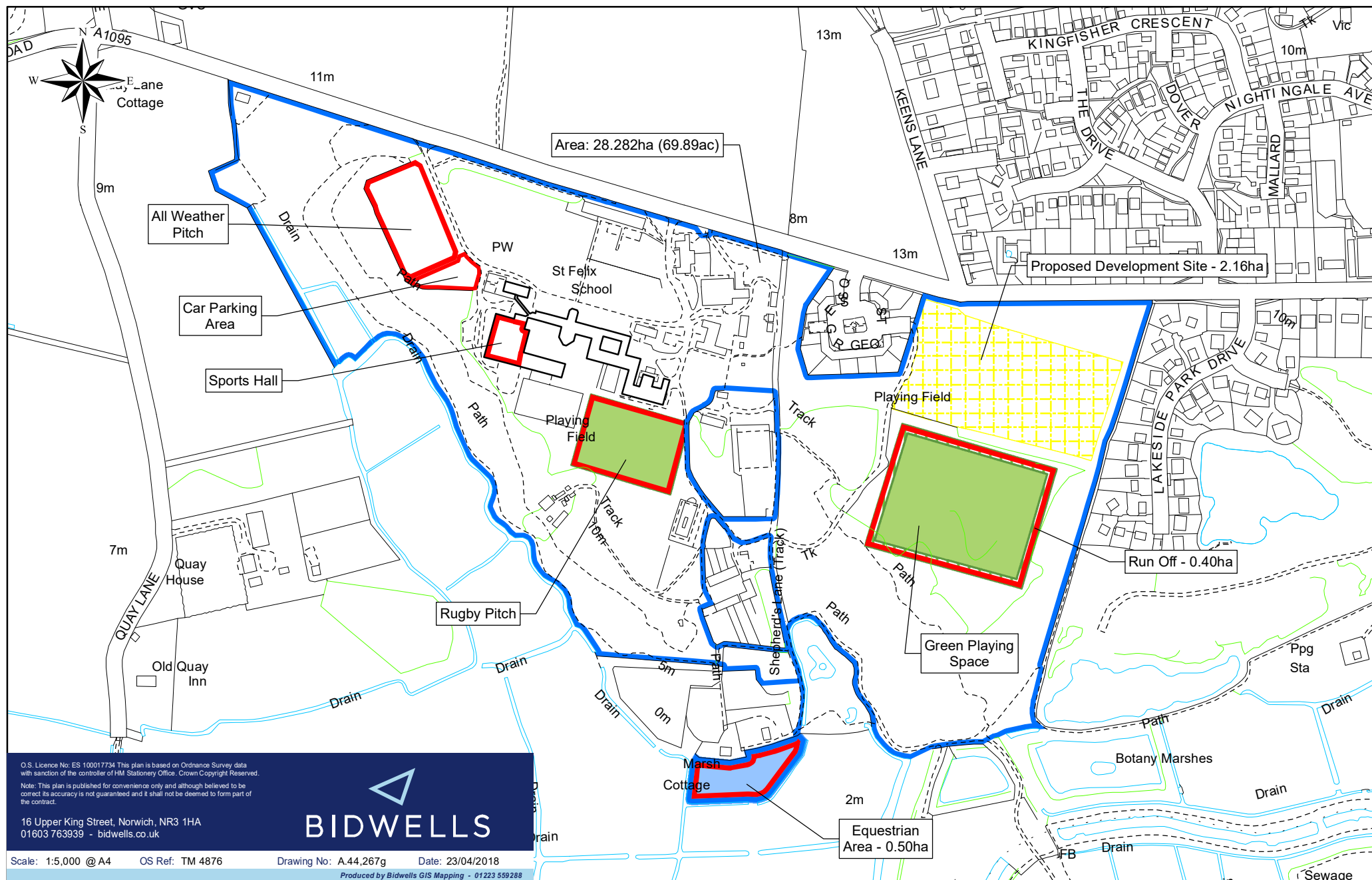
- 5.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 5.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 5.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 5.4 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

# St Felix School, Halesworth Road, Reydon, Southwold



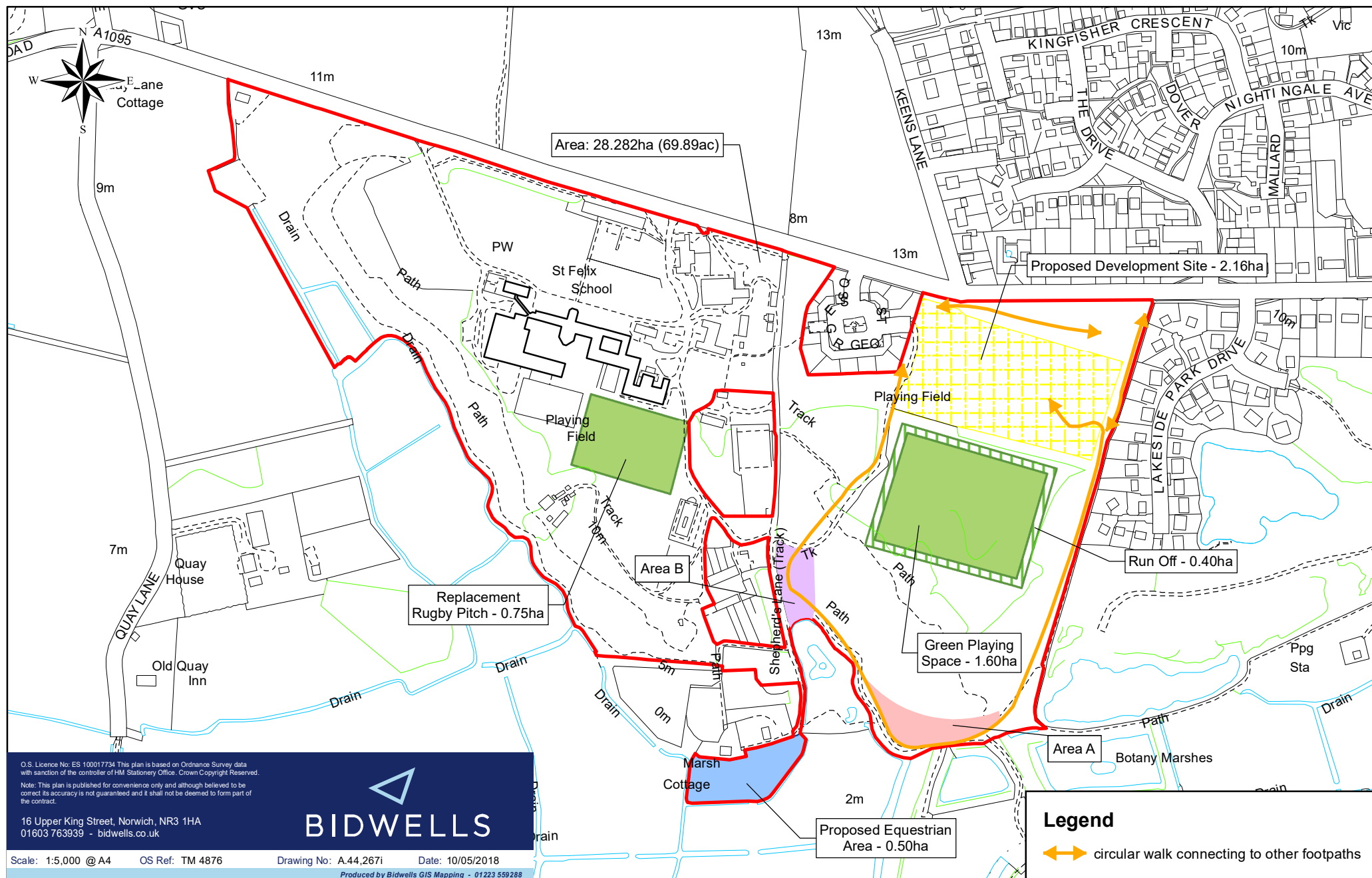


# St Felix School, Halesworth Road, Reydon, Southwold

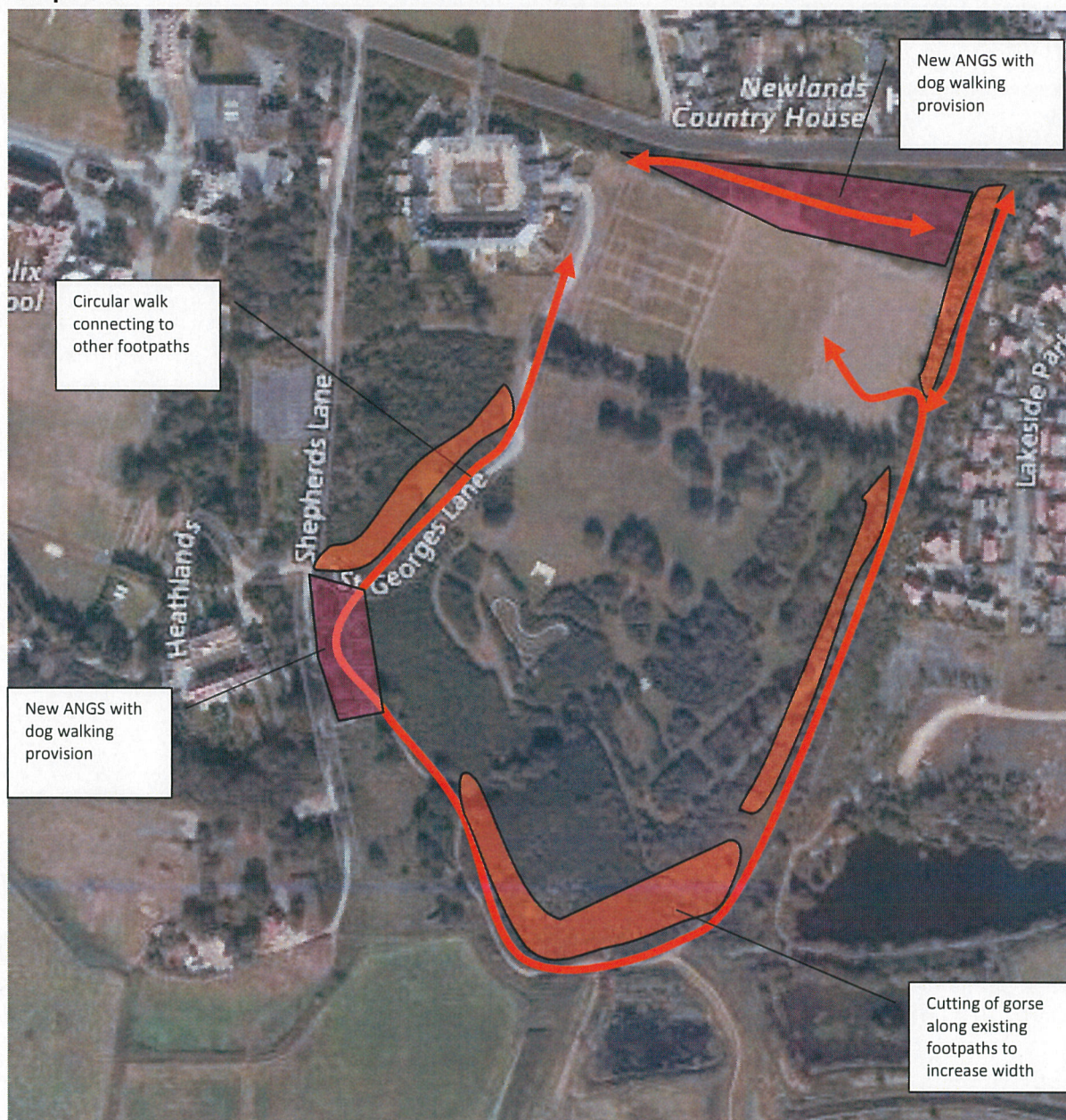




# St Felix School, Halesworth Road, Reydon, Southwold



**Figure 3 : Provision of Accessible Natural Green Space and widening of footpaths**





them jointly and against each individually unless there is an express provision otherwise.

5.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.

5.6 References to any person or party to this Deed shall include the successors in title to that person or party and to any deriving title through or under that person or party and in the case of the Council and the County Council the successor to their respective statutory function.

## **6. LEGAL BASIS**

6.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

6.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council as local planning authority and local highways authority (respectively) against the Owner in respect of its ownership of the Site (and in particular the Retained Land or the Development Land as set out in this Deed) and their successors in title to the Retained Land or the Development Land as appropriate.

## **7. CONDITIONALITY**

This Deed is conditional upon:

7.1 the grant of the Planning Permission and Commencement of Development save for provisions of Clauses 7.1, 14, 15 (legal costs, jurisdiction and delivery clauses).

## **8. THE OWNER'S COVENANTS**

8.1 The Owner covenants with the Council and/or the County Council as set out in the Third Schedule

## **9. THE COUNCIL'S AND COUNTY COUNCIL'S COVENANTS**

9.1 The Council and the County Council covenant with the Owner as set out in the Fourth Schedule

## 10. MISCELLANEOUS

- 10.1 The Owner shall pay to the Council and the County Council on completion of this Deed the legal costs of the Council and the County Council reasonably incurred in the negotiation, preparation and execution of this Deed.
- 10.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 10.3 This Deed shall be registered as a local land charge by the Council.
- 10.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 10.5 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.
- 10.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 10.7 The Council shall not be liable to any person under this Deed after that person has parted with all interest in the Site but without prejudice to any liability arising prior thereto.
- 10.8 Nothing in this Deed 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 Deed.
- 10.9 The covenants, restrictions and requirements contained in this Deed shall not be enforceable against:
- 10.9.1 individual purchasers or lessees of Dwellings constructed on the Development Land pursuant to the Planning Permission or their mortgagees where (in relation to a breach) that breach occurs after that individual purchaser or lessee has completed the purchase or lease of the Dwelling or has entered into a binding contract for such purchase or lease;
  - 10.9.2 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity, gas,

water, telecommunications or highways in connection with the Development.

10.10 In the event of the Planning Permission being quashed, revoked or withdrawn before the Commencement of Development or expiring without the Development having been Commenced or in the event of the revocation of the Planning Permission the obligations under this Deed shall cease absolutely BUT FOR THE AVOIDANCE OF DOUBT where permission is issued pursuant to an application under section 73 of the Act this Deed shall continue in full force and effect subject to and in accordance with the provisions contained herein AND PROVIDED THAT in the event that upon receipt of an application under section 73 of the Act if the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations.

10.11 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it.

## 11. **TITLE**

The Owner hereby covenants that they are the owners of the Site as set out in the recitals to this Deed and have full power to enter into this Deed and that the Site is free from any other mortgages, charges or other encumbrances other than those belonging to the Bank that would prevent the entry into this Deed and that there is no person having any interest in the Site other than the Bank as set out in the recitals or as notified in writing to the Council to the date hereof.

## 12. **WAIVER**

No waiver (whether expressed or implied) by the Council, the County Council or the Owner of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council, the County Council or the Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

### 13. **CHANGE IN OWNERSHIP**

The Owner covenants with the Council to give the Council written notice of any change in ownership of any of its interest in the Site (save for the disposal of an individual Dwelling) within 5 Working Days of the same occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased or transferred by reference to a plan.

### 14. **INTEREST**

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

### 15. **DISPUTE RESOLUTION**

15.1 If any dispute arises between any or all of the parties with respect to a matter falling for determination under this Deed (other than over an issue of law or interpretation of this Deed), and the dispute persists 6 weeks after it is raised in writing by any party then;

15.1.1 the dispute may at the instance of any disputing party be referred to a person of relevant technical expertise agreed between the disputing parties ("an Expert"); or

15.1.2 in the absence of agreement within 21 days of the notice invoking this clause, then the disputing party(ies) may seek nomination of an Expert by the President for the time being of the Royal Institution of Chartered Surveyors and this nomination shall be final.

