

DATED 10th April

2014

THE COUNCIL OF THE ISLES OF SCILLY

(1)

and

CORNWALL RURAL HOUSING ASSOCIATION LIMITED

(2)

PLANNING OBLIGATION BY

AGREEMENT under

Section 106 of the Town and

Country Planning Act 1990

Relating to land at

Well Cross Yard, St Mary's, Isles of Scilly

Council of the Isles of Scilly

Town Hall

St Mary's

Isles of Scilly

THIS DEED is made 10th April

2014

BETWEEN

- (1) **THE COUNCIL OF THE ISLES OF SCILLY** of Town Hall, St Mary's, Isles of Scilly TR21 0LW ("the Council")
- (2) **CORNWALL RURAL HOUSING ASSOCIATION LIMITED** (Industrial and Provident Society No. 24935R) of 1 Dreason Barns, Bodmin Road, Bodmin, Cornwall, PL30 4BG ("the Owner")

WHEREAS

1. The Council is the Local Planning Authority for the purposes of this Deed for the area within which the land described in the First Schedule ("**the Land**") is situated and by whom the obligations contained in this Deed are enforceable
2. The Owner is interested as freehold owner in the Land which is registered at the Land Registry with title absolute under title number **CL291131**
3. The Owner has applied to the Council for planning permission for the Development on the Land and the Council is minded to grant approval of the Development under reference number **P/14/009** ("**the Planning Permission**") subject to the Owner first entering into this Deed

NOW THIS DEED is made in pursuance of Section 106 of the Act and contains planning obligations and is a planning obligation for the purposes of that Section and **WITNESSES** as follows:

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act" the Town and Country Planning Act 1990.

"Application" the application for **full** planning permission dated **17th January 2014** submitted to the Council for the

Development and allocated reference number
P/14/009.

"Commencement of Development"	the date on which any change of use or material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.
"Development"	the development of the Land for the conversion of existing stores into 2 no dwellings for rent as set out in the Application.
"Dwelling"	The dwellings shown edged red on the Layout Plan annexed hereto
"the Expert"	means a person having appropriate qualifications and local knowledge and experience in the matters in dispute as agreed by the Relevant Parties or failing agreement such person as is nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Relevant Parties
"Household"	means any person who may reasonably be expected to reside with the Qualifying Person(s)
"Land"	means the Land referred to in the First Schedule and Recitals 1 and 2 hereof
"Layout Plan"	means the plan titled layout plan and annexed hereto

"Mortgagee"	means the mortgagee of a Dwelling where the mortgagor has defaulted on the particular mortgage
"Nomination Invitation"	means a written notice inviting the Council to nominate not more than three nominees to take up Occupation of the Dwelling
"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
"Occupation Notice"	means a written notice containing the name and address of the Prospective Occupier and details of his Household together with confirmation accompanied by supporting evidence that the proposed occupier is a Qualifying Person
"Plan"	the plan attached to this Deed.
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application
"Prospective Occupier"	means any person who wishes or intends to Occupy a Dwelling
"Qualifying Criteria"	means those criteria at the Third Schedule
"Qualifying Person"	means a person who satisfies the Qualifying Criteria
"Relevant Parties"	means the parties to this deed or their successors in title or assigns and in the case of the Council includes any statutory successors as local planning authority
"Vacancy Notice"	means written notice of the Vacation Date
"Vacation Date"	means the first date on which the Owner reasonably considers that the Dwelling will be vacant and ready for Occupation.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and all other enabling powers and enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Owner's interest in the Land and to the intent that the obligations on the part of the Owner herein contained falling within the provisions of Section 106 of the Act shall be planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority in accordance therewith but subject as hereinafter provided

4 CONDITIONALITY

- 4.1 This Deed shall take effect from the date hereof PROVIDED THAT if the Planning Permission is revoked or expires by the effluxion of time then this Deed shall cease to have effect provided always that at the time of the said revocation no development has begun within the meaning of Section 56 of the 1990 Act;

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council to fulfil the obligations and restrictions specified in the Second Schedule of this Deed.

