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- email: planning.admin@ashfield.gov.uk
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THIS AGREEMENT is made the 6th day of April 2005

BETWEEN:

- (1) **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall, West Bridgford, 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 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 17th April 2003 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2003/0380

- 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 Balancing Lagoon' means the surface water balancing lagoon to be constructed as part of the Proposed Development in the approximate location shown edged and hatched green on the Plan
- 1.8 'the Blue Land' means the land edged blue on the Plan which is adjacent to the Application Site and belongs to the Owner.
- 1.9 'Commencement of the Proposed Development' or cognate terms means the point at which the Owner has implemented the Planning Permission (or as the case may be the detailed consent pursuant to a Subsequent Application) by carrying out a material operation as defined in Section 56(4) (a)-(d) of the Act other than the carrying out of development comprising trial holes bore pits or other ground investigation works or any other works relating to archaeology, ground surveys, works of demolition or the erection of advertisement hoardings
- 1.10 'the Council's Surveyor' means a surveyor acting on behalf of the Council to make an inspection of any part of the Application Site in accordance with any Part of the Fourth Schedule
- 1.11 'the Balancing Lagoon Maintenance Payment' means the payment of £25,180 to be made pursuant to paragraph 3 of the First Schedule of this Agreement for the continuing costs of maintaining the Balancing Lagoon to be transferred to the Council pursuant to the provisions of Part One of the Fourth Schedule

- 1.12 'the Footpath Maintenance Payment' means the payment of £12,900 to be made pursuant to paragraph 3 of the First Schedule of this Agreement for the continuing costs of maintaining the Footpath Corridor (as defined in the Fourth Schedule) to be transferred to the Council pursuant to the provisions of Part Two of the Fourth Schedule
- 1.13 'Dwelling(s)' means (a) separate residential unit(s) and shall include both Affordable Housing Unit(s) and non-Affordable Housing Unit(s)
- 1.14 '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 Hucknall
- 1.15 'Education Need' means the provision of
- 1.15.1 additional primary school places within Hucknall
- 1.15.2 additional secondary school places within Hucknall
- 1.16 "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.
- 1.17 'the Obligations' means the planning obligations contained or referred to in the First, Third and Fourth Schedules to this Agreement
- 1.18 'the Plan' means the plan attached to this Agreement
- 1.19 'the Planning Permission' means the grant of Planning Permission pursuant to the Application in the form of the draft annexed as Annex 2 to this Agreement.

- 1.20 '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
- 1.21 'Registered Social Landlord' means a registered social landlord within the meaning of the Housing Act 1996
- 1.22 'a Subsequent Application' means any application for the approval of reserved matters following the issue of the Planning Permission
- 1.23 'Transport Contribution' means a payment to be made pursuant to paragraph 2 of the First Schedule of this Agreement to be dealt with in accordance with the provisions of that Schedule and the Second Schedule

2. Recitals

WHEREAS:-

- 2.1 The Owner is seised of part of the Application Site (being part of the former Hucknall Colliery branch railway) for an estate in fee simple in possession and is registered at H.M. Land Registry as the proprietor of the remaining parts of the Application Site with title absolute variously under title numbers NT 65991, NT121757 and P183123
- 2.2 The Owner 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 within Hucknall estimated at 22 new primary places and 16 new secondary places per 100 Dwellings built on the Application Site
- 2.6 The Council resolved on 17th June 2003 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 Development would not have been granted
- 2.7 The Owner has agreed to enter into this Agreement for the purpose of procuring the issue of the Planning Permission

3. Enabling Powers

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

4. Planning Obligations

4.1 The Obligations are planning obligations for the purposes of Section 106 of the Act to the intent that the Obligations shall be binding and enforceable without time limit against the Owner and any persons deriving title from him in the manner specified in Section 106 of the Act.

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

5. Conditionality

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

6. Covenant

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

7. Agreements and Declarations

It is agreed and declared as follows:

- 7.1 Any reference to a party to this Agreement shall where the context so admits shall (in the case of the Owner) include its 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 or 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 Upon the first transfer of a legal estate in each completed Dwelling comprised within the Proposed Development that completed Dwelling shall by operation of this paragraph be released from the Obligations

7.8 If the Planning Permission having been granted shall expire before the Proposed Development is begun, or shall at any time be quashed or revoked, this Agreement shall forthwith determine and cease to have effect save that the Council shall be entitled to receive a pro rata proportion of any commuted sum payments in respect of those Dwellings erected on the Application site prior to the Planning Permission being quashed or revoked where such Dwellings are not required to be demolished

