

THIS AGREEMENT is made the ~~eleventh~~ day of February 2005

BETWEEN:

- (1) **ALAN SOWTER, EDWIN SOWTER and KEITH SOWTER** all of Studfold Farm, Kirkby-in-Ashfield, Nottinghamshire ("the Owner")
- (2) **ASHFIELD DISTRICT COUNCIL** of Council Offices Urban Road Kirkby-in-Ashfield Nottinghamshire NG17 8DA ('the Council')

1. **Definitions**

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

- 1.1 "the Act" means the Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Agreement have the meaning ascribed to them in the Act unless a contrary intention appears
- 1.2 'Affordable Housing Units' means the Dwellings to be constructed on the Application Site which are designated as the Affordable Housing Units in any approval given to a Subsequent Application and which shall be provided by the Owner in accordance with the terms of Paragraph 6 and the Third Schedule
- 1.3 'non-Affordable Housing Units' means the Dwellings to be constructed on the Application Site other than the Affordable Housing Units
- 1.4 "the Application" means the Planning Application dated 5<sup>th</sup> November 2003 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2003/1094

- 1.5 “the Application Site” means the land for which planning permission is sought to carry out the Proposed Development and which is shown for the purposes of identification only edged red on the Plan
- 1.6 ‘agreed’ or ‘approved’ means agreed or approved in writing and given for the purpose of this Agreement and where this Agreement requires any matter to be approved by the Council such approval shall not be unreasonably withheld or delayed
- 1.7 ‘the Blue Land’ means the land edged blue on the Plan but excluding the land hatched blue
- 1.8 ‘Commencement of the Proposed Development’ or cognate terms means the point at which the Owner has implemented the Planning Permission (or as the case may be the detailed consent pursuant to a Subsequent Application) by carrying out a material operation as defined in Section 56(4) (a)-(d) of the Act provided that the carrying out of development comprising trial holes bore pits or other ground investigation works or any other works relating to archaeology, ground surveys, works of demolition or the erection of advertisement hoardings shall not constitute Commencement of the Proposed Development except for the purposes of paragraph 7.7
- 1.9 ‘Dwelling(s)’ means (a) separate residential unit(s) and shall include both Affordable Housing Unit(s) and non-Affordable Housing Unit(s)
- 1.10 “Education Authority” means Nottinghamshire County Council or such other Local Government Authority or public body as shall for the time being have the statutory duty to provide compulsory state education within the area of Kirkby-in-Ashfield
- 1.11 “Education Need” means the provision of additional primary school accommodation necessitated by the Proposed Development

- 1.12 “Education Contribution” means a payment to be made pursuant to paragraph 4 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of the Second Schedule.
- 1.13 “the Master Plan” means the master plan for the Proposed Development to be approved by the Council pursuant to Condition 4 of the Planning Permission or any subsequent variation of it which shall be approved by the Council.
- 1.14 “the Obligations” means the planning obligations contained or referred to in the First, Third, and Fifth Schedules to this Agreement
- 1.15 ‘the Open Space Maintenance Payment’ means a payment to be made pursuant to paragraph 5.3 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of the Fifth Schedule
- 1.16 ‘the Play Equipment Payment’ means a payment to be made pursuant to paragraph 5.1 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of the Fifth Schedule
- 1.17 ‘the Park Maintenance Payment’ means a payment to be made pursuant to paragraph 5.2 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of the Fifth Schedule
- 1.18 ‘the Portland Park Payment’ means a payment to be made pursuant to paragraph 7 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of the Sixth Schedule
- 1.19 “the Plan” means the plan attached to this Agreement
- 1.20 “the Planning Permission” means the grant of planning permission pursuant to the Application in the form of the draft annexed to this Agreement.

- 1.21 “the Proposed Development” means the erection of dwellings, construction of means of access and emergency link, provision of public open space, footpaths, landscaping, balancing pond and associated works as more particularly described in the Application
- 1.22 ‘Registered Social Landlord’ means a registered social landlord within the meaning of the Housing Act 1996
- 1.23 “a Subsequent Application” means any application for the approval of reserved matters following the issue of the Planning Permission and pursuant thereto

## **2. Recitals**

### **WHEREAS:-**

- 2.1 The Owner is registered at H.M. Land Registry as the proprietor of the Application Site with title absolute under title number NT 385350
- 2.2 W.Westerman Ltd has submitted the Application
- 2.3 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Application Site is situated
- 2.4 The Council’s Local Plan Review adopted in November 2002 contains inter alia policies HG6 (Public Open Space requirements on new housing development), HG4 (Affordable Housing) and TR6 (Contribution to costs of Transport Initiatives from new development)
- 2.5 The Proposed Development will create Education Need estimated at 22 new primary places per 100 dwellings built on the Application Site and the Council has on 17<sup>th</sup> July 2003 adopted a development brief in respect of the Application Site which seeks a contribution towards meeting the

Education Need in accordance with paragraph 8.55 of the Local Plan Review.

2.6 The Council resolved on 15<sup>th</sup> January 2004 to grant planning permission for the Proposed Development in accordance with the Application subject to conditions and subject to the making of this Agreement without which planning permission for the Proposed Development would not have been granted

2.7 The Owner has agreed to enter into this Agreement for the purpose of procuring the issue of the Planning Permission

### **3. Enabling Powers**

THE parties hereto enter into this Agreement under and pursuant to Section 106 of the Act.

### **4. Planning Obligations**

4.1 The Obligations are planning obligations for the purposes of Section 106 of the Act to the intent that the Obligations (subject to the provisions of sub-paragraphs 7.6 and 7.7 below) shall be binding and enforceable without time limit against the Owner and any persons deriving title from him in the manner specified in Section 106 of the Act.

