

Benners Field,  
Holbrook

DATED 15<sup>th</sup> April 2008

BABERGH DISTRICT COUNCIL

AND

ORWELL HOUSING  
ASSOCIATION LIMITED

AND

MR C MANN

AGREEMENT

in pursuance of Section 106 of the Town  
and Country Planning Act 1990 relating  
to land at land at the rear of 1 Hither  
house to Hollydene Holbrook Suffolk

Kathryn Saward  
Solicitor to the Council  
Babergh District Council  
Corks Lane  
Hadleigh  
Ipswich Suffolk IP7 6SJ



AN AGREEMENT made the *fifteenth* day of *April* Two thousand and eight  
BETWEEN

- (1) BABERGH DISTRICT COUNCIL of Council Offices Corks Lane Hadleigh  
Ipswich Suffolk IP7 6SJ ("the Council") and
- 2) ORWELL HOUSING ASSOCIATION LIMITED of Crane Hill Lodge 325  
London Road Ipswich Suffolk IP2 0B ("the Association") and
- (3) COLIN MANN of 11 Old Road Frinton-on-Sea Essex CO13 9DA ("the  
Owner")

#### RECITALS

1. The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the Land is situated and by whom the Obligations contained in this Agreement are enforceable.
2. The Owner is interested as the freehold owner of the Land free from incumbrances
3. The Association wishes to develop the Land for local needs housing for which there is an identifiable demand within the parish of Holbrook
4. For this purpose the Owner has agreed to sell the Land (excluding that part of the Land shown edged blue on plan numbered 2 annexed to this deed) to the Association this agreement being set out in a contract made the *fifteenth* day of *April* 2008 between the Owner and the Association
5. On completion of the Development the Association is willing to rent the dwellings constructed on the Land

6. The Association has applied to the Council for planning permission to carry out the Development upon the Land and the Council has resolved to grant full planning permission for the Application subject to conditions and the execution of this Agreement
7. The Council is also the Housing Authority for the purposes of the Housing Act 1985 and as Housing Authority is required by Section 8 of the Housing Act 1985 to consider housing conditions in its district and the needs of the district with respect to the provision of further housing accommodation and pursuant to such consideration the Council as the Housing Authority has concluded that there is a need in the district for low cost housing for local needs and that the provision of the housing the subject of this Agreement contributes towards the satisfaction of that need
8. By virtue of Section 609 of the Housing Act 1985 the Local Housing Authority may enter into a covenant with the Owner concerning the Land for the purposes of any of the provisions of the Housing Act 1985 and the Local Housing Authority may enforce the covenant against the persons deriving title under the covenant notwithstanding that the Local Housing Authority is not in possession of or interested in any of the Land for the benefit of which the covenant was entered into in like manner and to the like extent as if the Local Housing Authority has been possessed of or interested in such land.
9. The Council consider and the Owner and the Association acknowledge that the Development should not take place unless certain restrictions regulating the use of the Land are complied with and for the securing of such compliance the parties hereto have agreed to enter into this Agreement in the manner hereinafter appearing
10. The Association is a Registered Social Landlord whose objects include the managing of dwellings and any functions supplemental or incidental thereto

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1. Definitions

In this Agreement in addition to the parties hereinbefore referred to the following words and expressions shall where the context so requires or admits have the following meanings:

- 1.1 "The Application" shall mean the Application for planning permission submitted by the Association for the construction of dwellings on the Land as received by the Council on the twentieth-fifth day of July two thousand and seven and entered on the Council's Register of Planning Applications with number B/07/01251/FUL
- 1.2 "Appropriate Accommodation" shall mean in the case of one and two bedroomed units of accommodation for the occupation of one or more persons and in the case of a three bedroomed unit of accommodation for the occupation of not less than three persons living together as a single family
- 1.3 "The Association" means Orwell Housing Association Limited or its successors in title to the Land
- 1.4 "The Council" shall where the context so admits include any public body in which the functions of the Council at the date hereof under the enabling powers may for the time being be vested and any duly appointed servant agent or contractor of the Council or other such body
- 1.5 "The Development" shall mean the erection of 12 houses including an access road and parking areas being the development permitted by the planning permission granted for the same substantially as specified in the Application
- 1.6 "The Dwellings for Rent" shall mean the houses comprised in the Development
- 1.7 "The Land" means the land described in the First Schedule