15.2 An Expert shall;

15.2.1 not be liable in the making of his or her decision save to the extent in law as provided in relation to the decisions of an expert;

15.2.2 give each disputing party the opportunity to comment on the representations of the other;

15.2.3 make a decision that is final and conclusive as between the disputing parties to such dispute (except in regard to matters of law or in the case of manifest error);

15.2.4 be replaced by a fresh appointee in the event of him or her becoming at any time unable or unwilling for any reason to proceed to discharge his

or her functions such fresh appointee to be appointed in the manner prescribed in clause 15.1; and

15.2.5 make his or her decision within 6 weeks of being appointed.

15.3 The costs of appointing an Expert under clause 15.1 shall be shared equally by the parties involved in the dispute except where the Expert takes the view that one party has acted unreasonably in which case the Expert shall have binding discretion as to apportionment of those costs.

## 16. **BANK'S COVENANTS**

16.1 The Bank acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed PROVIDED THAT the Bank shall otherwise have no liability under this Deed unless it takes possession of all or any of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner. For the avoidance of doubt, the Bank shall only be liable for any continuing breaches or breach of this Deed if it has itself caused the breach whilst being mortgagee in possession and shall in no circumstances be liable for any pre-existing breach and it shall have no liability in relation to the Site (save for any breaches it has caused itself whilst a mortgagee in possession) after it has discharged its charge or has disposed of its interest in the relevant Site whether by sale or otherwise.

## 17. **VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

## 18. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the laws of England.

## 19. **DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written.

**THE COMMON SEAL OF  
WAVENEY DISTRICT  
COUNCIL** was affixed in the  
presence of:

Authorised Signatory:

**THE COMMON SEAL OF  
SUFFOLK COUNTY COUNCIL**  
was affixed in the presence of:

Authorised Signatory:

SIGNED AS A DEED  
BY **SAINT FELIX SCHOOLS** in  
the presence of

Executed as a deed by )  
**BARCLAYS BANK PLC** acting )  
by a director and a director or its )  
secretary:

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Director

---

Director / Secretary



## **SCHEDULE 1**

### **DETAILS OF THE OWNER'S TITLE, AND DESCRIPTION OF THE SITE**

The freehold land situated at St Felix School, Halesworth Road, Reydon, IP18 6SD which is shown edged red for identification purposes only on the Plan and which is registered under title number SK234364 in the Land Registry.

DRAFT

## SCHEDULE 2

### DRAFT PLANNING PERMISSION

DRAFT

## SCHEDULE 3

### THE OWNER'S COVENANTS

The Following Covenants shall be binding on the Development Land only:

Paragraph 1, Paragraph 2, Paragraph 3, Paragraph 4.2.3, Paragraph 4.3.2, Paragraphs 5.1.3 and 5.1.5, Paragraphs 5.2.3 and 5.2.5, Paragraphs 5.3.2 and 5.4.2, Paragraph 5.6

The following Covenants shall be binding on the Retained Land only:

Paragraphs 4.1.1, 4.1.2 4.1.3, Paragraphs 4.2.1 and 4.2.2, Paragraph 4.3.1, paragraphs 5.1.1, 5.1.2, 5.1.4, 5.1.6, Paragraphs 5.2.1, 5.2.2 and 5.2.4, paragraphs 5.3.1, 5.4.1, 5.5 and paragraph 6.

Paragraphs 4.1.4, 4.2.3, 4.3.2, shall be binding both on the Retained Land and the Development Land:

#### 1. AFFORDABLE HOUSING - COVENANTS WITH THE COUNCIL

- 1.1 With the first Reserved Matters Application and in any event prior to Commencement of Development the Owner shall provide the Council for its written approval the Affordable Housing Scheme for the provision of the Affordable Housing to reflect a thirty five per cent (35%) allocation of the total number of Dwellings to be built on the Development Land pursuant to the Planning Permission for onsite provision such Affordable Housing Scheme shall include details of the tenure of the dwellings; the dwelling type; the plot numbers allocated to the Affordable Housing Scheme
- 1.2 In carrying out the Development to ensure the Affordable Housing Units shall be provided in accordance with the approved Affordable Housing Scheme
- 1.3 Not to Commence Development without having obtained the written approval of the Council to the Affordable Housing Scheme
- 1.4 Prior to the first Occupation of the first (1st) Market Housing Unit to be Occupied the Owner shall agree with the Council on the identity of the Registered Provider or other body to which the Affordable Housing Units are to be transferred such agreement not to be unreasonably withheld or delayed but if no agreement has been reached at the expiration of the period of three (3) months following the first Occupation of the first (1st) Market Housing Unit the Council shall be entitled to nominate a Registered Provider or other appropriate body for the purpose.

- 1.5 To procure that the Registered Provider enters into a Nominations Agreement with the Council at least one (1) month prior to the date of transfer in paragraph 1.6 below of this Schedule 3
- 1.5.1 The Registered Provider is to allocate Rental Dwellings in the priority order set out in the Local Lettings Cascade
- 1.5.2 If there are no persons who qualify under paragraph 1.5.1 above the Owner or the Registered Provider is to allocate each of the Rental Dwellings to a person who is considered by it to be in need of such accommodation and who is unable to compete in the normal open market for property in one of the districts immediately adjacent to Waveney District or Suffolk Coastal District (hereinafter referred to as the "Neighbouring Districts") and who
- 1.5.2.1 has lived in one of the Neighbouring Districts for the preceding period of three years, or
- 1.5.2.2 has parents or close family living in one of the Neighbouring Districts, or
- 1.5.2.3 has a place of work in one of the Neighbouring Districts, or
- 1.5.2.4 during the preceding three years has been forced to move away from the Neighbouring Districts due to lack of suitable accommodation
- 1.6 Not to Occupy or permit Occupation of more than forty per cent (40%) of the Market Housing Units until the Affordable Housing Units have been constructed in accordance with the Planning Permission and the associated reserved matters and have been made ready for residential Occupation and all the Affordable Housing Units have been transferred to a Registered Provider under a transfer deed on terms that accord with the relevant Homes England's funding requirements current at the date of construction of the Affordable Housing Units and which contains the following provisions:
- 1.6.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units,
- 1.6.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits in the adjoining land up to and abutting the boundary to the Affordable Housing Units all such services to be connected to the mains and written notification of such has been received by the Council,

- 1.6.3 a covenant by the Registered Provider to the Owner and the Council that the Registered Provider will not dispose of or grant a lease of any Affordable Housing Unit other than in accordance with the provisions of the Nominations Agreement
- 1.7 To construct the Affordable Housing Units in the positions indicated by the Affordable Housing Scheme and in no other positions without the District Council's prior written approval
- 1.8 From the date of Practical Completion the Affordable Housing Units shall not be used other than for Affordable Housing as set out herein save that this obligation shall not be binding on:
- 1.8.1 any Protected Person or any mortgagee or chargee of the Protected Person exercising the mortgage protection provision within a Shared Ownership Lease or any person deriving title from a Protected Person or any successor in title thereto and their respective mortgagees and chargees; or
- 1.8.2 any Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or
- 1.8.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor
- 1.9 The provisions in this Agreement shall not be binding on a Chargee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee PROVIDED THAT:
- 1.9.1 The Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units ("the RP Notice"); and
- 1.9.2 if the Council provides written notice to the Chargee within four weeks of receipt of the RP Notice that acceptable arrangements can be made for the transfer of the Affordable Housing Units to either the Council or another Registered Provider within three calendar months of the date of the RP Notice the Chargee shall use reasonable endeavours over that period to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses
- 1.9.3 if the Council does not serve the notice referred to in paragraph b) within the four week period referred to or if such disposal has not completed

within the three month period the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Agreement

- 1.10 PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council shall give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage.

**2. ON SITE OPEN SPACE PROVISION AND MAINTENANCE - COVENANTS WITH THE COUNCIL**

- 2.1 Prior to the Commencement of the Development the Owner shall submit to the Council the Open Space Specification and details of the Management Company for approval.
- 2.2 The Owner covenants not to Occupy or permit the Occupation of the first Dwelling to be Occupied on the Development Land unless and until the Council has approved the Open Space Specification and the Management Company.
- 2.3 The Owners covenant to lay-out and complete the Open Space in accordance with the Open Space Specification as approved by the Council but in any event prior to the Occupation of the 20<sup>th</sup> Dwelling.
- 2.4 The Owner covenants to transfer the Open Space to the Management Company within 12 months of Occupation of the last Dwelling on accordance with the Open Space Transfer.

**3. HIGHWAYS AND PUBLIC TRANSPORT CONTRIBUTION - COVENANTS WITH THE COUNTY COUNCIL**

- 3.1 The Owner covenants to pay to the County Council the Highways and Public Transport Contribution prior to the first Occupation of the first (1st) Dwelling to be Occupied.
- 3.2 The Owner hereby covenants not to Occupy or permit Occupation of any Dwellings until the Highways and Public Transport Contribution has been paid in full to the County Council.

#### **4. SPORTS AND RECREATION FACILITIES - COVENANTS WITH THE COUNCIL**

##### **4.1 Replacement playing/sports pitch**

- 4.1.1 The Owner covenants to use all reasonable endeavours to obtain any necessary planning permission or consents for the Replacement Playing Pitches within 12 months of the date of the Planning Permission
- 4.1.2 The Owner shall, in making an application for the Replacement Playing Pitches, obtain the Council's approval in writing of an implementation scheme to ensure that the Replacement Playing Pitches provided are of equivalent or better quality to the existing sports pitches on the Development Land.
- 4.1.3 The Replacement Playing Pitches shall, upon obtaining all necessary consents, be laid out and be available for use by the Owner prior to the Commencement of the Development on the Development Land and in any event within 6 months of the obtaining of the relevant consents for the Replacement Playing Pitches or the sale of the Development Land whichever is the latter.
- 4.1.4 No Development shall Commence on the Development Land unless and until the Replacement Playing Pitches have been laid out in accordance with any necessary consents or if no formal consents are required then as agreed in writing with the Council and made available for use by the Owner and the Community Users. Until such time as the Replacement Playing Pitches have been completed and made available for public use, the existing pitches at Saint Felix School shall be available for use by the public as per the arrangements current at the date of this Deed.

##### **4.2 New Sports Changing Facilities**

- 4.2.1 The Owner covenants to use all reasonable endeavours to obtain any necessary planning permission or consents for the New Sports Changing Facilities within 12 months of the date of the Planning Permission
- 4.2.2 The New Sports Changing Facilities shall, upon obtaining all necessary consents, be laid out, constructed and be available for use by the Owner and the Community Users prior to the Commencement of the Development on the Development Land and in any event within 6 months of the obtaining of the necessary consents or the sale of the Development Land whichever is the later, unless a longer period is agreed in writing with the Council.

- 4.2.3 No Development shall Commence on the Development Land unless and until the New Sports Changing Facilities have been laid out and constructed in accordance with any necessary consents or if no formal consents are required then as agreed in writing with the Council and made available for use by the Owner and the Community Users.

#### **4.3 Community Use**

- 4.3.1 The Owner Covenants to use reasonable endeavours to enter into the Community Use Agreement with the Council as soon as reasonably practicable following the grant of the Planning Permission and in any event within 6 months following the obtaining of the necessary consents or the sale of the Development Land whichever is the latter unless a longer period is agreed in writing with the Council.
- 4.3.2 The Owner shall not Commence Development on the Development Land unless and until it has entered into the Community Use Agreement with the Council.

### **5. ACCESS TO GREEN SPACES - COVENANTS WITH THE COUNCIL**

#### **5.1 Provision of Accessible Natural Green Spaces**

- 5.1.1 The Owner covenants to use all reasonable endeavours to obtain any necessary planning permission or consents for the Accessible Natural Green Spaces within 12 months of the date of the Planning Permission
- 5.1.2 Prior to Occupation of the first Dwelling to be Occupied on the Development Land the Owner shall submit to the Council the Accessible Natural Green Spaces Specification for approval.
- 5.1.3 The Owner covenants not to Occupy or permit the Occupation of the first Dwelling to be Occupied on the Development Land unless and until the Council has approved the Accessible Natural Green Spaces Specification.
- 5.1.4 The Accessible Natural Green Spaces shall, upon obtaining all necessary consents, be laid out, constructed and be available for use by the general public in accordance with the Accessible Natural Green Spaces Specification as approved by the Council prior to the first Occupation of any Dwellings on the Development Land.
- 5.1.5 No Dwellings on the Development Land shall be Occupied unless and until the Accessible Natural Green Spaces have been laid out and constructed in accordance with any necessary consents and in



accordance with the Accessible Natural Green Spaces Specification as approved by the Council and made available for use by the general public.

- 5.1.6 The Owner shall maintain in perpetuity the Accessible Natural Green Spaces in accordance with the approved Accessible Natural Green Spaces Specification

## 5.2 New Footpath Access Network

- 5.2.1 The Owner covenants to use all reasonable endeavours to obtain any necessary planning permission or consents for the New Footpath Access Network within 12 months of the date of the Planning Permission
- 5.2.2 Prior to Occupation of the first Dwelling to be Occupied on the Development Land the Owner shall submit to the Council a plan for the New Footpath Access Network for approval.
- 5.2.3 The Owner covenants not to Occupy or permit the Occupation of the first Dwelling to be Occupied on the Development Land unless and until the Council has approved the New Footpath Access Network.
- 5.2.4 The New Footpath Access Network shall, upon obtaining all necessary consents, be laid out, constructed and be available for use by the general public on a permissive basis prior to the first Occupation of any Dwellings on the Development Land.
- 5.2.5 No Dwellings on the Development Land shall be Occupied unless and until the New Footpath Access Network have been laid out and constructed in accordance with any necessary consents and made available for use by the general public on a permissive basis.

## 5.3 Signposting and interpretation

- 5.3.1 Prior to Commencement of Development on the Development Land the Owner shall submit to the Council for approval a scheme of signposting for the Development Land and an information pack for future residents of the Dwellings showing options for walks around the Retained Land .
- 5.3.2 The Owner covenants not to Occupy or permit the Occupation of the first Dwelling to be Occupied on the Development Land unless and until the Council has approved the scheme of signposting for the Development Land and an information pack for future residents of the Dwellings showing options for walks around the Retained Land and such scheme has been implemented and completed.

#### 5.4 Management of the Path Margins and Gorse

- 5.4.1 Prior to submission of reserved matters on the Development Land the Owner shall submit to the Council for approval a strategy for maintaining the Path Margins and Gorse Areas in perpetuity.
- 5.4.2 The Owner covenants not to Occupy or permit the Occupation of the first Dwelling to be Occupied on the Development Land unless and until the Council has approved the strategy for maintaining the Path Margins and Gorse Areas signposting and such strategy has been commenced.

#### 5.5 Habitat Mitigation (Natura 2000) Contribution

- 5.5.1 The Owner covenants to pay to the Council the Habitat Mitigation (Natura 2000) Contribution prior to Commencement of the Development.
- 5.5.2 The Owner hereby covenants not to Commence the Development until the Habitat Mitigation (Natura 2000) Contribution has been paid in full to the Council.