4.2 The Council is the Authority entitled to enforce the Obligations.

### **5. Conditionality**

The Obligations are conditional upon the issue of the Planning Permission.

### **6. Covenant**

THE Owner hereby covenants with the Council pursuant to Section 106 of the Act that the Application Site shall be subject to the Obligations and that the Owner shall duly carry out and perform the Obligations

**7. Agreements and Declarations**

It is agreed and declared as follows:

- 7.1 Any reference to a party to this Agreement shall where the context so admits (in the case of the Owner) include their successors in title and assigns and (in the case of the Council) include its successors in function
- 7.2 Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa
- 7.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually
- 7.4 Any reference to a numbered paragraph, schedule or plan is to one in or attached to the Agreement but any reference to a numbered paragraph occurring within a Schedule is to one within that same Schedule unless the contrary intention appears
- 7.5 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument direction or specification made or issued under the statute or deriving validity from it
- 7.6 No person shall be liable for breach of covenant contained in this Deed after he shall have parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to

liability for any subsisting breach of covenant prior to parting with such interest

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

7.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement

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

#### 8. Costs

The Owner shall on the execution of this Deed pay the Council's costs incurred in the preparation and settlement of this Deed in the sum of £7250.00 (receipt whereof is acknowledged by the Council)

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

## **FIRST SCHEDULE**

### **COMMUTED SUM PAYMENTS**

1. Any Subsequent Application to which any following part of this First Schedule applies shall be in conformity to the Master Plan.
2. There shall be paid as a commuted sum to the Council for the improvement of , existing open space and/or the provision of new open space and/or the planting of community woodland within Kirkby-in-Ashfield a sum calculated at the rate of ONE THOUSAND TWO HUNDRED POUNDS (£1200) per Dwelling in respect of the total number of Dwellings authorised to be erected on the Application Site for which consent is given pursuant to Subsequent Applications (adjusted for inflation in accordance with paragraph 9) but the Due Date for actual payment of such sums shall be as set out in the provisions of paragraph 8.1
3. There shall be paid in accordance with the provisions of paragraph 8.2 as a commuted sum to the Council for the improvement of public transport infrastructure including bus priority measures, bus stop facilities, rail facilities, associated highway infrastructure to support public transport modes, the cycling network, pedestrian facilities and park and ride sites a sum of ONE HUNDRED AND SEVENTY-SIX THOUSAND ONE HUNDRED POUNDS (£176,100)
4. There shall be paid as a commuted sum to the Council an Education Contribution calculated at the rate of £1320 per Dwelling in respect of the total number of Dwellings authorised to be erected on the Application Site for which consent is given pursuant to Subsequent Applications (adjusted for inflation in accordance with paragraph 9) but the Due Date for actual payment of such sums shall be as set out in the provisions of paragraph 8.3
5. There shall be paid to the Council



5.1 the Play Equipment Payment in the sum of SEVENTY FIVE THOUSAND POUNDS (£75,000) (adjusted for inflation in accordance with paragraph 9), and

5.2 the Park Maintenance Payment in the sum of SIXTY THOUSAND POUNDS (£60,000)(adjusted for inflation in accordance with paragraph 9) and

5.3 the Open Space Maintenance Payment in the sum of ONE HUNDRED AND FIFTY THOUSAND POUNDS (£150,000)(adjusted for inflation in accordance with paragraph 9)

all of which payments shall be made in accordance with paragraph 8.4 and dealt with in accordance with the terms of the Fifth Schedule

6. There shall be paid to the Council the Kirkby Regeneration Payment in the sum of TEN THOUSAND POUNDS (£10,000) per 4 Dwellings (rounded up to the next multiple of 4) for which consent is given pursuant to Subsequent Applications (subject to a minimum payment of ONE MILLION POUNDS (£1,000,000) provided that consent in total is given to not less than 361 Dwellings) but the Due Date for actual payment of such sums shall be as set out in the provisions of paragraph 8.5. All sums received by the Council pursuant to this Paragraph 6 shall be dealt with in accordance with the terms of the Fourth Schedule

7. There shall be paid to the Council the Portland Park Payment the sum of ONE HUNDRED THOUSAND POUNDS (adjusted for inflation in accordance with paragraph 9) in accordance with the provisions of paragraph 8.6 and which shall be dealt with in accordance with the terms of the Sixth Schedule

8. The Due Date for payment of the above sums shall be

8.1 Under Paragraph 2

8.1.1 £120,000 (adjusted for inflation in accordance with paragraph 9) on the day prior to the Commencement of the Proposed Development

8.1.2 £120,000 (adjusted for inflation in accordance with paragraph 9) on the day prior to the first occupation of the 100<sup>th</sup> Dwelling on the Application Site

- 8.1.3 £120,000 (adjusted for inflation in accordance with paragraph 9) on the day prior to the first occupation of the 200<sup>th</sup> Dwelling on the Application Site
- 8.1.4 £120,000 (adjusted for inflation in accordance with paragraph 9) on the day prior to the first occupation of the 300<sup>th</sup> Dwelling on the Application Site UNLESS Subsequent Applications covering the whole of the Application Site shall have been approved prior to the first occupation of the 300<sup>th</sup> Dwelling pursuant to which less than 400 units of occupation can be built in total on the Application Site IN WHICH CASE this payment shall be of all remaining sums calculated in accordance with paragraph 2 ('the Lesser Sum') that is to say (£1200 x N) where N = the number of Dwellings above 300 approved to be erected on the whole of the Application Site
- 8.1.5 In the event that the Lesser Sum has been paid pursuant to paragraph 8.1.4 above and a further Subsequent Application is granted pursuant to which more Dwellings can be built in total on the Application Site than the number of Dwellings in respect of which the Lesser Sum has been calculated the difference between the Lesser Sum and the sum which would have been payable had the Subsequent Application been granted prior to the making of the payment of the Lesser Sum shall be paid prior to the Commencement of Development implementing the consent pursuant to that further Subsequent Application and this paragraph 8.1.5 shall apply as often as may be mutatis mutandis until Subsequent Applications covering the whole of the Application Site shall have been approved pursuant to which no less than 400 Dwellings can be built in total on the Application Site) and for the avoidance of doubt the maximum sum having a Due Date for payment pursuant to the combined provisions of paragraph 8.1.4 and this paragraph 8.1.5 shall be £120,000 (but nevertheless adjusted for inflation in accordance with paragraph 9)
- 8.1.6 a further £4,800 (adjusted for inflation in accordance with paragraph 9) on the day prior to the first occupation of the 401<sup>st</sup>, 405<sup>th</sup> and each subsequent 4<sup>th</sup> Dwelling erected on the Application Site thereafter PROVIDED THAT if the remaining number of Dwellings still to be occupied on the Application Site pursuant to the only remaining