- 1.8 "The Owner" shall include all persons that shall for the time being hold title to the Land and their successors in title
- 1.9 "Registered Social Landlord" shall mean any social housing landlord registered under Section 1 of the Housing Act 1996 with the Housing Corporation as defined in Section 56 of that Act
- 1.10 "the Section 106 Obligations" shall mean the obligations contained in Clause 5.1 and the Second Schedule

2. Interpretation

- 2.1 the expressions "the Council" "the Association" and "the Owner" shall include their successors in title and assigns
- 2.2 words importing the masculine gender only shall include all other genders and vice versa
- 2.3 words importing the singular shall include the plural and vice versa
- 2.4 words importing persons shall include Companies and Corporations and vice versa
- 2.5 where any party consists of two or more persons companies or corporations the covenants expressed to be made by that party and the conditions and provisions contained in this agreement shall be deemed to have been made jointly and severally by the persons named as that party
- 2.6 any reference in this document to a clause sub-clause paragraph sub-paragraph or schedule without further designation is to be construed as a reference to the clause sub-clause paragraph sub-paragraph or schedule to this document so numbered.

2.7 unless expressly stated to the contrary any references to a specific statute include any statutory extension or modification amendment or re-enactment of that statute and any regulations or orders made under that statute and any general reference to a statute includes any regulations or orders made under that statute.

2.8 the clause paragraph and schedule headings do not form part of this document and are not to be taken into account in its construction or interpretation

### 3. Enabling Provisions

3.1 This Agreement is made in pursuance of the following duties and powers and in connection with the performance of the Council's functions thereunder and these Sections shall apply to all covenants hereinafter contained

3.1.1 Section 106 of the Town and Country Planning Act 1990

3.1.2 Sections 89 and 609 of the Housing Act 1985

3.1.3 Section 111 of the Local Government Act 1972

3.1.4 All other powers hereby enabling

### 4. Enforcement

4.1 This Agreement is entered into under Section 106 of the Town and Country Planning 1990 and any other enabling power and is a planning obligation for the purposes of that Section and shall bind the Land and every part thereof into whomsoever hands the same may come and shall be enforceable against all the persons that shall for the time being hold title to the same

4.2 No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenants prior to parting with such interest

4.3 if the permission granted shall expire before the Development is begun or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect otherwise the Section 106 Obligations shall subsist unless or until Babergh by resolution decides that they shall cease to have effect

4.4 this Agreement is a local land charge and shall be registered as such

4.5 the Section 106 Obligations shall not take effect until the date on which the Development shall be taken to be commenced within the meaning of Section 56 of the Town and Country Planning Act 1990

## 5. Covenants

5.1 The Owner and the Association jointly and severally covenant with the Council to observe and perform the obligations contained in the Second Schedule and it is hereby agreed that the provisions set out in Third Schedule shall apply to the obligation contained in Paragraph 1 of the Second Schedule

5.2 The Association shall on or before the date of this Agreement pay the Council's legal costs incurred in connection with the preparation and completion of this Agreement

## 6. Warranty as to Title

The Owner warrants to the Council that he has full power to enter into this Agreement and that there is no person having a charge over or any other interest in the Land whose consent is necessary to make this Agreement binding on the Land and all estates and interests therein.