### 6. **SCHOOL REFURBISHMENT AND MODERNISATION INVESTMENT SCHEDULE AND PHASING PROGRAMME - COVENANTS WITH THE COUNCIL**

#### 6.1 Escrow Account

- 6.1.1 The Owner shall notify the Council in writing immediately upon completion of the sale of the Development Land and the receipt of the Sale Proceeds
- 6.1.2 Immediately upon receipt of the Sale Proceeds the Owner shall pay the same into the Escrow Account and provide written confirmation to the Council as soon as reasonably practicable that the Sale Proceeds have been placed in to the Escrow Account

#### 6.2 Ring-Fencing of Funds

- 6.2.1 The Owner shall use the Sale Proceeds exclusively for the purpose of carrying out the School Works and for no other purpose and shall not use the Escrow Account for any purpose other than receipt of the Sale Proceeds and administering the School Works
- 6.2.2 The Owner shall notify the Council in writing within seven (7) Working Days of the expected date of Commencement of the School Works and within seven (7) Working Days of the Commencement of the School Works

### 6.3 Financial Assessment

- 6.3.1 The Owner shall submit the Financial Assessment to the Council for its written approval no more than 10 Working Days either side of the Review Date.
- 6.3.2 Within 30 Working Days of receipt of the Financial Assessment and all relevant supporting information, the Council acting reasonably shall notify the Owner in writing that it agrees or disagrees with the Financial Assessment and in the latter case, specifying its reasons and if the Council fails to notify the Owner of its response within 30 Working Days of the Owner's submission of the Financial Assessment the Council shall be deemed to approve the Financial Assessment.
- 6.3.3 Once the Owner has submitted the Financial Assessment to the Council the Owner shall respond promptly and fully and in writing to any reasonable requests from the Council for further information, such a request will stop the 30 Working Day period referred to in paragraph 6.3.2 above and it will begin again on the receipt of the requested information.
- 6.3.4 The procedure set out in paragraph 6.3.1 to 6.3.3 above shall be repeated until the Council has all the information it reasonably needs in order to agree or disagree the Financial Assessment and the Council shall following receipt of such information serve written notice on the Owner that the Financial Assessment is agreed or not agreed and if the Council has failed to serve such notice within 30 Working Days of receipt of such information the Financial Assessment shall be deemed to be approved for the purposes of this Deed .
- 6.3.5 Any dispute on the Financial Assessment shall be referred to an arbitrator appointed jointly by the parties ("the Arbitrator"). If the Parties cannot agree on the Arbitrator's identity the Arbitrator shall be appointed on either party's request (in the event of a dispute relating to building contract sums) by the Royal Institution of Chartered Surveyors or in the event of a dispute relating to finance costs or marketing costs or any other financial issues) by the Royal Institute of Chartered Accountants. The Arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the Arbitrator (or if the Arbitrator makes no direction, then equally).

## Schedule 4

### Council and County Council's covenants with the Owner

#### THE COUNTY COUNCIL COVENANTS WITH THE OWNER

##### 1. HIGHWAYS AND PUBLIC TRANSPORT CONTRIBUTION

- 1.1. To use the Highways and Public Transport Contribution towards delivering improvements to the existing bus stops on Halesworth Road to the front of the Site comprising raised kerbs for easier boarding/alighting at the Westbound stop (£2,000) and real time screens to show live bus arrival times (£10,000 for each stop)
- 1.2. If requested to do so in writing after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year to pay to the payer such amount of the Highways and Public Transport Contribution paid by the payer which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period

#### COUNCIL COVENANTS WITH THE OWNER

##### 2. HABITAT MITIGATION (NATURA 2000) CONTRIBUTION

- 2.1. To use the Habitat Mitigation (Natura 2000) Contribution towards wardening and / or monitoring of the Minsmere,-Walberwick SPA and the Benacre-Easton Bavents SPA
- 2.2. If requested to do so in writing after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year to pay to the payer such amount of the Habitat Mitigation (Natura 2000) Contribution paid by the payer which has not been committed or expended by the Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period

## FIFTH SCHEDULE

### Local Lettings Cascade

The Registered Provider (or the Council) is to allocate each of the Rental Dwellings to a person nominated by WDC in line with its allocation scheme who is considered by them or it to be in need of such accommodation and unable to compete in the normal open market for property. Before nominating an applicant the council will be satisfied that the applicant:

- (a) has continuously lived in the Parishes of Southwold and Reydon for the preceding 3 years; or
- (b) has continuously had a place of work in the Parishes of Southwold and Reydon for the preceding 3 years; or
- (c) has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived in the Parishes of Southwold and Reydon for the preceding 5 years; or
- (d) can demonstrate some other local connection to the satisfaction of the Council; or
- (e) due to a lack of suitable accommodation was forced within the preceding 3 years to move away from the Parishes of Southwold and Reydon.

If there are no persons who qualify under paragraphs a-e above the Registered Provider is to allocate each of the Rental Dwellings to a person nominated by the Council who is considered by it to be in need of such accommodation and who is unable to compete in the normal open market for property in one of the neighbouring parishes (that is to say in the Parishes of Blythburgh, Wangford, Wrentham and Walberswick hereinafter referred to as the "Neighbouring Parishes") and who:

- (a) has continuously lived in one of the Neighbouring Parishes for the preceding period of 3 years; or
- (b) has parents or close family (i.e. mother, father, son or daughter) who are over 18 and have been living in one of the Neighbouring Parishes for the preceding 5 years; or
- (c) has continuously had a place of work in one of the Neighbouring Parishes for the preceding 3 years; or
- (d) due to a lack of suitable accommodation was forced within the preceding 3 years to move from one of the Neighbouring Parishes .

If there are no persons who qualify under the foregoing provisions the Registered Provider shall select an applicant from the Common Housing Register operated in the District of Waveney (or any housing waiting list taking its place) who is seeking accommodation in the Parish of Southwold and Reydon.

## Appendix 1

### Draft Community Use Agreement

DRAFT

**WAVENEY DISTRICT COUNCIL (1)**

**and**

**SAINT FELIX SCHOOLS (2)**

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**COMMUNITY USE AGREEMENT**

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Relating to  
Community Use of specified Sports Facilities at  
Saint Felix School, Halesworth Road, Reydon, Suffolk in connection  
with planning permission reference DC/15/3288/OUT



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DATE

2018

- (1) **SAINT FELIX SCHOOLS (CO. REGN. NO. 316883)** of Saint Felix School, Halesworth Road, Reydon, Suffolk IP18 6SD (“the School”)
- (2) **WAVENEY DISTRICT COUNCIL** of Riverside, 4 Canning Road, Lowestoft, NR33 0EQ (“the Council”)

## 1. **RECITALS**

- 1.1 Planning Permission was granted by the Council on [xxxxx] for the Development subject to conditions and a s106 Agreement dated [xxxxxx] (“the s106 Agreement”). Paragraph 4.3 of Schedule 3 of the s106 Agreement requires that an agreement shall be submitted to the local planning authority for approval to demonstrate how community access to the Sports Facilities within the Development and/or the wider school site will be managed.
- 1.2 The parties wish to enter into this Agreement in order to make the Sports Facilities available (when their use is not required by the School) for use by the general public in compliance with the terms of this Agreement and the s106 Agreement.
- 1.3 The School is the owner of the School Premises and is responsible for their use.
- 1.4 The Council has responsibility for the provision of sports facilities in the Waveney District area for use by and for the benefit of the community and is desirous of entering into this Agreement in furtherance of that responsibility and as the local planning authority in respect of the Development.

## 2. **DEFINITIONS AND INTERPRETATION**

In this Agreement the following words or phrases have the corresponding meanings ascribed to them unless the context otherwise requires:

<b>Community Use</b>	use of the Sports Facilities by the general public including organised sports clubs, organisations and for Casual Use;
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<b>Casual Use</b>	availability for any individual(s) or groups to book the Sports Facilities up to 28 days in advance for use on a pay-as-you-play basis, where space is available;
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<b>Development</b>	improvements to Saint Felix School to include residential development, public open space and associated infrastructure on the former playing field at Saint Felix School as set out in application
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	DC/15/3288/OUT for which Planning Permission has been granted;
<b>Sports Facilities</b>	the sports facilities identified in Schedule 1 to this Agreement forming part of the School Premises;
<b>Parties</b>	the parties to this Agreement;
<b>Planning Permission</b>	planning permission (reference DC/15/3288/OUT) granted by the Council on [xxxx]
<b>Priority Groups</b>	those groups identified by the Parties as being under represented for the particular activity engaged in;
<b>Review Committee</b>	representatives of each of the Parties to this Agreement or their nominees;
<b>School Core Times</b>	8am to 6pm Mondays to Fridays during term time as defined in Schedule 2 to this Agreement;
<b>School Premises</b>	the land and buildings comprising Saint Felix School shown edged red on plan A.44.267fg attached to the s106 Agreement (excluding the land cross-hatched yellow on plan A.44.267.h)

### 3. **AIMS**

The Parties agree to pursue the following aims:

- Providing opportunities for the local community and sports organisations to participate in sport and physical activity for health improvement and development of their skills, particularly amongst low participant groups;
- Operating in line with the national agenda for sport taking into account nationally adopted strategies;
- Generating positive attitudes in sport and physical activity by young people and reducing the dropout rate in sports participation with age;
- Increasing the number of people of all ages and abilities participating in sport and physical activity including people with disabilities;
- Using the Sports Facilities to encourage the range, quality and number of school sports club links and to stimulate competition that is inclusive of young people and adults;

- To provide affordable access to the Sports Facilities and to be self-financing in terms of community use;
- *[Insert further local aims as appropriate].*

#### **4. ARRANGEMENTS FOR COMMUNITY USE**

- 4.1 Save for emergencies, maintenance or circumstances agreed at least one month in advance in writing by the Council, the School agrees to make the Sports Facilities available for Community Use in accordance with the provisions of Schedule 2 to this Agreement and (for the avoidance of any doubt) the Sports Facilities may also be offered during School Core Times at the absolute discretion of the School.
- 4.2 This Agreement does not create any additional public rights of access to or over the School Premises and any public use, whether by Community Use or Casual Use offered by the School to the Sports Facilities whether in accordance with this Agreement or otherwise is strictly by permission of the School.
- 4.3 Users of the Sports Facilities shall be required to comply with the terms of use of the Sports Facilities at all times.
- 4.4 The Sports Facilities shall be unavailable for use by members of the public, the local community, organised sports clubs, organisations and casual users for 4 calendar days per year: Christmas Day, Boxing Day, New Year's Day and Easter Sunday.

#### **5. TARGETS FOR COMMUNITY USE**

The School shall use reasonable endeavours to achieve community use targets where appropriate in line with appropriate sports development strategies, including making a contribution to local participation targets for sporting and physical activity. The School shall work with the Council and *[insert any other relevant partners e.g. the Community Sports Network/the Leisure Trust/County Sports Partnership]* to provide a range of opportunities and pathways for the community. These may include existing initiatives and will also include new and local activities.

#### **6. MARKETING AND PROMOTION**

The School will be responsible for marketing and promoting the Sports Facilities in accordance with the agreed aims and targets. A marketing strategy will be prepared and implemented and reviewed on an annual basis.

## **7. MANAGEMENT**

7.1 The School will be responsible for the Sports Facilities and shall:-

- 7.1.1 resource, control and routinely ensure the maintenance of the Sports Facilities in a manner that will allow achievement of the agreed aims, and
- 7.1.2 make the Sports Facilities available on the occasions and times specified in Schedule 2:
- 7.1.3 ensure provision of heat, light and water and such other amenities as required for the Sports Facilities and their intended use;
- 7.1.4 ensure that the Sports Facilities comply with all legislation and guidance in force at the time of this Agreement relating to access for disabled users;
- 7.1.5 cover the cost of gas, fuel, oil, electricity, water, rates and taxes that may be attributable to the use of the Sports Facilities.

## **8. FINANCIAL MATTERS**

8.1 The School endeavours to ensure that the costs of operating Community Use at the Sports Facilities will be fully covered by income from such use and any surplus will be utilised to:

- 8.1.1 contribute to a contingency or sinking fund for major maintenance, repairs and ultimately renewal of fixed life elements of the Sports Facilities;
- 8.1.2 increase the use of the Sports Facilities by any Priority Groups by staging special promotions or by offering discounted rates of hire;
- 8.1.3 improve and increase the stock of sports equipment for use in connection with the Sports Facilities.

## **9. MONITORING AND REVIEW**

9.1 Two months prior to the date on which the Review Committee produces its annual report the School shall make available to the Review Committee details of all usage, bookings, maintenance and financial matters relating to the Community Use of the Sports Facilities to assist with the development and improvement of community access.

9.2 The Review Committee shall undertake an assessment of the adequacy of the implementation of this Agreement in relation to:

- hours of use of the Sports Facilities;
- pricing policy;
- compliance with targets and aims of this Agreement;
- marketing;
- financial performance of the Sports Facilities during the previous year;  
and
- maintenance.

9.3 The Review Committee shall prepare a report based on the above assessment and prepare recommendations as to how Community Use of the Sports Facilities can be further developed and improved.

9.4 The School shall implement all reasonable recommendations of the Review Committee as soon as reasonably practicable.

9.5 In the event any significant changes are required to this Agreement as a consequence of each or any annual review prior written approval of each of the Parties to this Agreement shall be required.

9.6 The School shall not materially reduce the level of community access to the Sports Facilities without the prior written approval of the local planning authority following consultation with Sport England.

## 10. **DURATION OF AGREEMENT**

This Agreement shall operate for so long as the School is operating as a school and the Sports Facilities are being provided in accordance with the Planning Permission.

## 11. **AUTHORITY**

The School warrants that it has the full right and authority to enter into this Agreement.

## 12. **NO VARIATIONS**

This Agreement may only be varied in writing by a document executed by all the Parties hereto.

13. **NO AGENCY**

Nothing in this Agreement shall be construed as creating a partnership, a joint venture, a contract of employment or a relationship of principal and agent between the parties hereto.

14. **SEVERABILITY**

If any term condition or provision contained in this Agreement shall be held to be invalid unlawful or unenforceable to any extent such term condition or provision shall (save where it goes to the root of this Agreement) not affect the validity legality or enforceability of the remaining parts of this Agreement.

15. **WAIVER**

No term or provision of this Agreement shall be considered as waived by any party to this Agreement unless a waiver is given in writing by that party.

16. **NON-ASSIGNABILITY**

This Agreement is personal to the parties and none of them shall assign sub-contract or otherwise deal with their rights or obligations without the prior written consent of the others.

17. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the courts of England.





## **SCHEDULE 1**

1. The outdoor sports areas and facilities to be made available for Community Use shall comprise the following (as shown edged red on plan A.44.267.g but excluding the sports hall)

Sports Pitch (x2) and all weather pitch plus equestrian area

2. The indoor sports areas and facilities (together with any ancillary facilities including toilets and changing rooms) to be made available for Community Use shall comprise the following (as shown edged red and labelled “sports hall” on plan A.51.050)

Sports hall and changing facilities

## **SCHEDULE 2**

### Arrangements for Community Use

#### **1. USERS**

- 1.1 The Sports Facilities shall be made available for Community Use.

#### **2. HOURS OF ACCESS**

Subject to the provisions of Clause 4 to this Agreement, the following will be the permitted hours of Community Use or Casual Use of the Sports Facilities:

##### TERM-TIME

Community Use	Mon	6pm – 9pm
	Tues	6pm – 9pm
	Wed	6pm – 9pm
	Thurs	6pm – 9pm
	Fri	6pm – 9pm
	Sat	8am – 6pm
	Sun	8am – 4pm

##### SCHOOL HOLIDAYS

Community Use	Mon - Fri :	9am – 9pm
	Sat :	8am – 6pm
	Sun :	8am – 4pm

Subject to the School providing appropriate justification to the Review Committee, the School may restrict the use of grassed sports areas to protect them to fit in with the School requirements for their continued use by the School

#### **3. PRICING**

- 3.1 A policy of affordable pricing shall apply to maximise Community Use and in accordance with the aims of this Agreement. Prices shall be no greater than for

similar local authority run facilities in the District of Waveney, with outdoor events priced per match, and indoor events priced per hour.

- 3.2 Outdoor sports pitches shall be provided at a rate of between [£xxx] and [£xxx] per match (no VAT payable)
- 3.3 Indoor sports pitches shall be provided at a rate of between [£xxx] and [£xxx] per hour (no VAT payable)
- 3.4 Changing facilities shall be provided free of charge
- 3.5 Car parking shall be provided free of charge
- 3.6 Equestrian facilities shall be provided at a rate of between [£xxx] and [£xxx] per hour (no VAT payable)

3.7

#### 4. **BOOKING ARRANGEMENTS**

- 4.1 An easy and accessible advance booking arrangement for Casual Use and block bookings shall be established for hire of the Sports Facilities using a standard booking form.
- 4.2 The agreed booking arrangements shall operate using a dedicated website or webpage with the Management Committee to finalise precise booking arrangements after the first management meeting.