Subsequent Application which can be implemented is less than 4 ('the Residual Dwellings') then that final payment shall be of  $(£1200 \times D)$  (adjusted for inflation in accordance with paragraph 9) where D is the number of Dwellings yet to be occupied on the Application Site and shall be paid prior to the occupation of the first of the Residual Dwellings.

8.2 Under Paragraph 3 on the day prior to the Commencement of the Proposed Development.

8.3 Under Paragraph 4

8.3.1 £264,000 (adjusted for inflation in accordance with paragraph 9) on the day prior to the first occupation of the 150<sup>th</sup> dwelling erected on the Application Site and

8.3.2 £264,000 (adjusted for inflation in accordance with paragraph 9) on the day prior to the first occupation of the 300<sup>th</sup> dwelling erected on the Application Site UNLESS Subsequent Applications covering the whole of the Application Site shall have been approved prior to the first occupation of the 300<sup>th</sup> Dwelling pursuant to which less than 400 units of occupation can be built in total on the Application Site IN WHICH CASE this payment shall be of all remaining sums calculated in accordance with paragraph 4 ('the Lesser Sum') that is to say  $(£132,000 + (£1320 \times E))$  where E = the number of Dwellings above 300 approved to be erected on the whole of the Application Site

8.3.3 In the event that the Lesser Sum has been paid pursuant to paragraph 8.3.2 above and a further Subsequent Application is granted pursuant to which more Dwellings can be built in total on the Application Site than the number of Dwellings in respect of which the Lesser Sum has been calculated the difference between the Lesser Sum and the sum which would have been payable had the Subsequent Application been granted prior to the making of the payment of the Lesser Sum shall be paid prior to the Commencement of Development implementing the consent pursuant to that further Subsequent Application and this paragraph 8.3.3 shall apply as often as may be mutatis mutandis until Subsequent

Applications covering the whole of the Application Site shall have been approved pursuant to which no less than 400 Dwellings can be built in total on the Application Site) and for the avoidance of doubt the maximum sum having a Due Date for payment pursuant to the combined provisions of paragraph 8.3.2 and this paragraph 8.3.3 shall be £264,000 (but nevertheless adjusted for inflation in accordance with paragraph 9)

8.3.4 a further £5,280 on the day prior to the first occupation of the 401<sup>st</sup>, 405<sup>th</sup> and each subsequent 4<sup>th</sup> Dwelling erected on the Application Site thereafter PROVIDED THAT if the remaining number of Dwellings still to be occupied on the Application Site pursuant to the only remaining Subsequent Application which can be implemented is less than 4 ('the Residual Dwellings') then that final payment shall be of (£1320 x D) (adjusted for inflation in accordance with paragraph 9) where D is the number of Dwellings yet to be occupied on the Application Site and shall be paid prior to the occupation of the first of the Residual Dwellings

#### 8.4 Under Paragraph 5

- 8.4.1 as to the payment due under Paragraph 5.1 on the day prior to the first occupation of the 175<sup>th</sup> dwelling erected on the Application Site or such other date as shall be agreed by the Council following the submission of a Subsequent Application, whichever is the later, and
- 8.4.2 as to the payment due under Paragraph 5.2 as provided in Paragraph 4 of the Fifth Schedule
- 8.4.3 as to the payment due under Paragraph 5.3 as provided in Paragraph 8 of the Fifth Schedule

#### 8.5 Under Paragraph 6

- 8.5.1 as to the first £100,000 on the day prior to the Commencement of the Proposed Development
- 8.5.2 as to the second £100,000 on the day prior to the first occupation of the 41<sup>st</sup> Dwelling erected on the Application Site and
- 8.5.3 as to the third £100,000 on the day prior to the first occupation of the 81<sup>st</sup> Dwelling erected on the Application Site and
- 8.5.4 as to each further £100,000 on the day prior to the first occupation of the 121<sup>st</sup>, 161<sup>st</sup> and each subsequent 40<sup>th</sup> Dwelling erected on the Application Site up to and including the 361<sup>st</sup> Dwelling
- 8.5.5 a further £10,000 on the day prior to the first occupation of the 401<sup>st</sup>, 405<sup>th</sup> and each subsequent of 4<sup>th</sup> Dwelling erected on the Application Site thereafter

8.6 Under Paragraph 7 on the day prior to the Commencement of the Proposed Development

- 9.1 Where any amount is payable pursuant to the provisions of paragraphs 2, 5 or 7 of this First Schedule the amount to be paid shall be adjusted for inflation in accordance with the following formula :-

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

Where:-

P = the amount payable pursuant to paragraphs 2, 5 or 7 of this First Schedule as the case may be

A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in respect of the month of January 2003.