7. Mortgagee in possession

If a power of sale shall have become exercisable in respect of any mortgage affecting the Land as a result of which the mortgagee wishes to exercise that power of sale then provided that a mortgagee shall have :-

7.1 actively and diligently sought a Registered Social Landlord to purchase the Land (such purchase to be subject to the Section 106 Obligations) for a period of at least two months; and

7.2 where no Registered Social Landlord can be found offered the land for sale to the Council for a further period of one month and the Council declines to accept the offer within that period

then on the expiration of both periods referred to above the mortgagee may dispose of the Land and the dwellings erected thereon free from the Section 106 Obligations

8. Council's Statutory Power

Nothing contained in this Agreement shall fetter or otherwise affect the exercise by the Council of its powers as a local planning authority or in any other capacity

9. Contracts (Rights of Third Parties) Act 1999

Notwithstanding any other provision of this Agreement and the Contracts (Rights of Third Parties) Act 1999 nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

10. Compensation

No compensation shall be payable by the Council unless as a result of any of the obligations contained in this Agreement.

11. Severability

Any provision of this Agreement which is unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this deed

IN WITNESS whereof the Council and the Association and the Owner have caused their respective Common Seals to be hereunto affixed and the Owner has signed this instrument as his deed in the presence of the person(s) mentioned below the day and year first before written

FIRST SCHEDULE

(The Land)

ALL THAT piece or parcel of land situate to the rear of 1 Hither House to Hollydene Ipswich Road Holbrook Suffolk shown edged red on the plan numbered 1 annexed to this deed