#### 5. **PARKING ARRANGEMENTS**

- 5.1 Car parking spaces shall be available to park for community users when using the Sports Facilities in the location shown edged [xxxx] on plan [xxxx] or such other arrangements as may be approved in writing from time to time by the Council. Such parking spaces shall not be available for use 1 hour outside of the times of Community Use of the Sports Facilities.

## **SCHEDULE 3**

### The Plans

**IN WITNESS** whereof the hands of the parties or their duly authorised representatives the day and year first above written.

Signed by

.....

Duly Authorised representative  
of

**WAVENEY DISTRICT  
COUNCIL**

Signed by

.....

Duly authorised representative  
of

**SAINT FELIX SCHOOL**

## Appendix 2

Appendix 1 of the Bidwells Financial Viability Assessment dated 28 April 2017

DRAFT

**STRICTLY PRIVATE AND CONFIDENTIAL**

# Financial Viability Assessment to Enable Improvements to Saint Felix School

Saint Felix School  
Halesworth Road, Reydon, Suffolk  
28 July 2015 **Amended April 2017**

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### **Freedom of Information Act and Environmental Information Regulations**

This viability report is provided on a confidential basis to the Waveney District Council. We therefore request that the report should not be disclosed to any third parties (other than consultants instructed by the Council to review this report) under the Freedom of Information Act 2000 (sections 41 and 43(2)) or under the Environmental Information Regulations.

## 1 Executive Summary

- 1.1 This financial viability assessment is provided to Waveney District Council to inform of the financial viability of the proposed development of the land off Halesworth Road, Reydon.
- 1.2 Saint Felix School owns the site and is proposing to sell the land with the benefit of planning permission for residential development in order to generate capital which is required to enable improvements to the School. The School estimates the costs to carry out the improvements will be approximately ~~£4,066,922~~ **£4,333,647**. Therefore the School must generate ~~£4,66,922~~ **£4,333,647** capital from the sale of the site.
- 1.3 The conservation of heritage assets such as the School and viability of the proposed development are material considerations in the determination of planning applications. The NPPF states that;
- 'Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.'*
- 1.4 For the proposed development to be financially viable, any uplift from current use value to residual land value that arises when planning permission is granted should be able to meet the cost of planning obligations whilst ensuring competitive returns are provided to a willing land owner. The 'competitive return to the land owner' is the capital required to enable the School to carry out the improvements. This concept is recognised in the NPPF.
- 1.5 The residual valuation demonstrates that the proposed scale of development is viable to deliver a scale of obligations equal to the adopted Community Infrastructure Levy and 35% affordable housing. Therefore this is the correct amount of development to enable the School to undertake the required improvements.
- 1.6 The FVA has been prepared in accordance with the Royal Institution of Chartered Surveyors' guidance note 'Financial viability in planning' and provides a reasonable, transparent and fair objective assessment of the financial viability of the proposed development.
- 1.7 This Viability Assessment has been amended in April 2017 to reflect additional costs for creating a new sports pitch area on the current equestrian site. These additional costs have been added to the Schedule of Improvement Works in Appendix 1 and have been taken from A Feasibility Study for the relocation of the Natural Playing Area at St Felix School prepared by Total Turf Solutions.
- 1.8 The additional works have followed negotiations with Sport England.

## 2 Introduction and Background

- 2.1 This assessment is provided to Waveney District Council (WDC) to inform of the financial viability of the proposed development of the land off Halesworth Road, Reydon to enable Saint Felix School ('the School') to undertake the necessary improvements.
- 2.2 A schedule of the improvements works to the School is detailed in appendix 1 and is referred to as 'the improvements' throughout the report. The improvements are illustrated on the plan enclosed in appendix 2. The reasons for the improvements are set out in the Business Strategy which Waveney District Council (WDC) is in receipt.
- 2.3 The School needs to raise a capital sum of ~~£4,066,922~~ £4,333,647 ('the capital') to enable the improvements. The School proposes to raise the capital through the sale of the site for residential development.
- 2.4 This report is provided to WDC to inform of the necessary level of development required on the site to raise the capital and enable the School to undertake the necessary improvements.
- 2.5 This Financial Viability Assessment has been prepared in accordance with the Royal Institution of Chartered Surveyors' guidance note 'Financial viability in planning' and provides a reasonable, transparent and fair objective assessment of the financial viability of the proposed development.

## 3 Description of Site Location

- 3.1 The site is located in the jurisdiction of Waveney District Council in the Southwold & Reydon ward.
- 3.2 The site comprises greenfield land which extends to approximately 2.45 hectares (6.05 acres), hereon in referred to as 'the site'. A plan of the site is enclosed in appendix 3.
- 3.3 The site is rectangular in shape. The site's northern boundary is formed by a substantial tree belt with Halesworth Road beyond. Halesworth Road provides vehicular access to the site. The eastern boundary is formed by a narrow tree belt with residential dwellings beyond accessed off Lakeside Park Drive. The southern boundary is formed by a narrow tree belt. The western boundary is formed by St. Georges Lane which provides vehicular access to the St. Georges Square residential estate.

## 4 Methodology and Approach

- 4.1 It is commonly accepted that FVAs are produced using a residual valuation model. The FVA has been produced using ARGUS Developer as the financial model. ARGUS Developer is widely recognised as the leading model for residual valuations within the development industry and is commonly used by practitioners.
- 4.2 The RICS defines financial viability for planning purposes as;

*'An objective financial viability test of the ability of a development project to meet its costs including the cost of planning obligations, while ensuring an appropriate Site Value for the landowner and a market risk adjusted return to the developer in delivering the project.'*

- 4.3 The residual model includes a number of input elements to establish a residual Site Value after a predetermined level of return to the developer. The Site Value, developer's return and other costs in the residual valuation are discussed in section 7.
- 4.4 The FVA has been prepared in accordance with the Royal Institution of Chartered Surveyors' (RICS) guidance note 'Financial viability in planning'. The RICS' guidance note is consistent with the Localism Act 2011, the NPPF and Community Infrastructure Levy (CIL) Regulations 2010. The RICS guidance note is also complementary to the Local Housing Delivery Group's advice on area-wide viability testing entitled 'Viability Testing Local Plans'.

## 5 Planning Policy Context

- 5.1 The importance of enabling sustainable development has been underlined in the National Planning Policy Framework (NPPF). The RICS guidance note recognises the role of the planning authority in achieving sustainable development and supports the implementation of development plans.
- 5.2 At the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. Development proposals that are sustainable should go ahead, without delay – a presumption in favour of sustainable development is the basis for every plan, and every decision.
- 5.3 In undertaking the proposed development the developer will be required to deliver and/or contribute to towards the provision of infrastructure and mitigate potential harm arising from a proposed development. The proposed development's viability is a material consideration in deciding the appropriate level of contribution and it is important that policies and/or planning obligations do not prevent the proposed development from proceeding.
- 5.4 In the context of achieving sustainable development the NPPF refers to ensuring viability and deliverability at sections 173-177;
- '... To ensure viability, the costs of any requirement likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.'*
- 5.5 The NPPF also refers to the use of planning conditions and obligations at sections 203-206 and advises that where obligations are being sought;
- '...local planning authorities should take account of changes in market condition over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.'*
- 5.6 Paragraph 140 of the NPPF details the stance Local Planning Authorities should take when determining planning applications which would secure the future conservation of heritage assets, such as the School. Paragraph 140 states;
- 'Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.'*

- 5.7 WDC adopted their Core Strategy (CS) Development Plan Document (DPD) in January 2009. The CS allocates 5,800 dwellings to the district 2001-2021 of which approximately 1,500 dwellings are allocated to the Market Towns including Southwold & Reydon.
- 5.8 WDC adopted their Development Management Policies (DMP) DPD in January 2011. The DMP adopts 32 district-wide policies which will secure the delivery of the CS's vision and sets out criteria which planning applications for development will be determined against. There are several DMP policies which are material to the financial viability of the site;
- Policy DM04 – Sustainable Construction
  - Policy DM16 – Housing Density
  - Policy DM17 – Housing type and Mix
  - Policy DM18 – Affordable Housing
  - Policy DM25 – Existing and Proposed Open Space
- 5.9 WDC adopted their Site Specific Allocation (SSA) DPD in January 2011. The SSA only allocates modest further housing development for the Southwold & Reydon area. The only housing allocation to Southwold & Reydon is the former Eversley School playing field site. Paragraph 6.14 states that the housing allocation under Policy SOU2 was adopted in order to enable the development of wider community benefits primarily related to the delivery of additional playing fields at the former Reydon High School site.

## **6 Description of Scheme**

- 6.1 The proposed development scheme is for up to 71 dwellings (class use C3) and public open space. The draft masterplan is enclosed in appendix 4.
- 6.2 A Design and Access Statement will be submitted in support of the planning application which will provide a comprehensive explanation of the design principles and concepts for the proposed development scheme.

## **7 Residual Valuation Inputs**

### **7.1 Site Value**

- 7.1.1 The Site Value must provide a competitive return to a willing landowner in order to for the development to be deliverable. Where planning obligation liabilities reduces the Site Value to the landowner below an appropriate level, the site will not be released for the development to take place. This is recognised in the NPPF.
- 7.1.2 The term 'Threshold Land Value' (TLV) was developed by the Homes and Communities Agency and is essentially a land value at or above that which is assumed a landowner would be prepared to sell. The TLV is effectively the 'competitive return' to a willing landowner.
- 7.1.3 The School must achieve the capital required through the sale of the land in order that they can be considered a willing landowner. The Site Value is therefore ~~£4,066,922~~ **£4,333,647**.

## **7.2 Developer's return (Profit)**

- 7.2.1 The NPPF recognises that a willing developer must be provided with a 'competitive return' in order for the development to be deliverable. The competitive return is a benchmark would be acceptable in the market for the risk in undertaking the development scheme. If cost implications of the obligations erode a developer's return below an acceptable market level for the scheme being assessed, the extent of those obligations will be deemed to make a development unviable as the development will not proceed on that basis.
- 7.2.2 The benchmark for the developer's return which has been considered is The Planning Inspectorate's Appeal Decision at Holsworthy Showground which assessed a competitive return to a willing developer was a profit margin of 20% on the private dwelling gross development value and 6% of the affordable housing revenue. Accordingly the FVA adopts this level for the developer's return.

## **7.3 Gross development value (Revenue)**

- 7.3.1 Policy DM17 (Housing Type and Mix) requires that proposals for residential development should take into account the Housing Market Assessment in determining the mix of unit sizes and types on a particular site.
- 7.3.2 A schedule of accommodation has been prepared based on the draft feasibility study and the residual valuation is based on this mix. The schedule of accommodation is enclosed in appendix 5.
- 7.3.3 Policy CM18 requires that for a development site in Reydon which is proposed for a scheme of +15 dwellings a 35% onsite affordable housing will be sought. Policy DM18 states;
- 'Outside the Area Action Plan area of Lake Lothing planning application for proposals of 15 or more dwellings shall provide a minimum of 35% on-site affordable housing.'*
- 7.3.4 Policy DM18 does acknowledge that affordable housing affects the viability of development schemes and that a lower percentage of affordable housing the may be required to allow the site to remain viable. Policy DM18 also states;
- 'The above requirements [35% onsite affordable housing] will be reduced where it can be demonstrated that lower percentages of affordable housing are required to ensure the site remains financially viable when taking into account other development costs and where grant funding is not available.'*
- 7.3.5 The Gross Development Value (GDV) is based on comparable prices achieved for the new build properties at the recently completed development scheme off Wangford Road, Reydon. The sale prices achieved have been index linked to the Land Registry's House Price Index rebased to Suffolk to benchmark their current value. A schedule of comparable values is enclosed in appendix 6.
- 7.3.6 The GDV of the private accommodation is based on an average of £300 / sq ft (£3,227 / sq m).
- 7.3.7 The GDV of the affordable accommodation is based on 50% of the private GDV which is an average of £150 / sq ft (£1,614 / sq m).

#### **7.4 Acquisition Costs**

- 7.4.1 The Applicant is not intending to develop the site once outline planning permission has been achieved and will instead sell the site to a developer to deliver the proposed development.
- 7.4.2 Stamp Duty Land Tax (SDLT) is payable on the residualised price of the site which has been calculated accordingly at 4.0%.
- 7.4.3 A legal fee for the site acquisition is based on 1.5% of the residualised price.
- 7.4.4 An agency fee for the disposal of the site on behalf of the Landowner is based on 1.5% of the residualised price.

#### **7.5 Construction Costs**

- 7.5.1 The build cost for the new build dwellings is based on BCIS data rebased to Suffolk. This is a legitimate form of data recognised in assessing build costs. The BCIS build costs is £956 / sq m (GIA) and a copy of the BCIS schedule is enclosed in appendix 7.
- 7.5.2 A contingency of 5.0% of the build cost has been made to reflect any increase in build cost to the dwellings and increase in specification given the site's sensitivity and context. It is anticipated WDC will not want a 'standard' development scheme and will seek the use of materials that enhance the appearance of the dwellings.
- 7.5.3 The BCIS includes preliminary costs but does not include costs for external works and strategic infrastructure. A cost for the external works including gardens, fencing and driveways is based on 12% of the build cost. A cost for strategic infrastructure including roads, sewers and utility costs is based on £370,000 per hectare (£150,000 per acre) i.e. 2.45 hectares multiplied by £370,000 per hectare, being £906,500.

#### **7.6 Abnormal Site Development Costs**

- 7.6.1 Policy DM04 (Sustainable Construction) of the DMP requires that all new residential developments in Waveney meet full Code for Sustainable Homes standards. Policy DM04 states;  
  
*'At least Code level 4 will be required for all new homes once updates to Part L come into effect.'*
- 7.6.2 Part L changes of the Building Regulations come in to effect on 6 April 2014 so the development of new residential dwellings will be required to deliver the Code for Sustainable Homes level 4.
- 7.6.3 In 2011, the Communities and Local Government published the 'Cost of Building to the Code for Sustainable Homes – updated cost review'. The document confirms that the extra-over cost to deliver level 4 for edge of town developments at approximately 40dph is an average of +6.2% above the baseline cost based on Part L 2010.
- 7.6.4 In September 2013, Element Energy and Davis Langdon produced a research paper on the cost for building to the Code for Sustainable Homes based on Part L 2013. The report concluded the extra cover cost to build to Level 4 would be £2,000 - £2,500 / dwelling. An allowance of £2,500 / dwelling has been made accordingly.

## 7.7 Planning Obligations

- 7.7.1 WDC adopted their Community Infrastructure Levy Charging Schedule in August 2013.
- 7.7.2 Reydon is identified in Zone 4 where the CIL charge levy is £150 / sq m index linked to the BCIS All-In Tender Price Index for class use C3 floorspace. The BCIS All-In Tender Price Index is included in appendix 8. The current rate payable in Zone 3 is £169 / sq m after indexation. A plan identifying the extent of Zone 3 is included in appendix 9. The charging levy has only been applied to the private accommodation.
- 7.7.3 A section 106 obligations document will be prepared to ensure delivery of on-site items (i.e. affordable housing, public open space, replacement pitches, changing rooms and community use agreements etc). It will also confirm the mechanism for ensuring receipts from sale of the existing sports pitch are appropriately invested into school improvements.

## 7.8 Professional Fees

- 7.8.1 A cost for Professional Fees is included to reflect the costs of consultants to discharge Reserved Matters conditions, other planning conditions and other professional fees. An allowance of 5.0% of the build costs has been made which is consistent with advice contained in the Viability Testing Local Plans report.

## 7.9 Marketing Costs

- 7.9.1 A marketing cost is included to reflect the costs of selling and marketing the new build dwellings. An allowance of 3.0% based on the private GDV has been made which is consistent with advice contained in the Viability Testing Local Plans report.