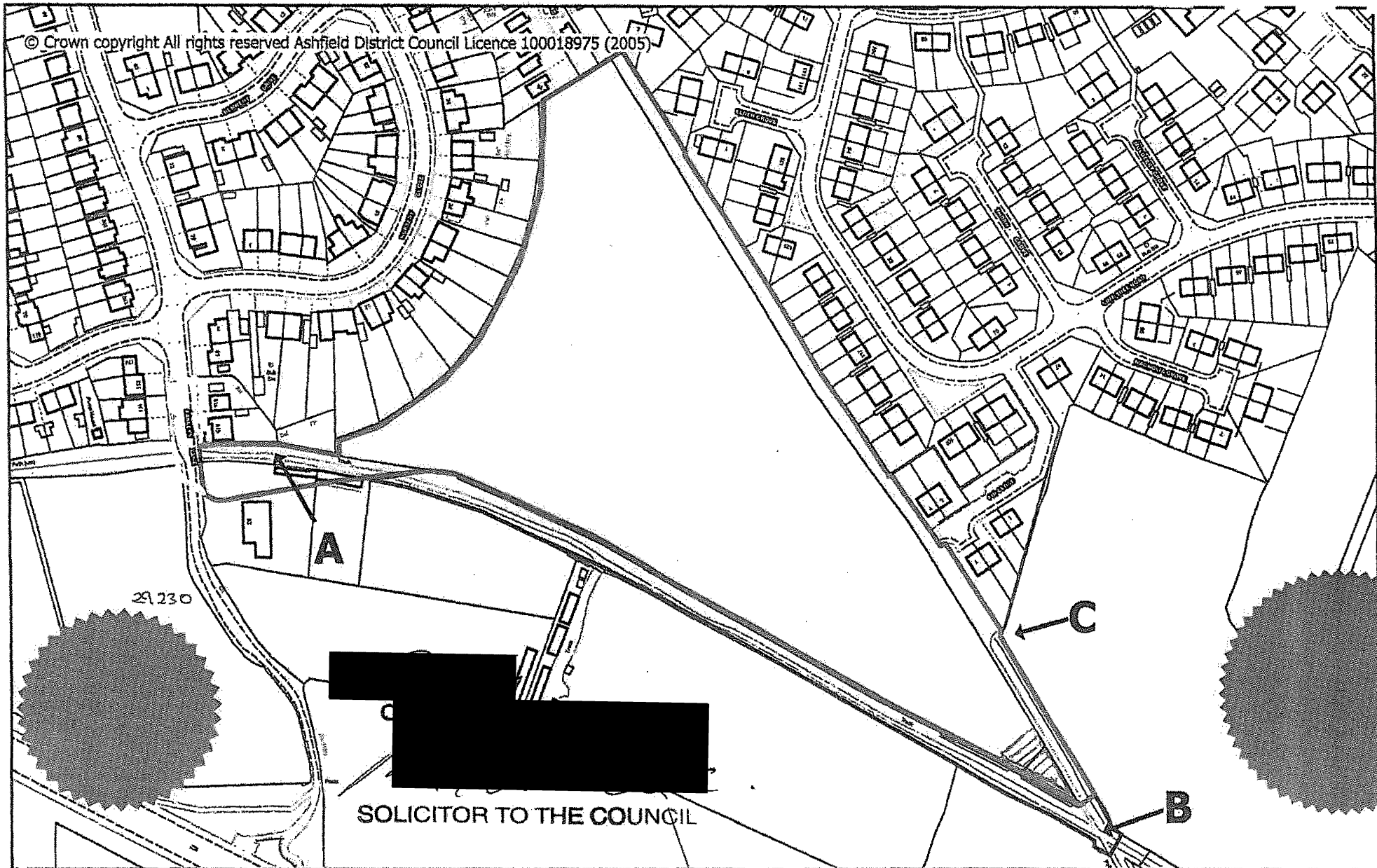
7.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the one relating to the Proposed Development as specified in the Application) granted after the date of this Agreement