6 MISCELLANEOUS

- 6.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 6.3 This Deed shall be registered:
- (a) as a Local Land Charge by the Council
 - (b) on the Charges Register of Title Number **CL291131** at the Land Registry by the Owner on each disposal and Office Copies from Land Registry provided to the Council as evidence of registration
- 6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by The Chief Executive and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 6.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 6.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but

without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

6.11 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

7 BANK CONSENT

7.1 This Deed has been entered into by the Owner and the Land shall be bound by the obligations contained in this Deed and the security of any mortgage over the Land shall take effect subject to this Deed. Any bank or organisation providing any mortgage shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

8. SETTLEMENT OF DISPUTES

8.1 Any dispute arising out of the provisions of this Deed shall be referred to the Expert for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to the Deed by the courts and / or in accordance with Section 106(6) of the 1990 Act

8.2 The Expert shall be appointed jointly by the Relevant Parties who are in dispute

8.3 The decision of the Expert shall be final and binding upon the Relevant Parties and subject to the following provisions:-

- (a) the charges and expenses of the Expert shall be borne equally between the Relevant Parties who are in dispute unless the Expert shall otherwise direct;
- (b) the Expert shall give the Relevant Parties who are in dispute an opportunity to make representations and counter representations to him before making his decision;
- (c) the Expert shall make his decision within the range of any representations made by the Relevant Parties who are in dispute themselves;

9 WAIVER

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

10 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

11 DELIVERY

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

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

FIRST SCHEDULE

ALL THAT piece or parcel of land known as **Well Cross Yard, St Mary's, Isles of Scilly**

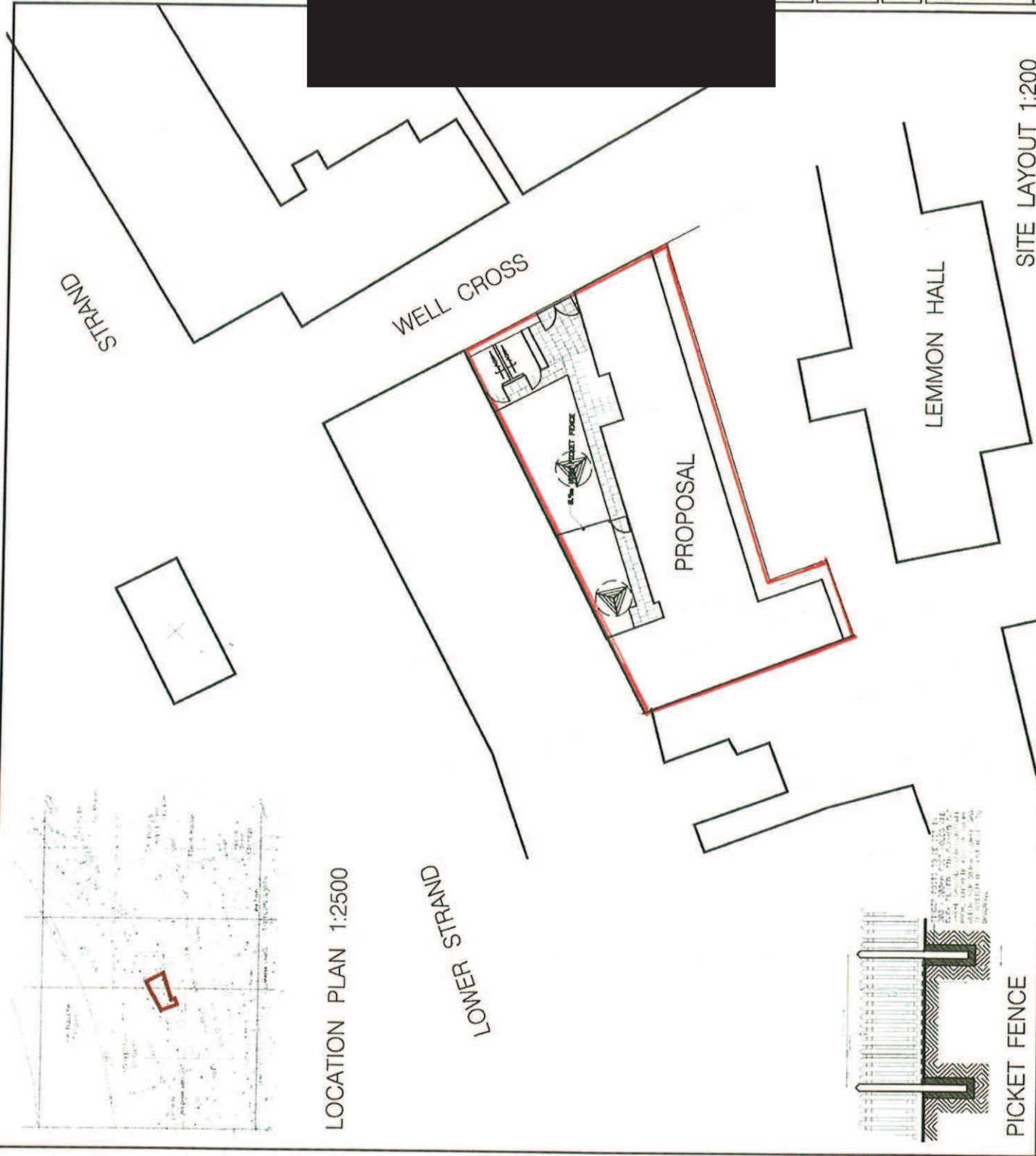
ALL OF WHICH said land is shown for identification purposes only edged with a red line
on the Plan