## 7.10 Finance Costs

- 7.10.1 A finance cost of 6.5% has been used which reflects the market rate cost to a national House Builder covenant using debt finance to fund a project of this nature. The development has been cash flowed and the finance cost applied accordingly.

## 8 Outputs and Results

- 8.1 A residual valuation has been produced based on a planning policy compliant scheme including £169 / sq m of Community Infrastructure Levy (CIL) payment and 35% affordable housing. The residual valuation demonstrates that the Site Value can be delivered to the willing landowner which is compliant with planning policy. Therefore the proposed scale of development is the correct amount and is viable.
- 8.2 A summary table of the residual valuation are based is shown in the table below;

GDV	Obligations (CIL)	Affordable Housing	Indicative / Residualised Price	Viable – does it meet the Site Value?
<b>£18,762,578</b>	£847,366	35%	£4,078,047	Yes, sufficiently close to incentivise the owner to release the land



## 9 Concluding Statement

- 9.1 Scheme viability is a material consideration in the determination of planning applications as it is inherently linked to delivery. This is reflected in paragraph 173 of the NPPF which states;

*'Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.'*

- 9.2 The consideration of financial viability in determining planning applications is particularly important in the context of negotiating contributions/obligations including affordable housing, which may be secured under Section 106 of the Town & Country Planning Act 1990 (as amended by Section 12(1) of the Planning and Compensation Act 1991) and through the Community Infrastructure Levy (CIL) Regulations 2010. The contributions/obligations are a development cost while the level of affordable housing sought affects the GDV. This in turn impacts upon residual land value and profit.
- 9.3 The residual valuations demonstrate that proposed scale of development is viable to meet the Community Infrastructure Levy and provide a policy compliant level of affordable housing as planning obligations and provide the School with the required capital to enable them to carry out the necessary improvements.

# Appendices

# **Appendix 1**

**Schedule of improvement works**

**Saint Felix School**  
**Investment Schedule and Programme**

July 2015

School Improvement	Fee quotes	Overall cost	Programme for works after receipt of funds of sale of land for residential development
<b>PRIORITY 1</b>			
New Natural Pitch Planning Area	£241,725	£266,725 (TTS Ltd)	Create pitch within 12 months from receipt of sales monies and prior to works commencing on existing pitch
Sand based hockey pitch	£487,032 plus VAT (unnamed contractor)	£460,102 (Agripower Ltd)	Apply for planning permission and construct within 3 12 months. Construction within 6 months
New Sports Changing Rooms	£350,000 + VAT	£350,000 +VAT	Apply for planning permission within 3 months. Construction within 6 months of planning permission Can be developed under the School's PD rights without planning permission and delivered within 12 months of receipt of monies
New Rugby training pitch rear of Gardiner/Somerville School buildings, including new sprinkler system and new turfing – to be also used by Southwold Rugby club and colts		£85,000+VAT	Works to start within 6-12 months
<b>Refurbishment and modernisation of boarding houses</b>			
<b>1. Fawcett House</b>  10 en suite rooms 15 refurbished rooms* refurbishment will include tasks such as painting and decorating, soft furnishing, bed storage carpet Upgrading internal plumbing and electrics	Bronte House  £9.4K per room +VAT £2.5K per room +VAT	£94,000 +VAT £37,500 +VAT   £25,000 + VAT	Internal works do not need planning permission.  Works to be undertaken in phases Bronte first. 6-24 months subject to availability during summer holidays

<b>2. Somerville and Gardiner</b>  30 en suites 30 refurbished rooms Upgrading internal plumbing and electrics  <b>3. Bronte House</b> 15 rooms to upgrade Upgrade staff flat kitchen Upgrading internal plumbing and electrics	£9.4k per room +VAT £2.5K per room +VAT  £2.5K per room +VAT	£282,000 +VAT £75,000 +VAT £50,000 +VAT  £37.500 +VAT £7.500 + VAT  £25,000 +VAT	
Upgrading school mains supply, rewiring and upgrade to new Electrical Standards throughout the whole school		£150,000 +VAT	Internal works do not need planning permission.  Works to be undertaken within 6-12 months subject to availability out of term time
<b>IT</b> Upgrading of school computer systems/ access to broadband etc to speed up delivery		£400,500+VAT	Works to start within 3 months
<b>Swimming pool</b> Upgrade pool, changing facilities and plant		£250,000+VAT	Internal works do not need planning permission.  Works to start within 12- 18 months
<b>Science laboratories</b> Refurbishment and remodelling of science laboratories		£300,000+VAT	Internal works do not need planning permission.  Works to be undertaken within 24 months
<b>Replacement of 1940's central heating system for main school block</b>		£70,000	Works to start within 18 months
<b>PRIORITY 2</b>			
<b>Hard sports play area</b> Upgrade existing artificial surface Extend to include 2 new courts		£85,000+VAT £110,000+VAT	External works need planning permission.  Works to be undertaken within 3 years.

<b>Athletics</b> New long jump run up/track and high jump fan		£45,000+VAT	External works need planning permission.  Works to be undertaken within 3 years.
<b>Sewerage</b> Relining sewerage system		£200,000+VAT	Works to be undertaken within 3 years.
<b>Maintenance programme</b> Window maintenance painting and rolling refurbishment /replacement over 5 years	£150 per window	£250,000 over five years	Work does not require planning permission  5 year rolling programme

Sub total of monies listed above is;

Priority 1: ~~£3,238,922~~ **£3,505,647** including VAT

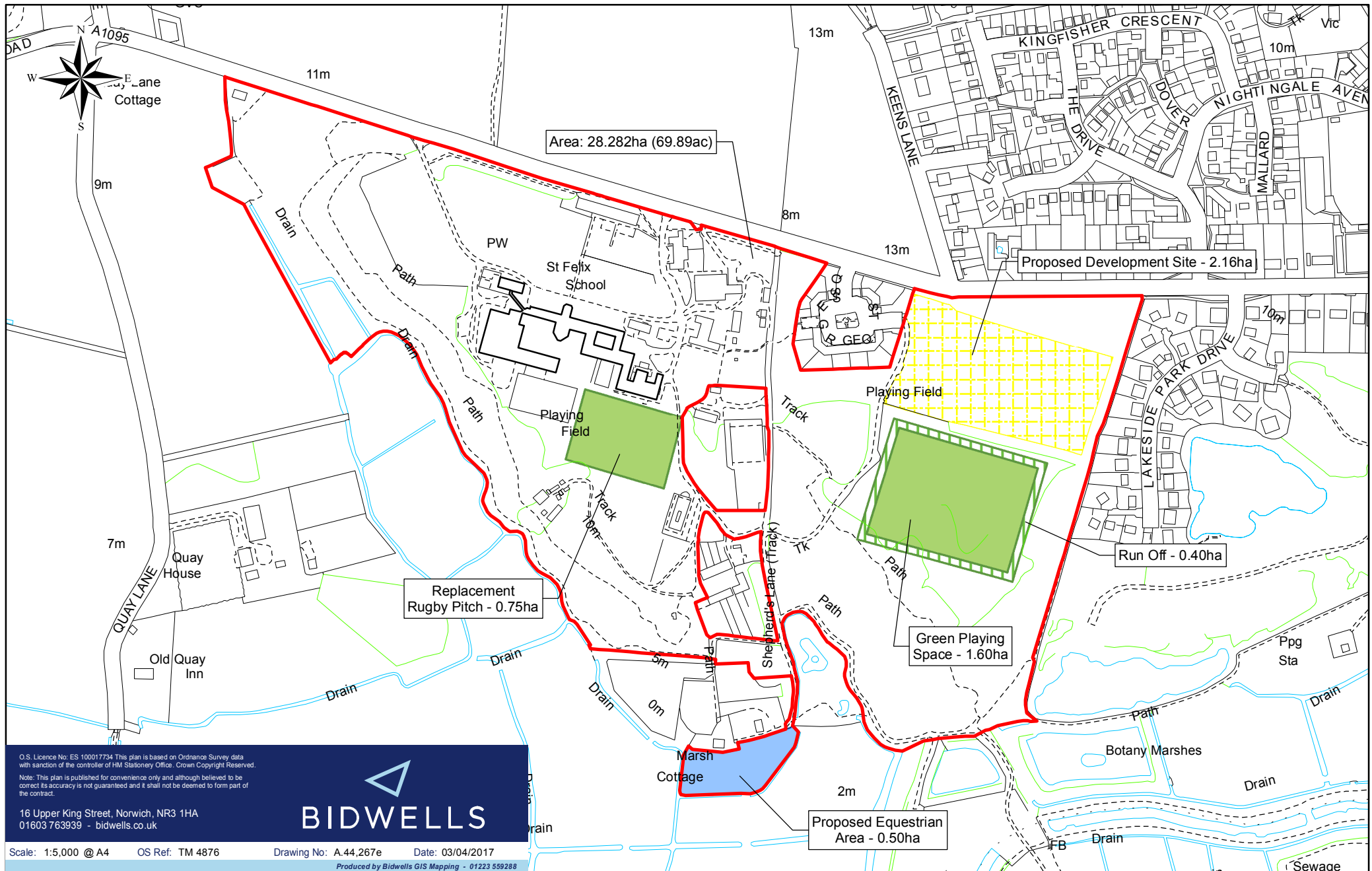
Priority 2: £828,000 including VAT

Total: ~~£4,066,922~~ **£4,333,647** including VAT

## **Appendix 2 – Amended April 2017**

**Plan of improvements to the School's grounds**

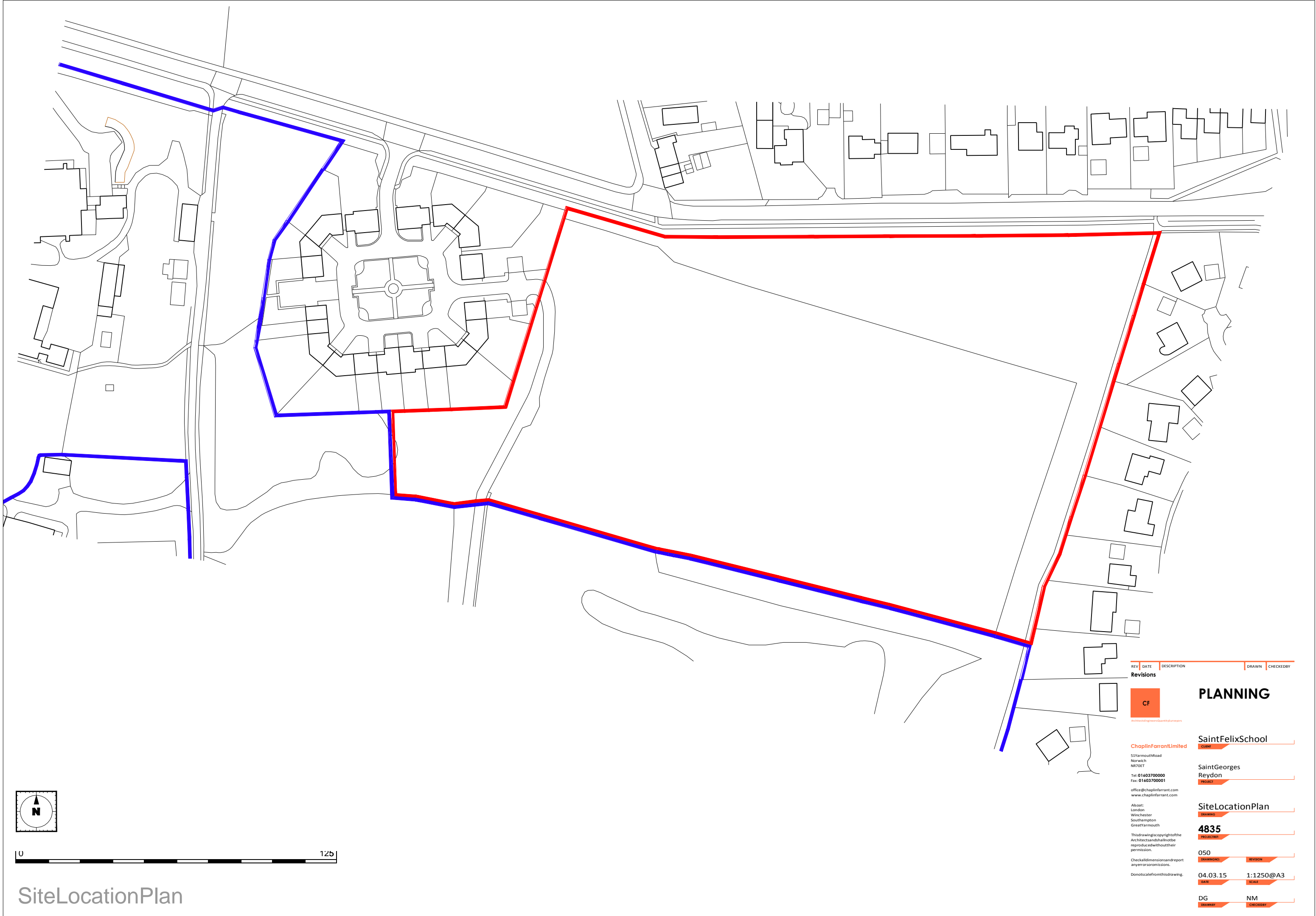
# St Felix School, Halesworth Road, Reydon, Southwold





# Appendix 3

Site plan



REV	DATE	DESCRIPTION	DRAWN	CHECKED BY
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Revisions

CF				
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Check all dimensions and report  
any errors or omissions.

Do not scale from this drawing.

## PLANNING

**Saint Felix School**  
SCHOOL

**Saint Georges  
Reydon**  
PROJECT

**Site Location Plan**  
DRAWING

**4835**  
PROJECT REF

**050**  
DRAWING NO.

**04.03.15**  
DATE

**DG**  
DRAWN BY

**1:1250 @ A3**  
SCALE

**NM**  
CHECKED BY

# Appendix 4

## Masterplan



# Feasibility

St George, Reydon

PROJECT NAME

St Felix School

CLIENT

Sketch Site Plan

DOCUMENT

4835 / Sk01B 06 Nov, 14

REF / DATE

New Access  
Road

Open Green Space

Saint Georges Square

Screen Planting

LAP Local Play Area

Existing woodland

School Grounds

North

0

50M



# **Appendix 5**

**Schedule of accommodation**

**Job No. 4835 – St Felix School****Schedule of Accommodation – Refer 4835/SK01A**

Open Market					
	1.	3B	Dwelling	95sqm	+ Garage
	2.	4B	Dwelling	145sqm	+ Garage
	3.	4B	Dwelling	145sqm	+ Garage
	4.	3B	Dwelling	95sqm	+ Garage
	5.	3B	Dwelling	95sqm	+ Garage
	6.	3B	Dwelling	95sqm	+ Garage
	7.	3B	Dwelling	110sqm	+ Garage
	8.	3B	Dwelling	110sqm	+ Garage
	9.	3B	Dwelling	110sqm	---
	10.	3B	Dwelling	110sqm	---
	11.	3B	Dwelling	110sqm	+ Garage
	12.	3B	Dwelling	95sqm	---
	13.	3B	Dwelling	95sqm	---
	14.	3B	Dwelling	110sqm	+ Garage
	15.	3B	Dwelling	110sqm	---
	16.	3B	Dwelling	110sqm	---
	17.	3B	Dwelling	110sqm	---
	18.	3B	Dwelling	95sqm	---
	19.	3B	Dwelling	95sqm	---
Affordable					
	20.	2B	Dwelling	78sqm	Shared Equity
	21.	2B	Dwelling	78sqm	Shared Equity
	22.	2B	Dwelling	78sqm	Shared Equity
	23.	2B	Flat	60sqm	
	24.	2B	Flat	60sqm	---