7.10 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 £6750.00

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



Authorised Signatory

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



Map sheet: SK5347NE
Reference :
Prepared by: kig
23 Mar 2005

Section 106 Agreement
Residential Development
Land at Farleys Lane, Hucknall

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FIRST SCHEDULE

COMMUTED SUM PAYMENTS

1. 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 the administrative district of Ashfield in Nottinghamshire 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 a Subsequent Application (adjusted for inflation in accordance with paragraph 6.1) PROVIDED that if consent is given to more than one Subsequent Application covering the same part of the Application Site the Owner shall elect in writing to the Council prior to making payment of such sum which consent is to be implemented and no other consent pursuant to a different Subsequent Application (whether granted before or after a Subsequent Application pursuant to which payment has already been made) shall thereafter be implemented unless the Owner shall first have paid to the Council any shortfall between the sum already paid to the Council and the sum due under the provisions of this First Schedule calculated with reference to the consent to the different Subsequent Application which the Owner then wishes to implement BUT FURTHER PROVIDED that nothing herein shall require the Council to make refund of any sum already paid
2. There shall be paid as a commuted sum to the Council for expenditure on any or all of items (a) – (d) inclusive of Policy TR6 of the November 2002 Local Plan Review a sum of EIGHTY-ONE THOUSAND POUNDS (£81,000) (adjusted for inflation in accordance with paragraph 6.1)
3. There shall be paid to the Council

3.1 the Balancing Lagoon Maintenance Payment in the sum of TWENTY-FIVE THOUSAND ONE HUNDRED AND EIGHTY POUNDS (£25,180) (adjusted for inflation in accordance with paragraph 6.1), and

3.2 the Footpath Maintenance Payment in the sum of TWELVE THOUSAND NINE HUNDRED POUNDS (£12,900) (adjusted for inflation in accordance with paragraph 6.1)

4. There shall be paid as a commuted sum to the Council an Education Contribution calculated at the rate of £2520 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 6.2) but the Due Date for actual payment of such sums shall be as set out in the provisions of paragraph 5.4 PROVIDED that if consent is given to more than one Subsequent Application covering the same part of the Application Site the Owner shall elect in writing to the Council prior to making payment of such sum which consent is to be implemented and no other consent pursuant to a different Subsequent Application (whether granted before or after a Subsequent Application pursuant to which payment has already been made) shall thereafter be implemented unless the Owner shall first have paid to the Council any shortfall between the sum already paid to the Council and the sum due under the provisions of this First Schedule calculated with reference to the consent to the different Subsequent Application which the Owner then wishes to implement BUT FURTHER PROVIDED that nothing herein shall require the Council to make refund of any sum already paid

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

5.1 Under Paragraph 1 on the day prior to the Commencement of Development in respect of the Subsequent Application being implemented

5.2 Under Paragraph 2 on the day prior to the Commencement of Development on the Application Site

5.3 Under Paragraph 3 as provided in the Fourth Schedule

5.4 Under Paragraph 4

5.4.1 on the day prior to the occupation of the 30th Dwelling erected on the Application Site whichever is the greater of the sum of £102,060 OR one half of £(Tx2520) (in either case adjusted for inflation in accordance with paragraph 6.2)

where T = the total number of Dwellings authorised to be erected on the Application Site by Subsequent Applications approved prior to this Due Date

5.4.2 on the day prior to the occupation of the 60th Dwelling erected on the Application Site the sum of £(Tx2520) (adjusted for inflation in accordance with paragraph 6.2)

where T = the total number of Dwellings authorised to be erected on the Application Site by Subsequent Applications approved prior to this Due Date

LESS the sum already paid pursuant to paragraph 5.4.1 PROVIDED THAT if when payment under this paragraph 5.4.2 is made Subsequent Applications have not been approved in respect of the whole Application Site then

5.4.3 there shall ALSO be paid on the day prior to the Commencement of Development on that part of the Application Site to which any further Subsequent Application relates in respect of the number of Dwellings authorised by that Subsequent Application the sum of £(Dx2520) (adjusted for inflation in accordance with paragraph 6.2)

where D = the total number of Dwellings authorised to be erected
on the Application Site by that Subsequent Application

and this paragraph 5.4.3 shall apply as often as may be mutatis mutandis
until Subsequent Applications covering the whole of the Application Site
shall have been approved

6. Where any amount payable pursuant to this First Schedule falls to be paid on a Due Date ascertained in accordance with paragraph 5 the amount shall be adjusted for inflation as follows:-

- 6.1 For amounts payable pursuant to paragraphs 1, 2 or 3 in accordance with the following formula :-

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

Where:-

P = the amount payable pursuant to paragraphs 1, 2 or 3 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 paragraphs 1, 2 or 3 as the case may be shall nevertheless be paid in full without reduction