'PLAN'

NO.1 STANHOPE SQUARE HOLSWORTHY DEVON EX22 6DR. 01409 253013



drawing 160 SITE AND LOCATION PLAN	100' scale. Proposed Affordable Housing. Wellcross, Hugh Town I.O.S.		Client Cornwall Rural Housing Association.	1000/2000 1000' scale. A. 1000/2000 B. 1000/2000 C. 1000/2000 D. 1000/2000	1000' scale. 1000' scale. 1000' scale. 1000' scale.	1000' scale. 1000' scale. 1000' scale. 1000' scale.	1000' scale. 1000' scale. 1000' scale. 1000' scale.	1000' scale. 1000' scale. 1000' scale. 1000' scale.	1000' scale. 1000' scale. 1000' scale. 1000' scale.
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SITE LAYOUT 1:200

LOCATION PLAN 1:2500

LOWER STRAND

PICKET FENCE

'LAYOUT PLAN'

TREWIN DESIGN PARTNERSHIP NO.1 STANHOPE SQUARE HOLSWORTHY DEVON EX22 6DR. 01409 253013

PROJECT	planning
DATE	NSP
SCALE	1:200 A3
DATE	NOV 2013
DRAWING NUMBER	5484 S10e
DATE	11/11/13



please note: specific details and layout of dwellings are contained in the approved plans from planning permission P/14/009



FLOOR LAYOUT

SECOND SCHEDULE

("the Obligations and Restrictions")