Affordable					
	25.	1B	Flat	47sqm	---
	26.	1B	Flat	47sqm	---
	27.	2B	Flat	60sqm	---
	28.	1B	Flat	47sqm	---
	29.	1B	Flat	47sqm	---
	30.	1B	Flat	47sqm	---
	31.	1B	Flat	47sqm	---
	32.	2b	Dwelling	78sqm	---
	33.	2B	Dwelling	78sqm	---
	34.	2B	Dwelling	78sqm	---
	35.	2B	Dwelling	78sqm	---
	36.	2B	Dwelling	78sqm	---
	37.	1B	Dwelling	60sqm	---
	38.	1B	Dwelling	60sqm	---
	39.	1B	Dwelling	60sqm	---
	40.	1B	Dwelling	60sqm	---
	41.	1B	Dwelling	60sqm	---
	42.	3B	Dwelling	95sqm	Shared Equity
Open Market	43.	3B	Dwelling	95sqm	---
	44.	3B	Dwelling	120sqm	---
	45.	3B	Dwelling	120sqm	---
	46.	3B	Dwelling	125sqm	---
	47.	3B	Dwelling	120sqm	---
	48.	3B	Dwelling	120sqm	---
	49.	2B	Bungalow	75sqm	+ Garage
	50.	1B	Bungalow	65sqm	+ Garage
	51.	3B	Dwelling	120sqm	---

Open market					
	52.	3B	Dwelling	120sqm	---
	53.	2B	Dwelling	80sqm	---
	54.	2B	Dwelling	80sqm	---
	55.	2B	Dwelling	80sqm	---
	56.	3B	Dwelling	120sqm	---
	57.	3B	Dwelling	120sqm	---
	58.	2B	Flat	70sqm	---
	59.	2B	Flat	70sqm	---
	60.	3B	Dwelling	110sqm	---
	61.	3B	Dwelling	110sqm	+ Garage
	62.	3B	Dwelling	110sqm	+ Garage
	63.	3B	Dwelling	120sqm	+ Garage
	64.	3B	Dwelling	120sqm	+ Garage
	65.	3B	Dwelling	120sqm	+ Garage
	66.	4B	Dwelling	150sqm	+ Garage
	67.	4B	Dwelling	150sqm	+ Garage
	68.	4B	Dwelling	145sqm	+ Garage
	69.	4B	Dwelling	145sqm	+ Garage



# **Appendix 6**

**Comparable new home prices**

# **Sale Prices of Comparable New Build Properties**

Address	Beds	Form	Sale Price	Sale Date	HPI inflation to June 2015	Sale Price plus Indexation	Size (sq ft)	£ / sq ft
14 Shearwater Way, Reydon	4	Detached	£340,000	04/07/2014	5.5%	£358,769	1,300	£276
20 Shearwater Way, Reydon	4	Detached	£407,500	27/06/2014	6.5%	£433,829	1,550	£280
1 Shearwater Way, Reydon	4	Detached	£445,000	23/08/2013	12.9%	£502,369	1,567	£321
1 Teal Close, Reydon	3	Semi	£260,000	29/07/2013	13.6%	£295,237	1,050	£281
18 Shearwater Way, Reydon	4	Detached	£429,995	25/07/2013	13.6%	£488,270	1,550	£315
9 Shearwater Way, Reydon	4	Detached	£430,000	11/07/2013	13.6%	£488,276	1,567	£312
16 Shearwater Way, Reydon	3	Detached	£230,000	07/06/2013	14.8%	£264,118	892	£296
11 Shearwater Way, Reydon	3	Semi	£290,000	31/05/2013	15.2%	£333,969	1,050	£318
<b>Average</b>			<b>£354,062</b>				<b>1,316</b>	<b>£300</b>

**£3,227 / sq m**

# **Appendix 7**

**BCIS Build Cost**

## £/m2 study

**Description:** Rate per m2 gross internal floor area for the building Cost including prelims.

**Last updated:** 25-Jul-2015 12:20

➤ Rebased to Suffolk

**Maximum age of results:** Default period

Building function (Maximum age of projects)	£/m² gross internal floor area						Sample
	Mean	Lowest	Lower quartiles	Median	Upper quartiles	Highest	
New build							
Estate housing							
Generally (15)	956	474	821	934	1,058	1,962	1746
Single storey (15)	1,049	557	903	1,016	1,190	1,805	284
2-storey (15)	937	474	814	921	1,031	1,849	1329
3-storey (15)	953	617	784	902	1,058	1,962	132
4-storey or above (25)	1,351	1,031	-	1,228	-	1,793	3
Estate housing detached (15)	1,025	731	864	1,057	1,154	1,324	16
Estate housing semi detached							
Generally (15)	955	492	831	935	1,053	1,805	398
Single storey (15)	1,095	659	926	1,090	1,245	1,805	64
2-storey (15)	931	492	826	921	1,028	1,629	315
3-storey (15)	895	662	741	876	969	1,406	19
Estate housing terraced							
Generally (15)	972	478	813	938	1,089	1,962	387
Single storey (15)	1,041	634	858	955	1,254	1,606	54
2-storey (15)	962	478	814	937	1,074	1,849	275
3-storey (15)	959	617	785	898	1,020	1,962	58

# **Appendix 8**

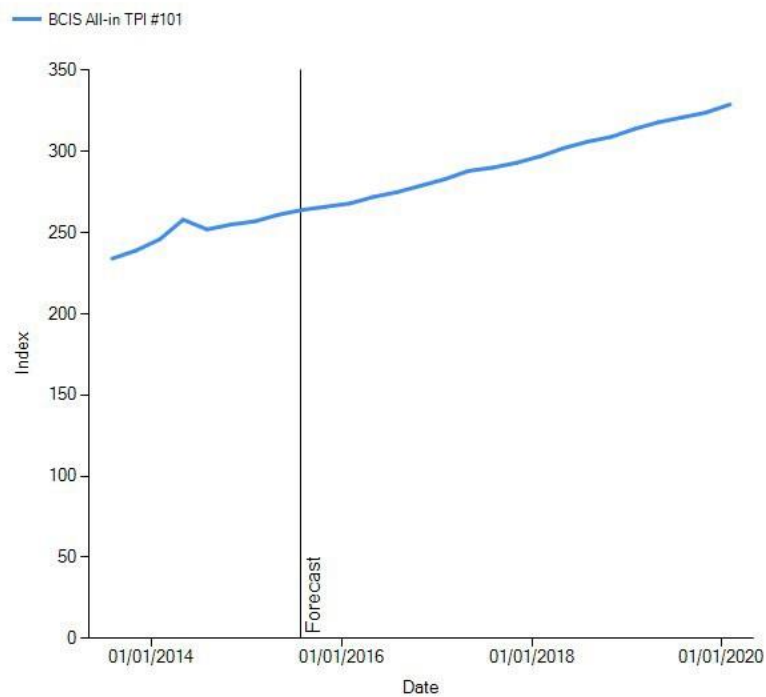
**BCIS All-In Tender Price Index**

## BCIS All-in TPI #101

Base date: 1985 mean = 100 | Updated: 24-Jul-2015 | #101

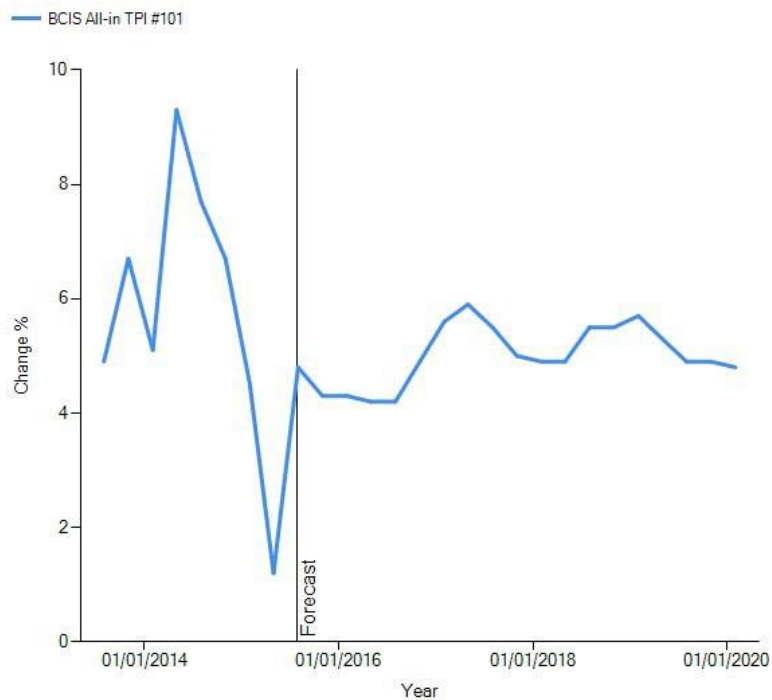
Date	Index	Sample	Percentage change		
			On year	On quarter	On month
3Q 2013	234	32	4.9%	-0.8%	
4Q 2013	239	37	6.7%	2.1%	
1Q 2014	246	34	5.1%	2.9%	
2Q 2014	258	29	9.3%	4.9%	
3Q 2014	252	23	7.7%	-2.3%	
4Q 2014	255	23	6.7%	1.2%	
1Q 2015	257	Forecast 13	4.5%	0.8%	
2Q 2015	261	Forecast	1.2%	1.6%	
3Q 2015	264	Forecast	4.8%	1.1%	
4Q 2015	266	Forecast	4.3%	0.8%	
1Q 2016	268	Forecast	4.3%	0.8%	
2Q 2016	272	Forecast	4.2%	1.5%	
3Q 2016	275	Forecast	4.2%	1.1%	
4Q 2016	279	Forecast	4.9%	1.5%	
1Q 2017	283	Forecast	5.6%	1.4%	
2Q 2017	288	Forecast	5.9%	1.8%	
3Q 2017	290	Forecast	5.5%	0.7%	
4Q 2017	293	Forecast	5.0%	1.0%	
1Q 2018	297	Forecast	4.9%	1.4%	
2Q 2018	302	Forecast	4.9%	1.7%	
3Q 2018	306	Forecast	5.5%	1.3%	
4Q 2018	309	Forecast	5.5%	1.0%	
1Q 2019	314	Forecast	5.7%	1.6%	
2Q 2019	318	Forecast	5.3%	1.3%	
3Q 2019	321	Forecast	4.9%	0.9%	
4Q 2019	324	Forecast	4.9%	0.9%	
1Q 2020	329	Forecast	4.8%	1.5%	

## Index value over time



## Percentage change over time

Percentage change: Year on year



# **Appendix 9**

**Community Infrastructure Levy charging zone**

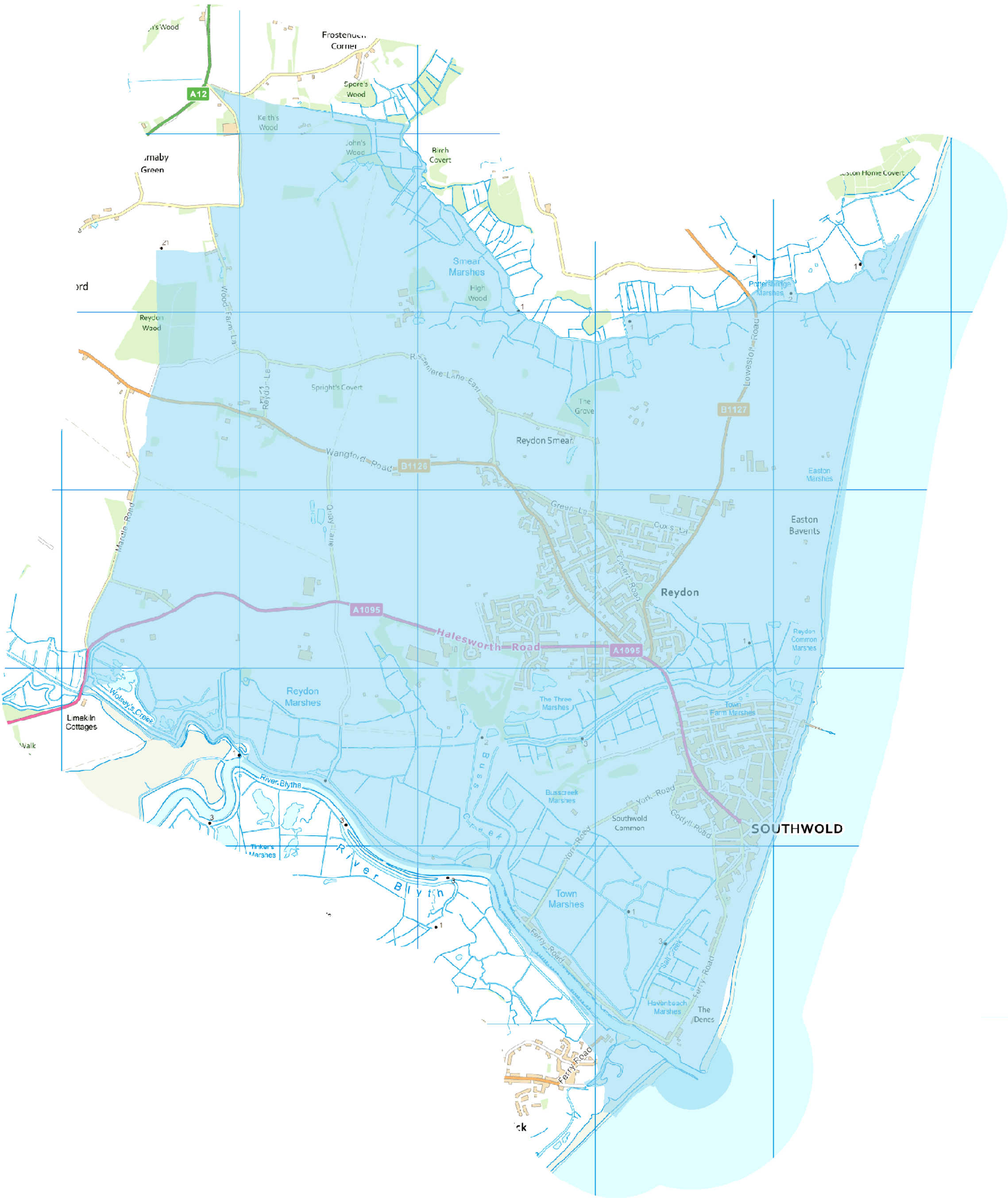


Community Infrastructure Levy

# Charging Zones

 Zone 4: £150

Reydon and Southwold  
and surrounding rural areas



# Appendix 10

## Residual valuation

# Bidwells

## Development Appraisal

Land off Halesworth Road, Reydon, Suffolk

Saint Felix School

Report Date: 28 July 2015

**Land off Halesworth Road, Reydon, Suffolk  
Saint Felix School**
**Timescale (Duration in months)**

Project commences Feb 2015

**Phase 1: Private**

Stage Name	Duration	Start Date	End Date	Anchored To	Align	Offset
Phase Start		Feb 2015				
Purchase	1	Aug 2015	Aug 2015	(None)	Start	0
Pre-Construction	12	Sep 2015	Aug 2016	Purchase	End	0
Construction	24	Sep 2016	Aug 2018	Pre-Construction	End	0
Sale	15	Jun 2017	Aug 2018	Income Flow	End	-15
Phase End		Aug 2018				
<b>Phase Length</b>	<b>43</b>					

**Phase 2: Affordable**

Stage Name	Duration	Start Date	End Date	Anchored To	Align	Offset
Phase Start		Feb 2015				
Purchase	1	Aug 2015	Aug 2015	(None)	Start	0
Pre-Construction	12	Sep 2015	Aug 2016	Purchase	End	0
Construction	24	Sep 2016	Aug 2018	Pre-Construction	End	0
Sale	15	Jun 2017	Aug 2018	Income Flow	End	-15
Phase End		Aug 2018				
<b>Phase Length</b>	<b>43</b>					