- 6.2 Where any amount is payable pursuant to the provisions of paragraph 4 of this First Schedule the amount to be paid shall be adjusted for inflation in accordance with the following formula :-

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

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Where:-

P = the amount payable pursuant to Paragraph 4 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 TRANSPORT PAYMENTS AND EDUCATION CONTRIBUTIONS

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

1. Any Transport Payment or Education Contribution received by the Council shall be ring fenced and be spent only in accordance with the following provisions of this Schedule and shall be kept at all times in an interest bearing account until used for the proposed herein specified
2. A Transport Payment shall only be spent for the purposes mentioned in Paragraph 2 of the First Schedule or those projects listed below and for no other purpose whatsoever
 - (a) Hucknall Inner Relief Road
 - (b) Broomhill Farm to By-Pass Bus Lane
 - (c) Hucknall By-Pass Southern Roundabout Bus/Cycle Priority measure
 - (d) Other schemes within the Hucknall-Nottingham Transport Corridor
3. If any Transport Payment has not been used by the Council by the 5th anniversary of the date on which the Transport Payment was made then upon receipt by the Council of written notice by the Owner requiring the Transport Payment to be repaid the Council shall repay it (together with interest that has accrued thereon) to the Owner. For the avoidance of doubt, any part of the Transport Payment spent by the Council after the 5th anniversary of the payment but before the Council is served with written notice pursuant to this paragraph shall not have to be repaid to the Owner

4. 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 Needs. The Council at its sole discretion will agree with the Education Authority a programme of works to alleviate the Education Needs but will, if at any time requested by the Owner in writing, advise the Owner of any works agreed pursuant to this paragraph.
5. 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.
6. 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.
7. If any Education Contribution has not been paid by the Council to the Education Authority by the 5th 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 (together with interest that has accrued thereon) to the Owner. For the avoidance of doubt, any sum paid out of an Education Contribution by the Council to the Education Authority after the 5th anniversary of the payment but before the Council is served with written notice pursuant to this paragraph shall not have to be repaid to the Owner.
8. At any time prior to the 5th anniversary of the making of a Transport or Education Contribution the Council shall upon written request by the Owner supply to the Owner reasonable short particulars of any expenditure on Transport

or Education Contributions made by the Council pursuant to the provisions of this Schedule provided that the Council shall be under no further obligation to answer any such request after they have given sufficient particulars pursuant to this paragraph showing that the whole of the Transport or Education Contribution as the case may be has been expended.

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

THIRD SCHEDULE

AFFORDABLE HOUSING OBLIGATIONS

1. Subject to the provisions of this Schedule the Owner shall in every Subsequent Application make provision for not less than 18.5% of the total Dwellings to be provided pursuant to that Subsequent Application to be constructed as a mix of 2,3 or 4 bedroom 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 to highways and sewers maintainable at the public expense.
3. Except in accordance with a programme submitted to and agreed by the Council pursuant to any Subsequent Application ('Affordable Programme') 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 (or the requisite number thereof as agreed in the Affordable Programme) 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 70% 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 built 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 on the Blue Land 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 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 or objective 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 Open 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

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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 and all of its sub-sub-paragraphs and sub-sub-sub-paragraphs

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 and made under Section 106 of the Town and Country Planning Act 1990 between Nottinghamshire County Council (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 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 either paragraphs 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

PUBLIC AREAS AND FOOTPATHS

PART ONE

1. The surface water and foul sewage disposal proposals required by Condition 10 of the Planning Permission shall provide in approximately the position shown edged and hatched green on the Plan an area sufficient to accommodate the Balancing Lagoon to trap the surface run-off to be created by the Proposed Development. No Development anywhere on the Application Site shall Commence until
 - 1.1 The details of the Balancing Lagoon as required by condition 10 of the Planning Permission and any requirements affecting the Balancing Lagoon in the ecological report required by condition 8 of the Planning Permission shall have been agreed with the Council ('the Specifications') and
 - 1.2 a Subsequent Application providing for the siting and creation of the Balancing Lagoon shall have been submitted to and approved by the Council seeking detailed consent for the improvement and management of the Balancing Lagoon and that Subsequent Application shall thereafter be implemented by the Owner who shall thereafter create the Balancing Lagoon in accordance with any relevant conditions in the approval of the Subsequent Application ('the Conditions').
2. At any time more than twelve months after the completion of the Proposed Development and subject to the provisions of paragraphs 3 - 11 the Council will accept a transfer of the Balancing Lagoon in accordance with the provisions of the following paragraphs of this Part One of this Fourth Schedule
3. At any time after twelve months have elapsed from the date when the Owner shall in its opinion have completed the Proposed Development it may invite the

Council in writing to make an inspection of the Balancing Lagoon for the purposes of this Part One of this Fourth Schedule and the Council shall as soon as practical thereafter arrange for such inspections to be made by the Council's Surveyor (who shall for the purposes of this Part One of this Fourth Schedule be a qualified drainage engineer).