B = the RPI figure for the month in which the relevant Due Date falls

But so that if at any time B shall be less than A the amount payable pursuant to the relevant paragraphs as the case may be shall nevertheless be paid in full without reduction

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

$$\frac{(P \div A) \times B}{100} \times 104$$

Where:-

P = the amount payable pursuant to Paragraph 3 of this First Schedule

A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in respect of the month of January 2003.

B = the RPI figure for the month in which the relevant Due Date falls

*PROVIDED ALWAYS* that:

- (a) if such sum or any part thereof shall not be paid on or before its Due Date it shall carry interest at 4% per annum over the Base Lending Rate for the time being of Barclays Bank plc from the Due Date until actual payment and
- (b) if any payment due under this Agreement is to be paid prior to the first occupation of a particular Dwelling, no more than the number of Dwellings which is the trigger for that payment may be occupied until that payment has been made, and

- (c) payment of any commuted sum shall not in itself constitute commencement of the Proposed Development for the purposes of implementing the Planning Permission

## SECOND SCHEDULE

### TREATMENT OF EDUCATION CONTRIBUTIONS

Where in this Agreement reference is made to an Education Contribution the following provisions shall apply to such payment:-

1. Any Education Contribution received by the Council shall be ring fenced and be spent only in accordance with the following provisions of this Schedule.
2. The Council will work in conjunction with the Education Authority to procure that capital expenditure is undertaken by the Education Authority to make provision for the Education Need. The Council at its sole discretion will agree with the Education Authority a programme of works to address the Education Need but will, if at any time requested by the Owner in writing, advise the Owner of any works agreed pursuant to this paragraph.
3. As soon as the Council is satisfied that the Education Authority has let a contract for work to meet the Education Need or has otherwise entered into a binding commitment to meet it the Council may in its absolute discretion release to the Education Authority a sum from the amount(s) ring fenced by the Council to meet the Education Need up to an amount which the Council in its absolute discretion is satisfied that the Education Authority has committed to meet the Education Need.
4. Where the Council has received more than one Education Contribution in respect of the same Education Need, whether from the Owner or other owners of sites which also give rise to the same Education Need, the Education Contributions received by the Council shall be applied by them in payment to the Education Authority in the order in which they were received by the Council.



5. If any Education Contribution has not been paid by the Council to the Education Authority by the fifth anniversary of the date on which the Education Contribution was made then upon receipt by the Council of written notice by the Owner requiring the Education Contribution to be repaid the Council shall repay it (but without interest) to the Owner (which for the purposes of this and the next following paragraph only shall mean the Owner by whom the Education Contribution is made and not its successors in title). For the avoidance of doubt, any sum paid out of an Education Contribution by the Council to the Education Authority after the fifth anniversary of its payment but before the Council is served with written notice pursuant to this paragraph, any amount actually paid by the Council to the Education Authority before receipt of such notice shall not have to be repaid to the Owner.

6. At any time prior to the fifth anniversary of the making of an Education Contribution the Council shall upon written request by the Owner supply to the Owner reasonable short particulars of any payments made by the Council to the Education Authority from that Education Contribution pursuant to the provisions of this Schedule provided that the Council shall be under no further obligation to answer any such request after they have given sufficient particulars pursuant to this paragraph showing that the whole of the Education Contribution has been expended.

## **THIRD SCHEDULE**

### **AFFORDABLE HOUSING OBLIGATIONS**

1. Subject to the provisions of this Schedule the Owner shall in every Subsequent Application make provision for not less than 6% of the total Dwellings to be provided pursuant to that Subsequent Application to be constructed as Affordable Housing Units and if approval is given to that Subsequent Application any units designated as Affordable Housing Units in the approval shall be constructed in accordance with the plans submitted with the Subsequent Application and the Owner may not dispose of such units save in accordance with the following terms of this Schedule
2. All Affordable Housing Units shall be provided with a vehicular access foul and surface water sewers and water gas electricity and telecommunication service systems linking in each case to the estate roads sewers and service systems to be constructed and laid as part of the remainder of the Proposed Development and connected ultimately (unless that the relevant authority shall refuse (except for reasonable cause) to accept their adoption) to highways and sewers maintainable at the public expense.
3. The Owner shall not permit the first occupation of more than 50% of the non-Affordable Housing Units to be built pursuant to any Subsequent Application to which this Schedule applies until the Affordable Housing Units to be erected pursuant to the Subsequent Application have been transferred in accordance with paragraph 5 to a Registered Social Landlord drawn from a list of Registered Social Landlords as may be approved by the Council
4. The transfer to the Registered Social Landlord shall be in a form approved by the Council's Solicitor and on terms that will ensure that 75% of the Affordable Housing Units erected pursuant to the Subsequent Application are made available on a rental basis with the remaining Affordable Housing Units being provided by way of shared ownership leases

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

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

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

“Except under an order of the Registrar no transfer, assent or other dealing by the Proprietor of the property is to be registered without the transferee’s solicitor producing to the Land Registry a Certificate confirming that the purchase price for the property does not exceed 75% of the Open Market Value as determined in accordance with an Agreement dated [DATE] and made under Section 106 of the Town and Country Planning Act 1990 between Alan Sowter, Edwin Sowter and Keith Sowter (1) and Ashfield District Council (2)”

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

8.5 If all the Affordable Housing Units constructed pursuant to that Subsequent Application as the case may be shall have been transferred pursuant to the provisions of this paragraph 8 the restrictions on occupation of the non-Affordable Housing Units constructed pursuant to that Subsequent Application shall cease

9 If not less than twelve months have elapsed from the giving of a notice pursuant to paragraph 6 the Owner may dispose of the freehold interest in any of the Affordable Housing Units constructed pursuant to that Subsequent Application

to any person (whether or not that person qualifies with the requirements of sub-paragraph 8.4) provided that the transfer to him complies in all respects with the requirements of the said sub-paragraph 8.4, its sub-sub-paragraphs and sub-sub-sub-paragraphs