**Project Length**      **43**      **(Merged Phases - Includes Exit Period)**

**Assumptions**
**Expenditure**

Professional Fees are based on Construction  
Purchaser's Costs are based on Gross Capitalisation  
Purchaser's Costs Deducted from Sale (Not added to Cost)  
Sales Fees are based on Net Capitalisation  
Sales Fees Added to Cost (Not deducted from Sale)

**Receipts**

Show tenant's true income stream	On
Offset income against development costs	Off
Rent payment cycle	Quarterly (Adv)
Apply rent payment cycle to all tenants	On
Renewal Void and Rent Free apply to first renewal only	Off
Growth starts from lease start date	Off
Deduct Ground Rent from Stepped Rent,	On
Initial Yield Valuation Method	Off
Default Capitalisation Yield	0.0000%
Apply Default Capitalisation to All Tenants	Off
Default stage for Sale Date	Off
Align end of income stream to Sale Date	Off
Apply align end of income stream to all tenants	On
When the Capital Value is modified in the cash flow	Recalculate the Yield
Valuation Tables are	Annually in Arrears
Deduct Post-Sale TI Costs & Lease Comm. from Cap. Value	Off
Rent Free method	Defer start of Tenant's Rent

**Finance**

Financing Method	Basic (Interest Sets)
Interest Compounding Period	Quarterly

**Land off Halesworth Road, Reydon, Suffolk  
Saint Felix School**
**Assumptions**

Interest Charging Period	Monthly
Nominal rates of interest used	
Calculate interest on Payments/Receipts in final period	Off
Include interest and Finance Fees in IRR Calculations	Off
Automatic Inter-account transfers	Off
Manual Finance Rate for Profit Erosion	Off

**Calculation**

Site Payments	In Arrears
Other Payments	In Arrears
Negative Land	In Arrears
Receipts	In Advance

Initial IRR Guess Rate	8.00%
Minimum IRR	-100%
Maximum IRR	99999%
Manual Discount Rate	Off
IRR Tolerance	0.001000

Letting and Rent Review Fees are calculated on	Net of Deductions
Development Yield and Rent Cover are calculated on	Rent at Sale Date(s)
Include Tenants with no Capital Value	On
Include Turnover Rent	Off
Net of Non-Recoverable costs	On
Net of Ground Rent deductions	On
Net of Rent Additions/Costs	On
Leasing Commissions are calculated	After Non-Recoverable cost deductions For the First Term of the lease only

**Value Added Tax**

Global VAT Rate	0.00%
Global Recovery Rate	0.00%
Recovery Cycle every	2 months
1st Recovery Month	2 (Mar 2015)
VAT Calculations in Cash Flow	On

**Residual**

Land Cost Mode	Residualised Land Value
Multi-Phasing	Separate Land Residual for each phase
Target Type	Profit on GDV

Phase Number	Target Value	Locked Value	Treat Neg Land as Revenue
1. Private	20.00%	No	No
2. Affordable	6.00%	No	No

**Distribution**

Construction Payments are paid on	S-Curve
Sales Receipts are paid on	Single curve
Sales Deposits are paid on	Monthly curve

Land off Halesworth Road, Reydon, Suffolk  
Saint Felix School

### Assumptions

#### Interest Sets

##### Interest Set 1

Debit Rate	Credit Rate	Months	Start Date
6.500%	0.000%	Perpetuity	Feb 2015

##### Loan Set 1

Debit Rate	Credit Rate	Months	Start Date
0.000%	0.000%	Perpetuity	Feb 2015

#### Inflation and Growth

##### Growth Sets

##### Growth Set 1

Inflation/Growth for this set is calculated in arrears  
This set is not stepped

Rate	Months	Start Date
0.000%	Perpetuity	Feb 2015

##### Inflation Sets

##### Inflation Set 1

Inflation/Growth for this set is calculated in arrears  
This set is not stepped

Rate	Months	Start Date
0.000%	Perpetuity	Feb 2015

**APPRAISAL SUMMARY****BIDWELLS**

**Land off Halesworth Road, Reydon, Suffolk**  
**Saint Felix School**

**Summary Appraisal for Merged Phases 1 2****REVENUE**

<b>Sales Valuation</b>	<b>Units</b>	<b>m<sup>2</sup></b>	<b>Rate m<sup>2</sup></b>	<b>Unit Price</b>	<b>Gross Sales</b>
Private accommodation	46	5,014.00	£3,227.00	£351,743	16,180,178
Affordable accommodation	<u>25</u>	<u>1,600.00</u>	£1,614.00	£103,296	<u>2,582,400</u>
<b>Totals</b>	<b>71</b>	<b>6,614.00</b>			<b>18,762,578</b>

**NET REALISATION****18,762,578****OUTLAY****ACQUISITION COSTS**

Residualised Price (2.45 Ha	£1,664,508.89 pHect)	4,078,047	
Stamp Duty	4.00%	163,122	
Agent Fee	1.50%	61,171	
Legal Fee	1.50%	61,171	
			4,363,510

**CONSTRUCTION COSTS**

<b>Construction</b>	<b>m<sup>2</sup></b>	<b>Rate m<sup>2</sup></b>	<b>Cost</b>
Private accommodation	5,014.00	£956.00	4,793,384
Affordable accommodation	1,600.00	£956.00	1,529,600
<b>Totals</b>	<b><u>6,614.00</u></b>		<b><u>6,322,984</u></b>

Contingency		5.00%	316,149
External works		12.00%	758,758
Strategic infrastructure	2.45 ha	370,000.00 /ha	906,500
Code for Sustainable Hom	71.00 un	2,500.00 /un	177,500
Community Infrastructure L	5,014.00 m <sup>2</sup>	169.00 pm <sup>2</sup>	847,366
			3,006,273

**PROFESSIONAL FEES**

Professional fees	5.00%	316,149	
			316,149

**MARKETING & LETTING**

Marketing	3.00%	485,405	
			485,405

**FINANCE**

Debit Rate 6.500% Credit Rate 0.000% (Nominal)			
Total Finance Cost			876,089

**TOTAL COSTS****15,370,410****PROFIT****3,392,168****Performance Measures**

Profit on Cost%	22.07%
Profit on GDV%	18.08%
Profit on NDV%	18.08%
IRR	24.90%
Profit Erosion (finance rate 6.500%)	3 yrs 1 mth

BIDWELLS



INVESTORS  
IN PEOPLE | Bronze

[bidwells.co.uk](http://bidwells.co.uk)



## Appendix 3

### Draft Nominations Agreement

DRAFT

*Details of scheme and Registered Provider to be inserted into final document*

**DATED**

**201**

**(name) (1)**

**and**

**WAVENEY DISTRICT COUNCIL (2)**

**NOMINATION AGREEMENT**

**Relating to Affordable Dwelling(s) for Rent**

**At**

**(name of scheme) SCHEDULE**

**THIS NOMINATION AGREEMENT is made the**

**day of**

**201**

**BETWEEN:**

- 1) .....of registered in England by the Financial Conduct Authority under the Co-operative and Community Benefit Societies Act 2014 (Register Number 32427R) (the Registered provider) [or such other Registered Provider as may be approved by Waveney District Council]

and

- 2) **WAVENEY DISTRICT COUNCIL** of Riverside, 4 Canning Road, Lowestoft NR33 0EQ ('the Council')

### **1. Definitions**

In this Deed:

"Affordable Dwelling(s) for Rent" means Dwellings on the Development to be made available as Affordable Housing let at a monthly or weekly rental figure that does not exceed:-

(a) 80% of the local market rent inclusive of service charges; or

(b) (if lower) the local housing allowance rate; or

(c) with rent increases during the term of any individual tenancy being limited to increases in the Consumer Price Index from the date of this Nomination Agreement plus 1% or any subsequent relevant limit placed upon Registered Providers by the Regulator or Central Government;

"Affordable Housing" means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market

"Allocation Policy" means the policy and procedure that the Council has adopted to determine eligibility and priority for Affordable Dwellings for Rent

"Chargee" means any mortgagee or charge of a Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 by such mortgagee or chargee or any other person appointed by a mortgagee or chargee under its security documentation for the purpose of enforcing its mortgage or charge or any administrator (howsoever appointed) including a housing administrator

“Choice Based Lettings” - means the process used to advertise Affordable Dwellings for Rent in the Council area or any system that replaces it.

“Development” means the Development as defined in the Section 106 Agreement to which this Nominations Agreement is appended

“Effective Date” means the date that the application form is received by the Partner Organisation (PO), except in the following situations:

- i. When an applicant is moved from one band to a higher band, their new effective date will be the date that their circumstances changed or when the PO is advised of this;
- ii. Where an applicant receives priority on medical or welfare grounds, their effective date will be the date that they the application for the award is received by the PO;
- iii. Where an applicant has been accepted as homeless their effective date will be the date that they applied as homeless unless they already qualify for Band B with an earlier date;
- iv. Where a woman is pregnant and the baby will make her eligible for a larger property, her effective date for the larger property will be the date that the baby is born

“Initial Let” means the first tenancy or lease of a newly constructed and previously unoccupied Affordable Dwelling(s) for Rent in accordance with Section 199 of the Housing Act 1996 as amended by Section 315 of the Housing and Regeneration Act 2008

“Landlord(s)” means a person or persons who are required to use the Council’s Choice Based Lettings process

“Nominee” or “Nominees” means a person named in the Shortlist nominated by the Council to the Registered Provider who qualify for a tenancy in accordance with the Registered Provider’s letting criteria (details of which have been provided to the Council prior to the date of such nominations) to be the tenant of an Affordable Dwelling(s) for Rent.

“Partner Organisation” or “PO” means each of the eight District and Borough Councils participating in the current Choice Based Lettings scheme

“Property” means the land [ ] shown edged red on the plan attached hereto

“Registered Provider” or “RP” means a Registered Provider of social housing within the meaning of Section 80(1) of the Housing and Regeneration Act 2008 and listed in the register kept by the Regulator under Chapter 3 of that Act

“Regulator” – Homes England (formerly the Homes and Communities Agency) or any body that replaces its role as regulator of Registered Providers

“Shortlist” means the list of applicants (as may be updated from time to time) to be supplied by the Council in line with the Allocation Policy and procedures giving the names of person(s) who the Council considers to be eligible for this size of property and have a local connection (as determined by the Council/ or as determined in the Section 106 Agreement for the Property and who has been assessed as being in housing priority.

“Tenancy Agreement” means an introductory/probationary tenancy, assured shorthold, assured or secure tenancy agreement in a form prepared by the Registered Provider and in line with an approved policy that meets the requirements of the Regulator.

“Vacancy Notice” means a written notice given by the Registered Provider to the Council the function of such notice being the notification to the Council by the Registered Provider that the construction and fitting out of the Affordable Dwelling(s) for Rent is completed and the Affordable Dwelling(s) for Rent is ready to be advertised through choice based letting or let through any subsequent agreed letting procedure. The notice shall be in a form agreed by the parties.

“Void” means an Affordable Dwelling(s) for Rent which is vacant otherwise than as a result of the tenant having

(a) Moved to other accommodation either by transfer or decant provided by the Registered Provider; or

(b) Moved to other accommodation under a reciprocal arrangement provided by another Registered Provider registered with The Regulator under the Housing Act 1996 or Housing and Regeneration Act 2008

“Void Notice” means a written notice given by the Registered Provider to the Council the function of such notice being the notification to the Council by the Registered Provider that the Affordable Dwelling(s) for Rent is available to be advertised through Choice

Based Lettings or let through any subsequent agreed letting procedure. The notice shall be in a form agreed by the parties.

## **2 Enabling Provisions**

This Agreement is made pursuant to Section 111 of the Local Government Act 1972 Section 33 (1) (b) of the Local Government (Miscellaneous Provisions) Act 1982 and Section 1 of the Localism Act 2011 and all other enabling powers

## **3 Procedure**

The parties agree that the Registered Provider shall give the Council nomination rights for each and every Initial Let and Void and the following procedure shall apply to the nomination of persons in respect of the Affordable Dwellings(s) for Rent.

### **3.1 Initial lets**

- 3.1.1 The Registered Provider shall give the Council not less than 4 months' written notice of the date when the Affordable Dwelling(s) for Rent will be ready for Occupation
- 3.1.2 The Registered Provider shall serve a Vacancy Notice on the Choice Based Lettings system detailing the date available for Occupation in respect of the Affordable Dwelling(s) for Rent at the point when it wishes the Affordable Dwelling(s) for Rent to be advertised. This will be in line with agreed advertising cycles which form part of the Allocation Policy.
- 3.1.3 The Council shall arrange for the Affordable Dwelling(s) for Rent to be advertised. Within 2 Working Days of the bidding cycle closing the Council shall serve upon the Registered Provider a Shortlist. The Nominees will be prioritised in line with their housing need and banding priority and effective date. The Council may agree to delegate the shortlisting to the Registered Provider and as required, verification of relevant applicant information.
- 3.1.4 The Shortlist to be served by the Council under clause 3.1.3 shall:
  - i. Specify the appropriate category of Affordable Dwelling(s) for Rent, and
  - ii. Indicate the priority for the housing of the persons named and any other relevant information using a standard pro-forma document via a generic e-mail address to the Council's Choice Based Lettings scheme
- 3.1.5 Upon the properties being ready to let the Registered Provider shall within five (5) Working Days of the date of receipt of the Shortlist select a Nominee from the Shortlist taking into account the priority in the order given for housing indicated by the Council

and shall use its reasonable endeavours to arrange a viewing of the Affordable Dwelling(s) for Rent and offer a Tenancy Agreement to such selected Nominee subject to any final checks as agreed in line with the Council's Allocation Policy and the Registered Provider's letting criteria

- 3.1.6 If the selected Nominee fails to accept the offer of a tenancy within one (1) Working Day of receipt of the Registered Provider's offer such selected Nominee shall be deemed to have rejected the Registered Provider's offer and the Registered Provider shall select and make an offer to another Nominee by repeating the procedure set out in clause 3.1.5
- 3.1.7 If the second selected Nominee fails to enter into a Tenancy Agreement within one (1) Working Day of receipt of the Registered Provider's offer then such second selected Nominee shall be deemed to have rejected the Registered Provider's offer and the Registered Provider shall select and make an offer to a third Nominee by repeating the procedure set out in clause 3.1.5
- 3.1.8 If such third selected Nominee fails to enter into a Tenancy Agreement within one (1) Working Day of receipt of the Registered Provider's offer then the Registered Provider will request a further Shortlist from the District Council and the District Council will supply this within three (3) Working Days.
- 3.1.9 If the District Council is unable to supply any further Nominees the Registered Provider will request that the Affordable Dwelling(s) for Rent is re-advertised and the procedures set out in 3.1.3 – 3.1.8 are complied with

#### **4. Voids**

- 4.1 Should an Affordable Dwelling(s) for Rent become a Void after the Initial Let or the Registered Provider has reasonable cause to believe it will become a Void then and in each case the procedures set out in 3.1.2 – 3.1.9 shall apply except 3.1.2 which shall refer to Void Notice rather than Vacancy Notice in addition to 4.1.1:
  - 4.1.1 The Registered Provider shall give the Council not less than 1 months written notice of the date when the Affordable Dwelling(s) for Rent will be ready for Occupation

#### **5. Provision of information and alteration of lists**

- 5.1 The Registered Provider shall give notification to the Council of the following events within (2) Working Days of their occurrence:

- i. a Nominee failing to view an Affordable Dwelling(s) for Rent when a viewing has been arranged
- ii. a Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Nomination Agreement
- iii. a Nominee accepting an offer of a Tenancy Agreement
- iv. Registered Provider rejecting a Nominee in accordance with Clause 5.3

5.2 Arrangements for notification to the Council will be set out in the Council's approved Allocation Policy

5.3 The Registered Provider shall have the right to interview and make enquiries of each Nominee and by serving written notice upon the Council to that effect to reject any Nominee if in the opinion of the Registered Provider the grant of an assured tenancy to such Nominee would be in contravention of the Registered Provider's registered rules or its letting criteria. The Registered Provider is required to make decisions without influence from third parties.