4. The Council shall procure that the Council's Surveyor shall with all reasonable diligence make his inspection and either

- 4.1.1 give his written certificate that the Specifications and Conditions have been complied with and that the Balancing Lagoon is ready to be transferred to the Council, or

- 4.1.2 make a written report setting out any respects in which the Specifications and Conditions have not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and

- 4.2 forthwith serve his certificate pursuant paragraph 4.1.1 or his report pursuant paragraph 4.1.2 as the case may be on the Owner and the Council

5. If the Council's Surveyor shall have given his certificate pursuant to paragraph 4.1 then the Owner shall proceed to transfer the Balancing Lagoon to the Council in accordance with paragraphs 6-10 following but if the Council's Surveyor shall have given a report pursuant to paragraph 4.1.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the Balancing Lagoon whereupon the Council shall as soon as practical thereafter arrange for such further inspection(s) to be made the Council's Surveyor and so on as often as may be necessary (*mutatis mutandis*) until the Council's Surveyor shall have given his certificate pursuant to paragraph 4.1.1

6. For the avoidance of doubt the Council's Surveyor shall act for the purposes of paragraph 4 as an expert and not an arbitrator and his opinion shall be binding on the parties

7. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor in making any inspection of the Balancing Lagoon for the purposes of this Part One of this Fourth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice
8. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 4.1.1 the Owner may transfer the freehold interest with Title Absolute of the Balancing Lagoon to the Council and if at the date of transfer the Balancing Lagoon 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 Balancing Lagoon from the nearest public highway.
9. On the date of transfer the Owner shall pay to the Council the Balancing Lagoon Maintenance Payment
10. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Balancing Lagoon

PART TWO

11. The Owner shall construct between points A and B and between points B and C on the Plan foot/cycle paths 3 metres wide and in accordance with the typical design standard set out in the illustrated specification which is attached to this Agreement as Annex 1 and shall provide a motorcycle barrier at each point of entry ('the Specification') and no more than 49 Dwellings anywhere on the Application Site shall be first occupied until the foot/cycle paths have been constructed and transferred to the Council in accordance with the provisions of the following paragraphs of this Part Two of this Fourth Schedule

12. At any time after the Owner shall in its opinion have completed the foot/cycle paths it may invite the Council in writing to make an inspection for the purposes of this Part Two of this Fourth Schedule and the Council shall as soon as practical thereafter arrange for such inspection to be made by the Council's Surveyor.
13. The Council shall procure that the Council's Surveyor shall with all reasonable diligence make his inspection and either
 - 13.1.1 give his written certificate that the Specifications and Conditions have been complied with and that the foot/cycle paths are ready to be transferred to the Council, or
 - 13.1.2 make a written report setting out any respects in which the Specification has not yet been complied with and the steps which the Owner must make in order to rectify such omissions, and
- 13.2 forthwith serve his certificate pursuant paragraph 13.1.1 or his report pursuant paragraph 13.1.2 as the case may be on the Owner and the Council
14. If the Council's Surveyor shall have given his certificate pursuant to paragraph 13.1 then the Owner shall proceed to transfer the Blue Land together with such part of the foot/cycle paths that lie within the Application Site together in the latter case with a strip of land extending to at least 5 metres on either side of the centre line of such path for maintenance purposes (all which land is hereafter referred to as 'the Footpath Corridor') to the Council in accordance with paragraphs 15-19 following but if the Council's Surveyor shall have given a report pursuant to paragraph 13.1.2 then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the foot/cycle paths whereupon the Council shall as soon as practical thereafter arrange for such further inspection(s) to be made the Council's Surveyor and so on as often as may be necessary (*mutatis mutandis*)

until the Council's Surveyor shall have given his certificate pursuant to paragraph 13.1.1