- 10 If at any stage the Owner and the Council so agree any of the Affordable Housing Units may be sold in the open market without restriction and the Owner shall be entitled to retain the proceeds of sale therefrom save that the Owner shall pay to the Council not later than 14 days from the date of the legal completion of the relevant sale a sum equal to 40% of the agreed open market value of the Unit inclusive of standard fixtures and fittings but disregarding the value of any additions made thereto or extras included by the Owner as part of the sale and always provided that

10.1 any sums paid to the Council pursuant to paragraph 10 shall be held by them in an interest bearing account and shall be applied solely for the purpose of providing affordable housing be it for rental shared ownership or discounted market sale within the District of Ashfield

10.2 if any of the sums paid to the Council for the purpose of providing affordable housing have not been spent within 5 years of the date of the last such payment then those such sums shall be repaid together with interest to the person who paid the sums to the Council and where there is more than one such person the sums paid by each shall be clearly identifiable whether held in the same account or not

11. If all the Affordable Housing Units constructed pursuant to that Subsequent Application shall have been transferred pursuant to the provisions of paragraphs 8,9 or 10 the restrictions on occupation of the non-Affordable Housing Units constructed pursuant to that Subsequent Application shall cease

- 12 The covenants within this Schedule shall not be binding on a mortgagee in possession exercising a power of sale under their mortgage nor the right to acquire the freehold interest in any of the said Affordable Housing Units pursuant to any statutory right to acquire the same

## **FOURTH SCHEDULE**

### **KIRKBY REGENERATION PAYMENT**

Where in this Agreement reference is made to the Kirkby Regeneration Payment the following provisions shall apply to such payment:-

1. The Council shall ring fence the Kirkby Regeneration Payment in a bank deposit account so as to earn the highest rate of return reasonably obtainable and all such return is to be credited to the Kirkby Regeneration Payment and be spent only in accordance with the following provisions of this Schedule.
2. The Council shall use the Kirkby Regeneration Payment only for purposes which will in the opinion of the Council tend to achieve the urban regeneration of the town centre of Kirkby-in-Ashfield, including its commercial, leisure, transport, cultural and municipal facilities and environmental amenities.
3. Without prejudice to the generality of Paragraph 2 the Council may out of the funds for the time being comprising the Kirkby Regeneration Payment held by it:
  - 3.1 Spend any part of the funds on the improvement of any facilities owned by the Council
  - 3.2 Spend any part of the funds on the acquisition of any property to be owned by the Council
  - 3.3 Make a loan of any part of the funds (whether or not on commercial terms and with or without interest) to any person or public or private body for the purpose only of enabling the improvement of any building, structure or grounds within the town centre of Kirkby-in-Ashfield provided that any repayment of such loan (including interest where applicable) shall be paid into the account mentioned in Paragraph 1 and be held as part of the Kirkby Regeneration Payment
  - 3.4 Make a grant of any part of the funds (whether or not on commercial terms and with or without interest) to any person or public or private body for the purpose only of enabling the improvement of any

building, structure or grounds within the town centre of Kirkby-in-Ashfield

3.5 Purchase and/or build and/or refurbish for resale of any property which in the opinion of the Council tend to achieve the urban regeneration of the town centre of Kirkby-in-Ashfield provided that any sum received on the resale of such a property shall be paid into the account mentioned in Paragraph 1 and be held as part of the Kirkby Regeneration Payment

4. The Council shall continue to hold the Kirkby Regeneration Payment (including any repayments made in the circumstances of or similar to Paragraphs 3.3 & 3.5) until it shall be exhausted. The Council shall publish an annual account of all expenditure from the Kirkby Regeneration Payment but shall not be under any other obligation to account to the Owner for it nor at any time to return it or any part of it.



## FIFTH SCHEDULE

### OPEN SPACE PROVISION

1. The Master Plan shall include an area of not less than 750 square metres to be used as public park and children's play area ('the Park'). If consent is given to a Subsequent Application including that part of the Application Site in which the Park is sited and it is thereafter implemented the Owner shall lay out the Park in accordance with any relevant conditions in the consent.
2. The Play Equipment Payment shall be used by the Council to provide children's play equipment on the Park (and for no other purpose).
3. Not later than six months after the Council's Head of Development Services shall have given his approval that the relevant conditions in the consent given to the Subsequent Application have been complied with the Owner shall transfer the freehold interest in the Park to the Council with Title Absolute such transfer to contain covenants to the following effect:-
  - (i) The Park shall be used solely for the purpose of providing recreation and amenity space for use by the general public.
  - (ii) The Council shall take reasonable steps to ensure that use of the Park shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development
  - (iii) No development shall take place on the Park other than for the purpose of facilitating its use for recreation and amenity purposes

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

4. On the date of transfer the Owner shall pay to the Council the Park Maintenance Payment

5. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Park
6. The Master Plan shall include provision for laying out the Blue Land to be used as public open space. If consent is given to a Subsequent Application in which one or more conditions require work to be carried out on or to the Blue Land and that Subsequent Application is thereafter implemented the Owner shall lay out the Blue Land in accordance with any relevant conditions in the consent.
7. Not later than six months after the Council's Head of Development Services shall have given his approval that the relevant conditions in the consent given to the Subsequent Application have been complied with the Owner shall transfer the freehold interest in the Blue Land to the Council with Title Absolute such transfer to contain covenants to the following effect:-
  - (i) The Blue Land shall be used solely for this purpose of providing recreation and amenity space for use by the general public.
  - (ii) The Council shall take reasonable steps to ensure that use of the Blue Land shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development
  - (iii) No development shall take place on the Blue Land other than for the purpose of facilitating its use for recreation and amenity purposes