5.4 The Council shall notify the Registered Provider in writing of any Nominee that is withdrawn from the Shortlist

5.5 The Registered Provider must ensure that they handle all information in line with the current Data Protection Act 1998 and future general data protection regulations and procedures and the requirements of the Councils' Allocation Policy

5.6 The Council and the Registered Provider agree that the nominations rights contained in this Nomination Agreement may be varied from time to time by agreement in writing by the parties

## **6. Notices**

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served 2 Working Days after posting

## **7. Chargee Provisions**

The provisions in this Agreement shall not be binding on a Chargee PROVIDED THAT:

- a) The Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Dwelling(s) for Rent ("the RP Notice"); and



- b) if the Council provides written notice to the Chargee within four weeks of receipt of the RP Notice that acceptable arrangements can be made for the transfer of the Affordable Dwelling(s) for Rent to either the Council or another Registered Provider within three calendar months of the date of the RP Notice the Chargee shall use reasonable endeavours over that period to complete a disposal of the Affordable Dwelling(s) for Rent to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses
- c) if the Council does not serve the notice referred to in paragraph b) within the four week period referred to or if such disposal has not completed within the three month period the Chargee shall be entitled to dispose of the Affordable Dwelling(s) for Rent free of the restrictions set out in this Nomination Agreement

PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council shall give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage.

## **8. Transfer to other Registered Providers**

- 8.1 The Registered Provider shall provide notice to the Council within five (5) Working Days of any transfer of the Affordable Dwelling(s) for Rent to a Registered Provider
- 8.2 The Registered Provider shall use its reasonable endeavours to procure that any Registered Provider to which the Affordable Dwelling(s) for Rent erected thereon are transferred otherwise than by direction of The Regulator under its statutory powers shall enter into a similar agreement mutatis mutandis with the Council simultaneously on completing the transfer of the Property

## **9. Disputes**

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by or on behalf of the President for the time being of the Chartered Institute of Housing on the application of either party

## **10. Costs**

The Registered Provider agrees with the Council to pay the reasonable legal costs which the Council incurs in preparing and entering into this Nomination Agreement and the Council's reasonable costs to cover the nominations procedure. Any changes to current charges will be negotiated with all Landlords who are required to let their properties in line with the District Council's allocation and letting policy and procedures

## **11. Agreements and Declarations**

- 11.1 Nothing in this Nomination Agreement fetters or restricts the exercise by the District Council of any of its powers
- 11.2 The obligations contained in this Nomination Agreement are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 section 33

## **12 Third Party Rights**

No provisions of this Nomination Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

In witness whereof the parties have executed this Nomination Agreement on the day and year first before written

**THE COMMON SEAL of**

was affixed in the presence of:-

Director

Secretary

**THE COMMON SEAL of WAVENEY**

**DISTRICT COUNCIL**

was affixed

In the presence of:-

Authorised signatory

*Details of scheme and Registered Provider to be inserted into final document*

**DATED**

**201**

**(name) (1)**

**and**

**WAVENEY DISTRICT COUNCIL (2)**

**NOMINATION AGREEMENT**

**Relating to Shared Ownership Dwellings**

**At**

**(name of scheme)**

**THIS NOMINATION AGREEMENT is made the      day of                      201**

**BETWEEN:-**

- (1) .....of/ registered in England by the Financial Conduct Authority under the Co-operative and Community Benefit Societies Act 2014 (Register Number 32427R) (the Registered Provider) [or such other Registered Provider as may be approved by Waveney District Council
- (2) **WAVENEY DISTRICT COUNCIL** of Riverside, 4 Canning Road, Lowestoft NR33 0EQ ('the Council')

## 1. Definitions

In this Deed:-

“Affordable Housing” means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market

“Affordable Housing Unit” means **xx** dwellings all of which shall be Affordable Housing to be provided on the Property and which dwellings shall be used as Shared Ownership Dwellings and and sold subject to a Shared Ownership Lease as approved by the Regulator or any regulatory body that replaces them and as approved by the Council, to a person nominated by the Council pursuant to this deed of nomination rights as varied from time to time. The definition of Shared Ownership shall be as set out in the S106 agreement.

“Chargee” means any mortgagee or charge of a Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 by such mortgagee or chargee or any other person appointed by a mortgagee or chargee under its security documentation for the purpose of enforcing its mortgage or charge or any administrator (howsoever appointed) including a housing administrator

“Choice Based Lettings” - means the process used to advertise affordable housing properties in Waveney and Suffolk Coastal Districts or any system that replaces it.

“Help to Buy website” means the website approved by the Regulator to advertise Shared Ownership properties or any other mechanism or system that is set up to replace it

“Housing register” means the list maintained by the Council of people who have been assessed as eligible for affordable housing (under part VI of the Housing Act 1996) or any system that replaces it

“Initial Sale” means the first sale of the newly constructed and previously unoccupied Affordable Housing Unit by the RP by way of a Shared Ownership Lease

“Practical Completion” the completion of a Dwelling to a standard which is wind and water tight and fit for habitation in terms of heating, plumbing, electrics and sanitation

“Property” means the land [ ] shown edged red on the plan attached hereto

“Protected Tenant” means a lessee under a Shared Ownership Lease of a particular Affordable Housing Unit

“Registered Provider” or “RP” means a Registered Provider of social housing within the meaning of Section 80(1) of the Housing and Regeneration Act 2008 and listed in the register kept by the Regulator under Chapter 3 of that Act

“Regulator” – Homes England (formerly the Homes and Communities Agency) or any body that replaces its role as regulator of Registered Providers

“S106 Agreement” means the agreement dated [ ] under section 106 of the Town and Country Planning Act 1990 between [ ]

“Shared Ownership Lease” means a lease of the Affordable Housing Unit where the lessee purchases an initial share of the equity in the Affordable Housing Unit of not less than 25% and not more than 75% for a premium and rents the remainder and is entitled to acquire further shares of the equity up to 100% after a period of 2 years from the date of the Initial Sale (or at any time in the case of a Chargee)

“Shared Ownership Lessee” means the lessee for the time being of a Shared Ownership Lease

## **2. Enabling Provisions**

This Agreement is made pursuant to Section 111 of the Local Government Act 1972 Section 33 (1) (b) of the Local Government (Miscellaneous Provisions) Act 1982 and Section 1 of the Localism Act 2011 and all other enabling powers

## **3. Procedure**

The Parties agree that the Affordable Housing Unit will be sold on a Shared Ownership Lease basis and the purchaser shall be selected in accordance with the procedure detailed in the clause 3.1 below

### **3.1 Initial Sales**

In relation to the Initial Sales of the Affordable Housing Units the following provisions shall apply:-

- 3.1.1 The RP shall give the Council not less than four (4) months written notice of the date when all the Affordable Housing Units will be ready for Occupation
- 3.1.3 The Council shall alert applicants from the Housing Register who have expressed an interest in low cost home ownership that the units are becoming available and advise them to contact the RP or direct them to the Help to Buy website
- 3.1.4. The RP shall upload details of the Affordable Housing Units onto the Help to Buy website and advertise the Affordable Housing Units on the basis of a Shared Ownership Lease and priority will be given to applicants who [have a connection to the District] [in accordance with the Local Lettings Cascade as set out in the S106 Agreement]. (the Council retains the right to vary the priority on a scheme by scheme basis) as set out in the S106 agreement.
- 3.1.5 the RP shall also advertise the units via the Choice Based Lettings website or other relevant systems as required by the Council at the same time as the units are advertised on the Help to Buy website
- 3.1.6 The RP shall assess all applicants for the units
- 3.1.7 The RP shall only consider applicants who have been assessed and meet the criteria for shared ownership as set out by the Regulator
- 3.1.8 The RP shall assess and verify applicants in line with any processes set out by the Regulator and retain all records that the criteria have been met and applicants have been prioritised as set out in 3.1.4 above
- 3.1.9 As part of the assessment process the RP shall require confirmation from each applicant that they are registered on the Housing Register
- 3.1.10 The RP shall provide the following information to the Council within 4 weeks of each sale:
  - i. the names of all applicants for the Affordable Housing Unit;

- ii. name(s) of the purchaser(s) and whether they were on housing register;
- iii. names of all other applicants on the housing register, assessed as eligible and who did not purchase the unit and the reasons why;
- iv. names of applicants on the housing register, who were assessed as ineligible and the reasons why;
- v. the name(s) of the purchaser(s).

3.1.11 The RP shall provide full evidence to the Council in relation to 3.1.7 and 3.1.8 on demand

3.1.12 Subject to the RP fulfilling these obligations under 3.1 the council will be deemed to have approved the application and taken up its nomination rights

### **3.2 Resales**

3.2.1. Where 100% of the equity in the Affordable Housing Unit has been acquired, it may be sold on the open market [remove for restricted schemes]

3.2.2. Where the RP retains a share in the Affordable Housing Unit the property shall be sold to a purchaser assessed as meeting the eligibility criteria as set out in 3.1.7

## **4. RP Covenants**

The RP covenants with the Council to the intent that the Local Government (Miscellaneous Provisions) Act 1982 applies to ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units

## **5. Variation of Nomination Rights**

The Council and the RP agree that the nomination rights contained in this Deed may be varied from time to time by agreement in writing by the parties

## **6. Notices**

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served two (2) Working Days after posting or in the case of electronic mailing the day such notice was transmitted by the party serving the notice

## **7. Chargee Provisions**

The provisions in this Agreement shall not be binding on a Chargee PROVIDED THAT:

- a) The Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit ("the RP Notice"); and
- b) if the Council provides written notice to the Chargee within four weeks of receipt of the RP Notice that acceptable arrangements can be made for the transfer of the Affordable Housing Unit to either the Council or another Registered Provider within three calendar months of the date of the RP Notice the Chargee shall use reasonable endeavours over that period to complete a disposal of the Affordable Housing Unit to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principle monies interest and costs and expenses
- c) if the Council does not serve the notice referred to in paragraph b) within the four week period referred to or if such disposal has not completed within the three month period the Chargee shall be entitled to dispose of the Affordable Dwelling for Rent free of the restrictions set out in this deed

PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council shall give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage.

#### **8. Transfer to the Registered Provider**

The RP shall use its reasonable endeavours to procure that any Registered Provider to which the Property and Affordable Housing Unit erected thereon are transferred otherwise than by direction of the Regulator under its statutory powers shall enter in to a similar Deed mutatis mutandis with the Council simultaneously on completing the transfer of the Property

#### **9. Disputes**

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of any agreement to be nominated by or on behalf of the President for the time being of the Chartered Institute of Housing on the application of either party



## **10 Agreements and Declarations**

The parties agree:-

- 10.1 Nothing in this Deed fetters or restricts the exercise by the Council of any of its powers
- 10.2 The obligations and covenants contained in this deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33
- 10.3 From the date of Practical Completion the Affordable Housing Unit shall be leased in accordance with the terms of this deed save that the obligations and restrictions contained in this deed shall not be binding on:-
- i) any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and charges; or
  - ii) any Chargee and any successor in title to the Chargee ; or
  - iii) any mortgagee and any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any successor in title to either of them.

AS WITNESS whereof the parties have executed this instructed as a Deed hereto the date and year first above written.

### **THE COMMON SEAL of**

was affixed in the presence of:-

Director

Secretary

### **THE COMMON SEAL of WAVENEY**

#### **DISTRICT COUNCIL**

was affixed

In the presence of:-

Authorised signatory

DRAFT

*Details of scheme and Registered Provider to be inserted into final document*

**DATED**

**201**

**(name) (1)**

**and**

**WAVENEY DISTRICT COUNCIL (2)**

**NOMINATION AGREEMENT**

**Relating to Shared Ownership Dwellings**

**At**

**(name of scheme)**

“Help to Buy website” means the website approved by the Regulator to advertise Shared Ownership properties or any other mechanism or system that is set up to replace it

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“Registered Provider” or “RP” means a Registered Provider of social housing within the meaning of Section 80(1) of the Housing and Regeneration Act 2008 and listed in the register kept by the Regulator under Chapter 3 of that Act

“Regulator” – Homes England (formerly the Homes and Communities Agency) or any body that replaces its role as regulator of Registered Providers

“S106 Agreement” means the agreement dated [ ] under section 106 of the Town and Country Planning Act 1990 between [ ]

“Shared Ownership Lease” means a lease of the Affordable Housing Unit where the lessee purchases an initial share of the equity in the Affordable Housing Unit of not less than 25% and not more than 75% for a premium and rents the remainder and is entitled to acquire further shares of the equity up to 100% after a period of 2 years from the date of the Initial Sale (or at any time in the case of a Chargee)

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## **2. Enabling Provisions**

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## **3. Procedure**

The Parties agree that the Affordable Housing Unit will be sold on a Shared Ownership Lease basis and the purchaser shall be selected in accordance with the procedure detailed in the clause 3.1 below

### **3.1 Initial Sales**

In relation to the Initial Sales of the Affordable Housing Units the following provisions shall apply:-

- 3.1.1 The RP shall give the Council not less than four (4) months written notice of the date when all the Affordable Housing Units will be ready for Occupation
- 3.1.3 The Council shall alert applicants from the Housing Register who have expressed an interest in low cost home ownership that the units are becoming available and advise them to contact the RP or direct them to the Help to Buy website
- 3.1.4. The RP shall upload details of the Affordable Housing Units onto the Help to Buy website and advertise the Affordable Housing Units on the basis of a Shared Ownership Lease and priority will be given to applicants who [have a connection to the District] [in accordance with the Local Lettings Cascade as set out in the S106 Agreement]. (the Council retains the right to vary the priority on a scheme by scheme basis) as set out in the S106 agreement.
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- 3.1.6 The RP shall assess all applicants for the units
- 3.1.7 The RP shall only consider applicants who have been assessed and meet the criteria for shared ownership as set out by the Regulator
- 3.1.8 The RP shall assess and verify applicants in line with any processes set out by the Regulator and retain all records that the criteria have been met and applicants have been prioritised as set out in 3.1.4 above
- 3.1.9 As part of the assessment process the RP shall require confirmation from each applicant that they are registered on the Housing Register
- 3.1.10 The RP shall provide the following information to the Council within 4 weeks of each sale:
  - i. the names of all applicants for the Affordable Housing Unit;

- ii. name(s) of the purchaser(s) and whether they were on housing register;
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- v. the name(s) of the purchaser(s).

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### **5. Variation of Nomination Rights**

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### **6. Notices**

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- c) if the Council does not serve the notice referred to in paragraph b) within the four week period referred to or if such disposal has not completed within the three month period the Chargee shall be entitled to dispose of the Affordable Dwelling for Rent free of the restrictions set out in this deed

PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council shall give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage.

#### **8. Transfer to the Registered Provider**

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## **10 Agreements and Declarations**

The parties agree:-

- 10.1 Nothing in this Deed fetters or restricts the exercise by the Council of any of its powers
- 10.2 The obligations and covenants contained in this deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33
- 10.3 From the date of Practical Completion the Affordable Housing Unit shall be leased in accordance with the terms of this deed save that the obligations and restrictions contained in this deed shall not be binding on:-
- i) any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and charges; or
  - ii) any Chargee and any successor in title to the Chargee ; or
  - iii) any mortgagee and any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any successor in title to either of them.

AS WITNESS whereof the parties have executed this instructed as a Deed hereto the date and year first above written.

**THE COMMON SEAL of**

was affixed in the presence of:-

Director

Secretary

**THE COMMON SEAL of WAVENEY**

**DISTRICT COUNCIL**

was affixed

In the presence of:-

Authorised signatory

DRAFT

## Appendix 4

### Indicative Affordable Housing Matrix

	Affordable Rent (70% of total Affordable Housing Units) to be made up of:	Shared Ownership (30% of total Affordable Housing Units) to be made up of:
1 bedroom (2 person) houses/flats	35%	0%
2 bedroom (4 person) houses	45%	70%
3 bedroom (6 person) houses	20%	30%