15. For the avoidance of doubt the Council's Surveyor shall act for the purposes of paragraph 13 as an expert and not an arbitrator and his opinion shall be binding on the parties
16. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor in making any inspection of the foot/cycle paths for the purposes of this Part Two of this Fourth Schedule (and as often as may be necessary in the case of re-inspections), such costs to be paid (exclusive of any VAT) not later than 14 days after the presentation to the Owner by the Council of a copy of the Council's Surveyor's invoice
17. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 13.1.1 the Owner shall transfer the freehold interest with Title Absolute of the Footpath Corridor to the Council and if at the date of transfer the Footpath Corridor cannot be reached by direct access over adopted highways the transfer shall also contain sufficient rights of access on foot and by cycles to enable public access to the Footpath Corridor from the nearest public highway.
18. On the date of transfer the Owner shall pay to the Council the Footpath Maintenance Payment
19. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the Footpath Corridor

PART THREE

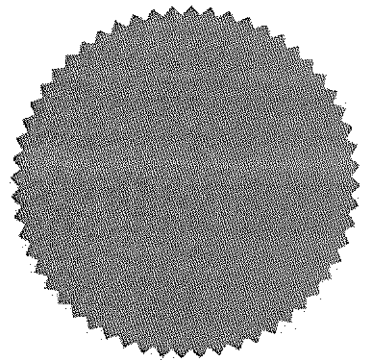
20. Where in either Parts One or Two of this Fourth Schedule any land is to be provided by the Owner and transferred to the Council before a specified event

may happen ('the Trigger') the Council may on or after approving a Subsequent Application also approve a variation to the Trigger and thereafter all references in this Agreement to the Trigger shall be to the Trigger as amended and not to the Trigger as specified in Parts One or Two (as the case may be) above.

21. Where in any of the previous Parts One or Two of this Fourth Schedule any person is to be appointed by the Council to carry out any functions as an expert and that person shall fail or neglect to carry them out or shall die or before completing those functions then the Council may either at its own discretion or upon receipt of a reasonable request by the Owner so to do appoint any other person (but without prejudice to any requirement that the appointee shall in any particular case have specified qualifications) to carry out or complete the functions which the original appointee shall have failed to carry out, and so on as often as may be necessary (*mutatis mutandis*) until the requisite functions of the expert shall have been completed.

**THE COMMON SEAL OF
NOTTINGHAMSHIRE COUNTY COUNCIL**
Was affixed to this Deed
In the presence of:

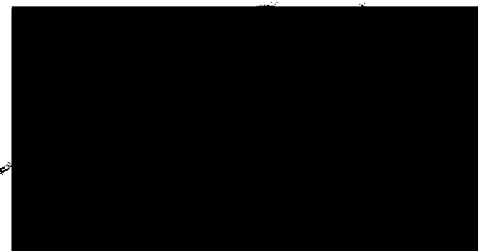
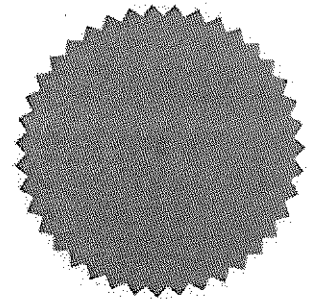
Authorised Signatory



Seal No. 28435

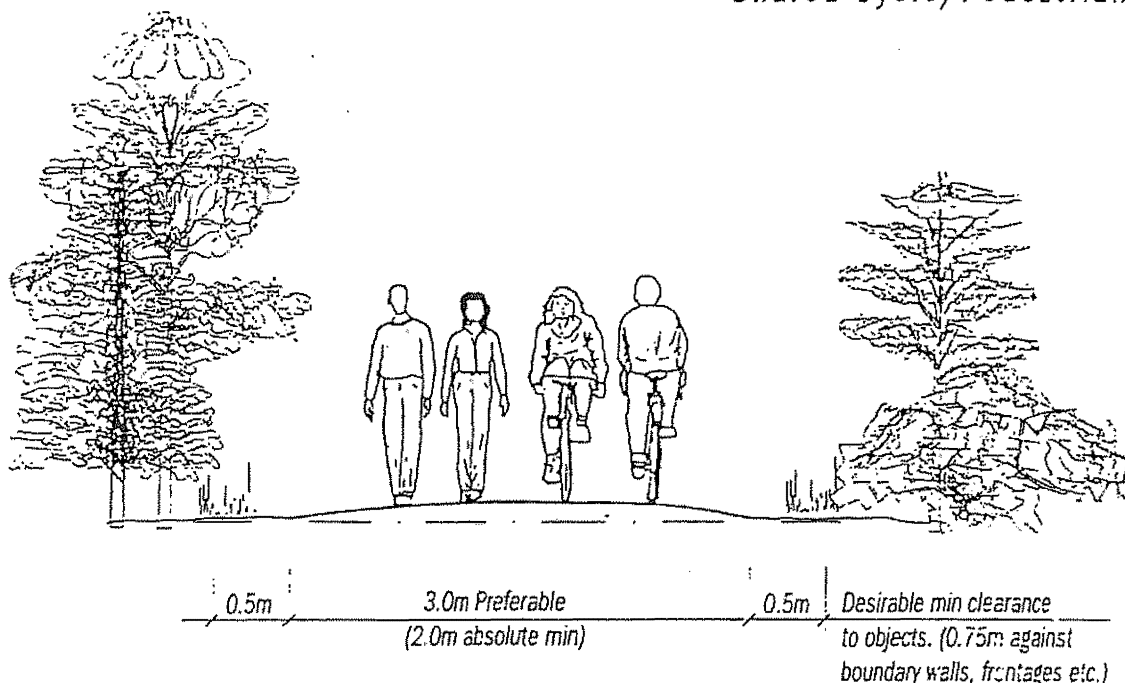
**THE COMMON SEAL OF
ASHFIELD DISTRICT COUNCIL**
Was affixed to this Deed
In the presence of:

29229

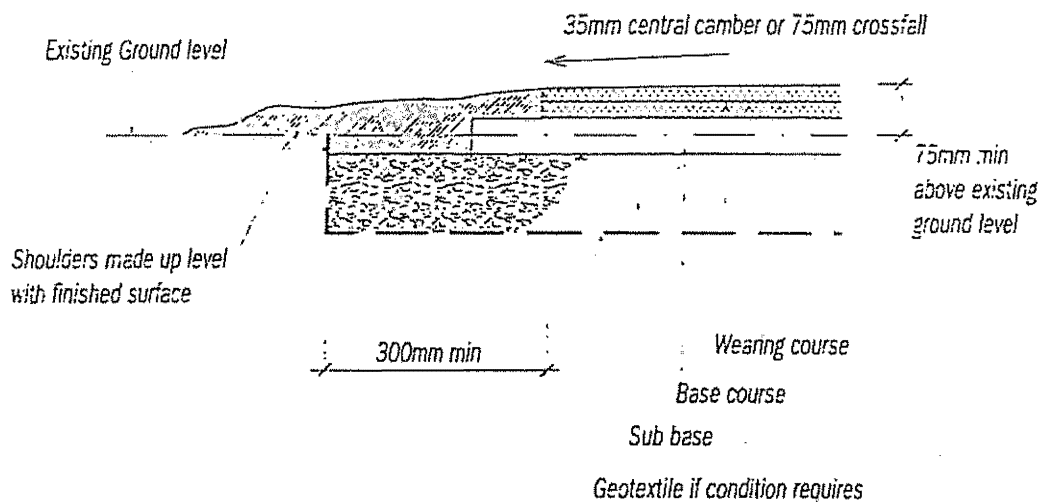


APPENDIX 1

Shared Cycle/Pedestrian Pa



Typical Section



Typical Construction Detail

Preferred Design Standard	
Design speed :	25Kph (15mph)
Minimum Radius :	6.0m
Minimum Forward Visibility :	20.0m
Gradients: Length unrestricted -	3% max
Up to 100m -	5% max
Up to 30m -	7% max *
Headroom :	2.7m (2.4 min)

* Gradients above 7% may be
exceeded over short lengths

Figure 9.1. Fe

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Shared Cycle/Pedestrian Paths

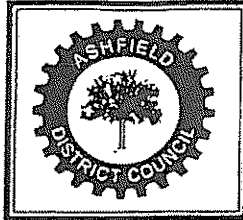
General Notes

1. Paths will generally be for shared use and unsegregated. Where flows of cyclists and pedestrians exceed 200 movements per hour per metre segregation for NCN route is by tactile white line (Diag No. 1049.1) and tactile paving. Careful signing will be required to notify users that routes are shared, by providing Diag No. 956.
2. Cyclists and pedestrians should always be segregated on steep paths where higher cyclist speeds can be anticipated.
3. Mowing should be carried out reasonably regularly (twice per year) to keep a short verge either side of the path.
4. The line of the path should be arranged where possible to provide a variation of views. Careful control of vegetation may be necessary and in places "windows" may need to be cut through trees and hedging.