- 1 The Dwelling/s shall not be Occupied otherwise than:
 - 1.1 as the sole private residence of the occupier; and
 - 1.2 by a Qualifying Person with or without their Household PROVIDED THAT the Dwelling shall not be Occupied by any person unless the Council has given its written approval that the Prospective Occupier is a Qualifying Person in accordance with paragraph 4; or,
 - 1.3 in accordance with the provisions of paragraphs 5 or 7 this Schedule.
- 2 Nothing in paragraph 1 shall prevent any former joint spouse civil partner or other member of the Qualifying Person's household from continuing to reside at the Dwelling after the Qualifying Person ceases to reside there.
3. The Owner shall serve a Vacancy Notice clearly addressed and marked for the attention of the Housing Officer each time [any of] the Dwelling/s becomes available for Occupation but in any event the Vacancy Notice shall not be served more than 28 before the expected Vacation Date.
4. Prior to the first or any subsequent Occupation of the/a Dwelling by any Prospective Occupier the Owner shall serve on the Council an Occupation Notice and obtain the Council's written confirmation that the Prospective Occupier is a Qualifying Person PROVIDED THAT if the Council fails to respond to the Occupation Notice within 14 days of receipt of the Occupation Notice the Prospective Occupier shall be deemed to be a Qualifying Person for the purposes of this Deed.
5. In the event that the Owner is unable to identify a Qualifying Person who wishes to Occupy the Dwelling within a period of 28 days from the date of service of the Vacancy Notice the Owner shall serve on the Council a Nomination Invitation and the Owner shall not permit the Occupation of the Dwelling otherwise than by a person nominated in accordance with the following:
 - 5.1 The Council shall have 10 days from the service of the Nomination Invitation in which to nominate a first nominee ("the First Nominee"), a second nominee ("the Second Nominee") and a third nominee ("the Third Nominee") to Occupy the Dwelling ;

- 5..2 If the First Nominee is unable to take up Occupation of the Dwelling within 28 days of the nominations or any other longer period as the Owner may permit the Owner shall offer the Dwelling to the Second Nominee;
- 5..3 If the Second Nominee is unable to take up Occupation of the Dwelling within 42 days of the nominations or any other longer period as the Owner may permit the Owner shall offer the Dwelling to the Third Nominee;
- 5..4 If the Third Nominee is unable to take up Occupation of the Dwelling within 56 days of the nominations or such other period as the Owner may agree the Owner may permit the Occupation of the Dwelling in accordance with the provisions of paragraph 7
- 6 The First Nominee the Second Nominee and the Third Nominee shall be deemed to be Qualifying Persons for the purposes of this Deed.
- 7 In the event that:
- 7.1 the Council fails to nominate in accordance with paragraph 5.1; or
- 7.2 none of the Council's nominees are able within 56 days of the nominations (or such longer period as the Owner may allow in accordance with paragraphs 5.2 and 5.3 and 5.4 to take up Occupation of the Dwelling
- the Owner may permit the Occupation of the Dwelling by a person who need not be a Qualifying Person PROVIDED THAT the Owner has provided the Council with written evidence that the First Nominee The Second Nominee and the Third Nominee have been unable to take up Occupation of the Dwelling and PROVIDED FURTHER THAT the Owner shall give priority to persons ordinarily resident upon the Isles of Scilly and PROVIDED FURTHER THAT the provisions and restrictions contained in this Deed will again apply on any subsequent Occupation
- 8 Nothing in this Deed shall require the Owner to permit the Occupation of a Dwelling by any person if such occupation would contravene the Owners registered objects or allocations policy or the any other statutory restrictions by which they are bound.
- 9 The provisions of paragraphs 2 to 7 of this Second Schedule shall not be binding on a Mortgagee
10. Any purchaser from a Mortgagee shall be deemed to be a Qualifying Person for the purposes of this deed PROVIDED THAT on all subsequent occupations the restrictions in this deed as to the Occupation of the Dwelling will apply

THE THIRD SCHEDULE

Qualifying Criteria

A person shall not be considered to be a Qualifying Person unless he satisfies the following criteria:

- 1) he must be either un –housed or living in inadequate accommodation; and
- 2) under the auspices of a Registered Social Landlord persons who at the time of service of the appropriate Occupation Notice are permanently resident on the Isles of Scilly and have been for a continuous period of at least 30 months immediately prior to the service of the Occupation Notice

EXECUTED as a DEED by)
THE COUNCIL OF THE ISLES OF SCILLY)
whose Common Seal was hereinto)
affixed in the presence of:)



Authorised Officer

[Print Name] *ANTHONY J. MARTIN*



*Leijser
Chief Executive*

EXECUTED as a DEED by)
CORNWALL RURAL HOUSING ASSOCIATION)
whose Common Seal was hereinto)
affixed in the presence of:)

W. Pendlebury

[Print Name]
G. Facker-Martin

Peter Moore