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

8. On the date of transfer the Owner shall pay to the Council the Open Space Maintenance Payment
9. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Blue Land

## SIXTH SCHEDULE

### PORTLAND PARK PAYMENT

1. The Council shall use the Portland Park Payment for the improvement of leisure facilities at Portland Park including the visitor centre and for no other purpose.
2. If the Portland Park Payment has not been expended by the Council for purposes permitted by paragraph 1 by the fifth anniversary of the date on which the Portland Park Payment was made then upon receipt by the Council of written notice by the Owner requiring the Portland Park Payment to be repaid the Council shall repay it (but without interest) to the Owner, which for the purposes of this and the next following paragraph only shall mean the Owner by whom the Portland Park Payment is made and not its successors in title. For the avoidance of doubt, any sum spent out of the Portland Park Payment by the Council after the fifth anniversary of its payment but before the Council is served with written notice pursuant to this paragraph, any amount actually spent by the Council before receipt of such notice shall not have to be repaid to the Owner.
3. At any time prior to the fifth anniversary of the making of the Portland Park Payment the Council shall upon written request by the Owner supply to the Owner reasonable short particulars of any payments made by the Council from that Portland Park Payment pursuant to the provisions of this Schedule provided that the Council shall be under no further obligation to answer any such request after they have given sufficient particulars pursuant to this paragraph showing that the whole of the Portland Park Payment has been expended.

SIGNED AS A DEED by

**ALAN SOWTER**

In the presence of:

SIGNED AS A DEED by

**EDWIN SOWTER**

In the presence of:

SIGNED AS A DEED by

**KEITH SOWTER**

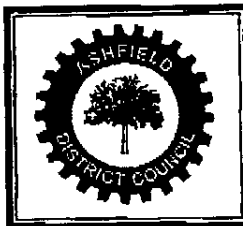
**DAVID E. KING**

SOLICITOR  
THE COMMON SEAL OF  
CHESTERFIELD

**ASHFIELD DISTRICT COUNCIL**

Was affixed to this Deed

In the presence of:



# OUTLINE PLANNING APPLICATION

## TOWN AND COUNTRY PLANNING ACT 1990

### TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995

PLANNING REF: 2003/1094

The **ASHFIELD DISTRICT COUNCIL** "Authority" in pursuance of its powers contained within the above mentioned Act and having considered an application for **Outline Planning Permission**

By **W. Westerman Ltd**  
 For **Site for Residential and Open Space Uses with Associated Infrastructure and Accesses**  
 At **Land At Studfold Farm, Lindleys Lane, Kirkby-in-Ashfield Nottingham**

as shown on the plans submitted with the application to the Authority on 05/11/2003 hereby make the following decision:

### CONDITIONAL OUTLINE PLANNING PERMISSION

for the development as described in the application subject to compliance with the **Conditions** imposed and for the **Reasons** set out below.

#### CONDITIONS

1. The formal approval of the Local Planning Authority shall be obtained prior to the commencement of any part of the development with regard to the following Reserved Matters:
  - a) siting;
  - b) design;
  - c) external appearance of the buildings;
  - d) the means of access thereto; and
  - e) the proposed landscaping of the site including boundary treatment.
 Where the development is proposed to be phased, no part of the development shall be commenced until the formal approval of the Local Planning Authority has been obtained for the reserved matters of that part.
2. Application for approval of the Reserved Matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

3. The development to which this permission relates shall be begun not later than whichever is the later of the following dates:
  - (a) The expiration of 5 years from the date of this permission.
  - (b) The expiration of 2 years from the date of the approval of the said Reserved Matters, or in the case of approval on different dates, the date that the last Reserved Matter was approved.
4. This permission does not relate to the submitted Illustrative Master Plan. Prior to the commencement of any development a revised Master Plan shall be submitted to and agreed in writing by the Local Planning Authority.
5. Development shall not commence until details of the following, designed in accordance with the Nottinghamshire County Council's Highway Design Guide and the General Specification for Roadworks, have been submitted to and approved in writing by the LPA;
  - a) The proposed junction improvements at Grives Lane/ Kingsway.
  - b) Details and costings for a scheme of traffic calming on Central Avenue and also the Kingsway service road.
  - c) The limited access junction for Lindley's Lane and the proposed estate road.
  - d) The highway layout, new roads, visibility splays, turning facilities, structures, pedestrian facilities, longitudinal and cross sections through the new roads, indicating surface water drainage and outfall proposals along with details of street lighting.
6. No development shall be occupied until the following works have been constructed to the satisfaction of the LPA:
  - a) The junction improvements at Grives Lane/Kingsway .
  - b) The limited access junction of Lindley's Lane and the new estate road.
7. None of the development hereby approved shall be occupied or brought into use until such time as an adequate means of disposal of foul sewage has been constructed and is capable of use to the satisfaction of the Local Planning Authority.
8. No building operations shall commence on site until such time as an adequate means of disposal of surface water has been constructed and is capable of use to the satisfaction of the Local Planning Authority.
9. The Management Scheme as detailed in the Ecological Assessment to be implemented in accordance with a timetable which subject to:
  - a) Further investigation into the possibility of stripping soil from Compartment 2.
  - b) The laying of green hay from the adjacent SSSI over the newly exposed bare soil.
  - c) Stock proof fencing to be erected in locations to be agreed in writing by the Local Planning Authority.
10. Unless otherwise agreed in writing all existing trees and hedges as identified on Plan 2094/L/01 Rev D contained within the submitted Landscape Strategy shall be retained. All retained trees and hedges shall be protected during construction in accordance with a previously agreed Method Statement submitted to and approved, in writing, by the Local Planning Authority
11. No demolition works shall take place until a scheme indicating the method of demolition, the hours of operation for demolition works, the method of removal, the length of time required for demolition, the finished surface treatment and the boundary treatment has been submitted to and agreed in writing by the Local Planning Authority. Demolition shall then proceed in accordance with the agreed scheme.