References

1. Local Transport Note 1/89
Making way for cyclists.
2. Traffic Advisory Leaflet 1/86
Cycle route project, Stockton.
3. Traffic Advisory Leaflet 3/86
Cycle route project, Bedford, The Hastingbury Route.
4. Traffic Advisory Leaflet 3/95
Cycle routes.
5. Making Ways for The Bicycle - Sustrans
A guide to traffic-free path construction.
Local Transport Note 2/86
Shared use by cyclists and pedestrians.

APPENDIX 2



OUTLINE PLANNING APPLICATION

TOWN AND COUNTRY PLANNING ACT 1990

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

PLANNING REF: 2003/0380

DRAFT

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 Nottinghamshire County Council (Strategic Property)
For Erection of Dwellings, Construction of Means of Access and
 Emergency Link, Provision of Public Open Space, Footpaths,
 Landscaping, Balancing Pond and Associated Works
At Land at Lime Tree Road/Farleys Lane, Hucknall, Nottingham

as shown on the plans submitted with the application to the Authority on 17/04/2003 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 development with regard to the following Reserved Matters:
 - (a) Siting ;
 - (b) Design ;
 - (c) External appearance of the building or buildings ; and
 - (d) The proposed landscaping of the site including boundary treatment.
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. Access to the site shall be as detailed in Drawing Nos HSL00365 200, 201, 202 and 203 received by the Local Planning Authority on 27th June 2003 subject to the prior agreement of the precise location of the speed retardants. The access shall be constructed prior to the commencement of any other works associated with the site.
5. The reserved matters application shall make provision for the following:
 - a) 18.5% of dwellings to be provided as affordable housing
 - b) a minimum very good rating for the development based on the Building Research Establishment Environmental Assessment Method or similar scheme to be agreed in writing with the Local Planning Authority
 - c) an average minimum density of 30 dwellings per hectare
 - d) the provision of an emergency link only onto Fir Close
 - e) the retention of existing vegetation
 - f) an average maximum parking provision of 1.5 parking spaces per dwelling
6. A noise assessment including recommendations for any appropriate mitigation measures shall be submitted for the written approval of the Local Planning Authority. The noise assessment shall specifically assess noise sources from the nearby Rolls Royce engine testing facility and the Hucknall bypass. The development shall be carried out in accordance with the noise assessment and approved recommendations.
7. No development shall commence until detailed soil contamination and methane gas investigations have been carried out, in such manner as may be agreed in writing by the Local Planning Authority, of the areas of site which may be contaminated, and the findings of the investigation 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.
8. An ecological report including any appropriate mitigation measures shall be submitted for the written approval of the Local Planning Authority and the development shall then proceed in accordance with the approved report and recommendations.
9. No development shall take place within 2.5 metres of the public sewer(s) which crosses the site.
10. No building operations shall commence until details of the surface water and foul sewage disposal proposals serving the site and a programme for their implementation has been submitted to and approved by the Local Planning Authority. Any agreed scheme shall be implemented in full.

REASONS

DRAFT

1. To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.
2. To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.
3. To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.
4. To ensure a satisfactory means of access.
5. To satisfy policy and highway requirements and to ensure a satisfactory standard of development.
6. To protect the amenity of future residents of the development.
7. To ensure that the site, when developed, is free from contamination, in the interests of safety.
8. In the interests of nature conservation.
9. To ensure there is no damage to the sewer, and there is access for maintenance.
10. To ensure that there are adequate facilities for the disposal of foul and surface water.

INFORMATIVES

DRAFT.

1. The future development of the site should incorporate the general principles and requirements established in the Development Brief for Farleys Lane.
2. There must be no interruption to the surface water drainage system of the surrounding land as a result of the operation on the site. Provision must be made to ensure that all existing drainage systems continue to operate effectively and that riparian owners upstream and downstream of the site are not adversely affected.
3. The applicant is reminded of the terms of the Section 106 Agreement which relates to this site.
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. 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).
7. The applicant's attention is drawn to the planning condition(s) 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 condition(s) then any work undertaken will be UNAUTHORISED and may be the subject of future Enforcement Action.
8. In the event that on site balancing is required the Council may be prepared to adopt this subject to securing a 15 year maintenance sum by way of a Section 106 Planning Obligation. Such land will not be deemed to represent a contribution towards Public Open Space.
9. With regard to Condition 4 the Council will wish to undertake a further consultation exercise with local residents and Nottinghamshire County Council

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For Peter Johnson
HEAD OF DEVELOPMENT SERVICES

17/06/2003