12. Prior to the commencement of development an environmental assessment against the Building Research Establishment Environmental Assessment Method (BREEAM) or equivalent assessment approved by the Local Planning Authority, shall be submitted for the written approval of the Local Planning Authority demonstrating that the development will achieve a "very good" rating. The development shall then be carried out in accordance with the approved assessment.
13. Notwithstanding the details contained within the Transport Assessment full details of the Lindleys Lane/New Spine Road junction design shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any work on the site.
14. Prior to the commencement of work on the site precise details of emergency access link between the site and Lindleys Lane shall first have been submitted to and agreed in writing by the Local Planning Authority.
15. Prior to the commencement of development precise details of the balancing lagoon shall first be submitted to and approved in writing by the Local Planning Authority.
16. No development shall commence until detailed soil contamination investigations have been carried out across the entire site, in such manner as may be agreed in writing by the Local Planning Authority. The findings of the investigation shall be reported to and agreed by the Local Authority. Any necessary measures identified by the investigations shall be carried out in full before the use of the site, hereby permitted, begins.
17. Prior to the commencement of development full details, including a programme of implementation, shall be submitted to and agreed in writing by the Local Planning Authority with regard to the provision of rear access facilities to those properties on Manor Crescent/Central Avenue that currently enjoy the benefit of such facilities.
18. The site shall be developed at a minimum density of 34 dwellings per hectare.
19. No development approved by this permission shall be commenced until a scheme for the provision and implementation of a surface water run-off limitation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved programme and details.
20. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies with an overall capacity compatible with the site being drained.
21. Prior to the commencement of development a further Noise Assessment of the Road Traffic Noise shall be submitted to and agreed in writing by the Local Planning Authority. Such should contain details of all mitigation measures with regard to all noise sources affecting the site together with an implementation programme.
22. Prior to the commencement of any development a working design, method statement and timetable of mitigation for any undue effects on the Kirkby Grives SSSI shall be submitted to and agreed by the Local Planning Authority.

## REASONS

1. To comply with Section 92 of the Town and Country Planning Act 1990.
2. To comply with Section 92 of the Town and Country Planning Act 1990.
3. To comply with Section 92 of the Town and Country Planning Act 1990.
4. For the avoidance of any doubt.
5. To ensure a satisfactory means of access to serve the site.
6. To ensure a satisfactory means of access to serve the site.
7. To ensure the satisfactory provision of foul drainage facilities.
8. To ensure the satisfactory provision of surface water drainage facilities.
9. To ensure that existing habitats are protected and new habitats created.

- 10.To ensure that existing landscape features are retained.
- 11.In order to minimise disturbance to neighbouring properties, and ensure a satisfactory appearance of the site in the interim period between demolition and redevelopment
- 12.To ensure that the site is developed in accordance with highest sustainable principles.
- 13.To ensure that the new junctions are designed to prevent "rat running" and create an acceptable visual feature in the street scene.
- 14.To ensure that the new junctions are designed to prevent "rat running" and create an acceptable visual feature in the street scene.
- 15.To ensure that the balancing lagoon is design so as to maximise habitat creation and is not a safety hazard.
- 16.To ensure that the site, when developed, is free from contamination, in the interests of safety.
- 17.To ensure that existing access rights are protected
- 18.To comply with Local Plan Policy and ensure the most efficient use of land.
- 19.To prevent the risk of flooding.
- 20.To prevent pollution of the water environment.
- 21.To ensure that satisfactory mitigation from noise pollution is achieved.
- 22.To ensure there are no undue effects on the Kirkby Grives SSSI.

## **INFORMATIVES**

1. The applicant's attention is drawn to the planning conditions attached to this permission that require you to resolve certain matters BEFORE work commences. If work commences without first complying with the terms of the conditions then any work undertaken will be UNAUTHORISED and may be the subject of future Enforcement Action.
2. The applicant/developer is strongly advised to ensure compliance with all planning conditions, if any, attached to the decision. Failure to do so could result in LEGAL action being taken by the Ashfield District Council at an appropriate time, to ensure full compliance. If you require any guidance or clarification with regard to the terms of any planning conditions then do not hesitate to contact the Development Advice & Control Section of the Authority on Mansfield (01623 450000).
3. The future development of the site should incorporate the general principles and requirements established in the adopted Lindleys Lane Development Brief.
4. The Crime and Disorder Act 1998 places a responsibility upon the Local Planning Authority to consider the implications of crime in its decisions and to this end we work with the police in respect of planning and design issues. We wish to encourage the adoption of the Association of Chief Planning Officers 'Secured by Design' scheme on future developments, wherever possible, as a means of reducing the opportunities for crime and disorder. You are therefore advised to contact the Police Architectural Liaison Officer (tel. 0115 9672617) to discuss your proposal in relation to such.
5. The Local Planning Authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination. The responsibility for safe development and secure occupancy of the site rests with the developer.
6. This decision notice should be read in conjunction with the accompanying Section 106 Agreement.
7. With regards to the demolition the applicant is reminded that the existing buildings contain asbestos. Therefore this will need to be removed off site by a specialist contractor to a suitably licensed disposal facility.



8. It would appear from the feasibility report that, through pumping arrangements, surface water may be discharged to an adjacent catchment and the Agency may not be able to support such a change without justification.
9. A copy of the Environment Agency's comments is attached.
10. Bats are protected species under the Wildlife and Countryside Act 1981. Bats often use such buildings as those located at Studfold Farm. If there is any reason to believe that bats are present then English Nature should be informed immediately. Tel: 01733 391100.
11. It will be necessary for the applicant/developer to enter into a Section 278 Agreement with the Highways Authority.

## **REASONS FOR APPROVAL**

In the opinion of the Local Planning Authority the proposal, the subject of this approval, is acceptable as it complies with the Council's Planning Policy as stated in the Ashfield Local Plan Review (2002). In particular it complies with Policies:

ST1 - Development

ST2 - Main Urban Area

EV6 - Sites Of Importance for Nature Conservation and Geological Significance

EV7 - Sites/Buildings Supporting Species Protected By Law

EV8 - Trees and Woodlands

EV15 - Derelict And Contaminated Land Reclamation

EV16 - Water Quality and Flood Protection

HG1Ka - Housing Land Allocations - Lindleys Lane

HG3 - Housing Density

HG4 - Affordable Housing

HG5 - New Residential Development

HG6 - Public Open Space In New Residential Developments

TR2 - Cycling Provision In New Developments

TR6 - Developer Contributions To Transport Improvements

Supplementary Planning Guidance 1 - New Residential Development

and government guidance as outlined in Planning Policy Guidance Note 1 - General Policies and Principles

Planning Policy Guidance Note 3 - Housing

Planning Policy Guidance Note 9 - Nature Conservation

Planning Policy Guidance Note 13 - Transport (DOE/Department of Transport)

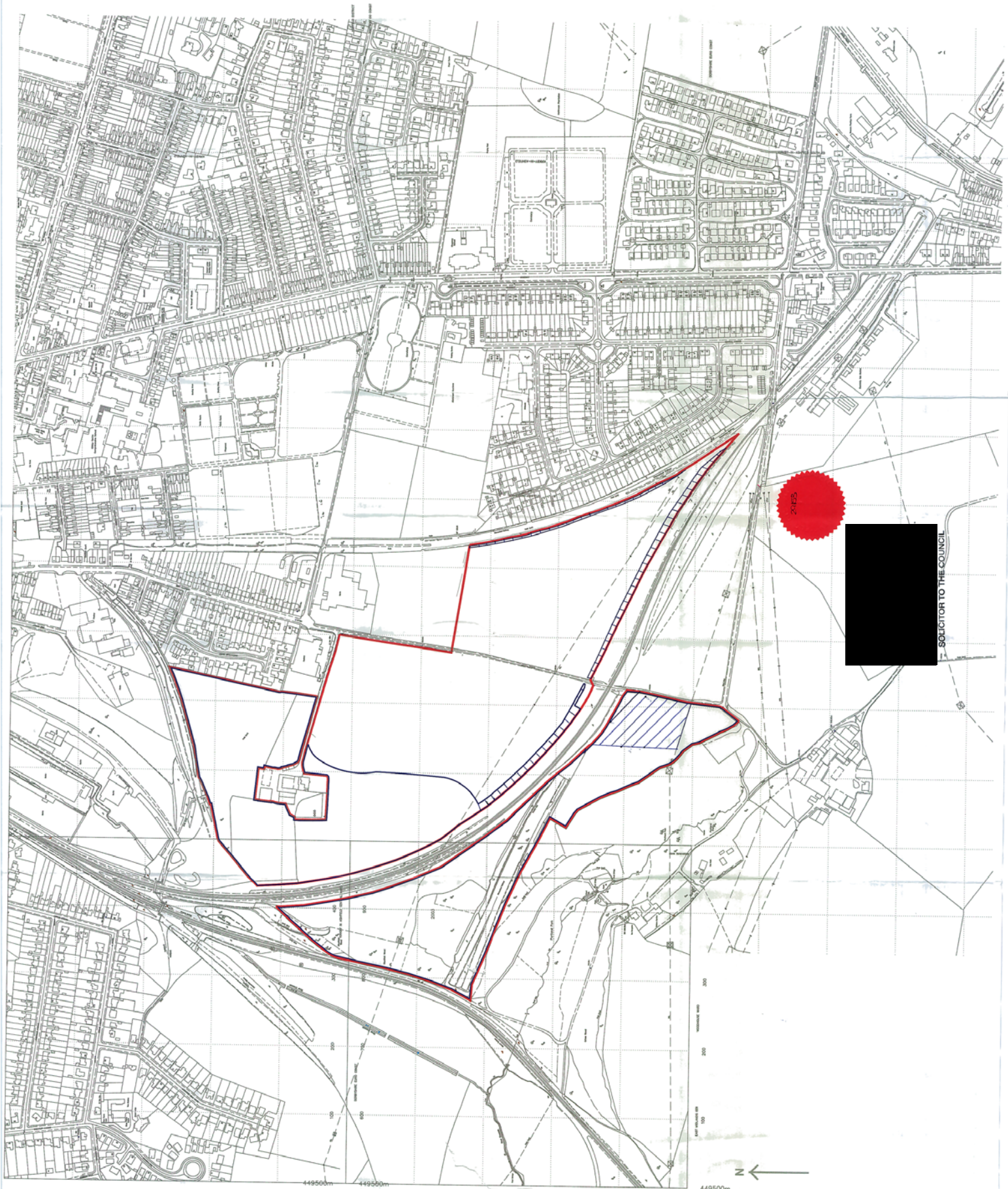
Planning Policy Guidance Note 24 - Planning and Noise

Planning Policy Guidance Note 25 - Development and Flood Risk

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**For Peter Johnson**

**HEAD OF DEVELOPMENT SERVICES**



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www.fpcr.co.uk

landscape architecture  
planning  
environmental assessment  
historic buildings  
archaeology

client: W. Westerman Limited  
project: Studfold Farm / Lady's Lane  
site: Section 106 Drawing  
scale: 1 : 2500 @ A1 size  
drawing: 2004LP01  
date:



SOLICITOR TO THE COUNCIL