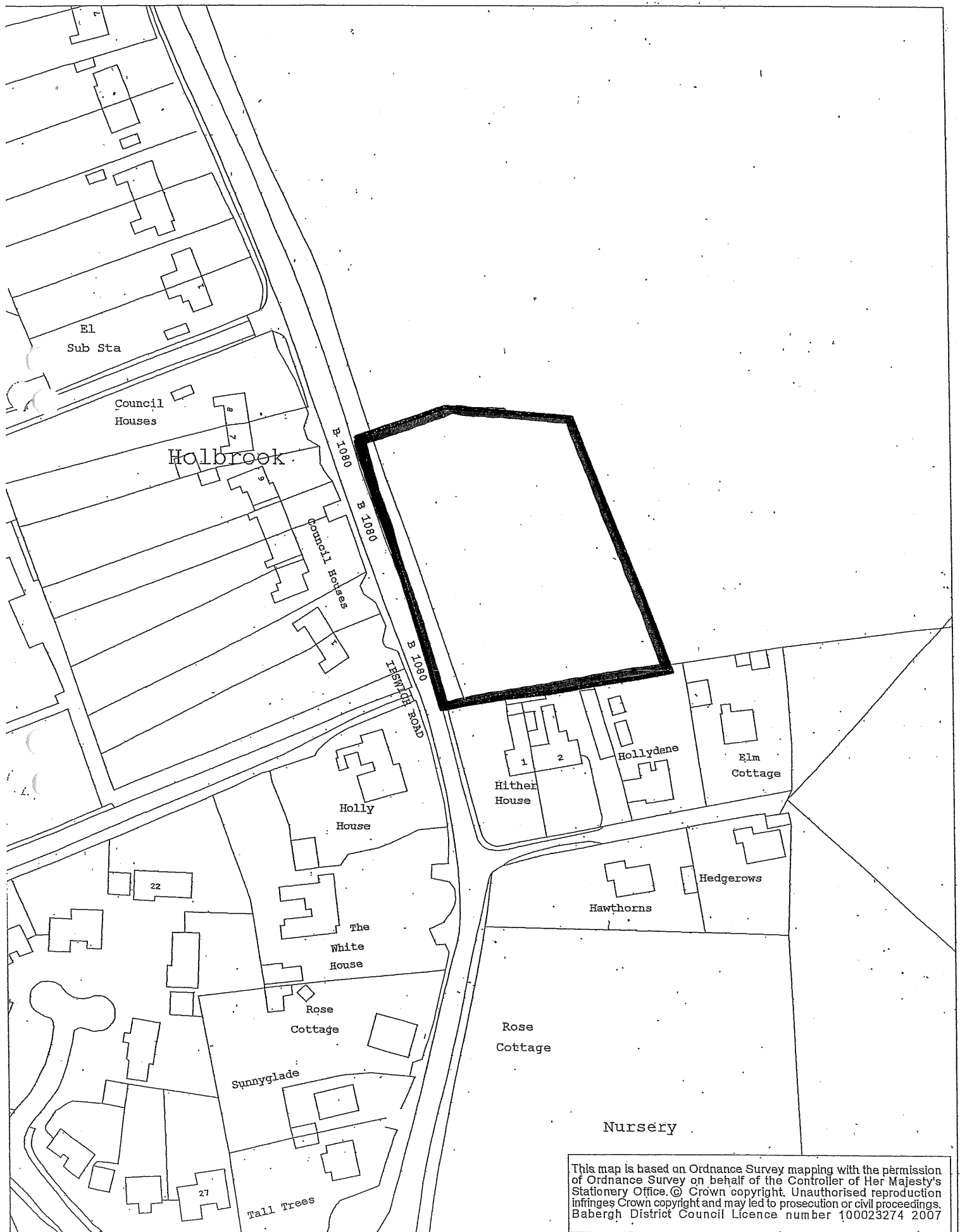
SECOND SCHEDULE

(The Section 106 Obligations)

1. Not to occupy or permit or suffer to be occupied the Dwellings for Rent (except any of the Dwellings for Rent which are purchased by tenants pursuant to any statutory right to acquire which may from time to time be in force) other than pursuant to a tenancy granted by a Registered Social Landlord to a person who cannot afford to purchase a low cost dwelling and who is in need of such accommodation and for whom the accommodation is Appropriate Accommodation (as defined by Clause 1.8) and who is:

SCALE 1:1250

PLAN 1



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# PLAN 2



## LOCATION PLAN

**Project:** Proposed residential development,  
Ipswich Road, Holbrook  
**Client:** Orwell Housing Association

Chapel House  
Out Westgate  
Bury St Edmunds  
Suffolk IP33 3NZ

Tel: 01284 756166  
Fax: 01284 702616

*Rees  
Pryer*  
ARCHITECTS

Drwg: 06 1149 Loc Revision:  
Date: December 2007 Scale: 1:500

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1.1 a retired or disabled person who has lived or worked within the parish of Holbrook for at least five of the preceding ten years and who is at the time of allocation resident in the parish of Holbrook or

1.2 a person resident in the parish of Holbrook living in sub-standard accommodation or

1.3 a person resident in the parish of Holbrook living in a household not having separate accommodation or

1.4 a person resident in the parish of Holbrook and who is on the Council's housing waiting list or

1.5 is an immediate descendant of a person currently resident in the parish of Holbrook that person having been resident in the said parish for at least five of the last ten years

2. In the event that any of the Dwellings for Rent are sold to the tenants under any statutory right to acquire which may from time to time be in force to utilise the proceeds of sale towards the purchase of a similar suitable dwelling at a location within the District of Babergh.
3. Not to sell or otherwise dispose of any of the Dwellings for Rent under any voluntary purchase grant scheme.
4. Not to permit or suffer the tenants of the Dwellings for Rent to assign the tenancies of the Dwellings for Rent to any person who does not meet the criteria specified in Paragraph 1 of this Schedule without the prior written consent of the Council and the form of tenancy agreement in respect of the letting of the Dwellings for Rent shall contain a restriction to this effect
5. To produce to the Council on request the form of tenancy agreement relating to the letting of the Dwellings for Rent

### THIRD SCHEDULE

(Provisos applicable to Paragraph 1 of the Second Schedule)

1. In the event that no person qualifying under the criteria set out in Paragraph 1 of the Second Schedule above shall be identified at the relevant time then such criteria shall be applied to a person who cannot afford to purchase a low cost dwelling and who is in housing need and for whom the accommodation is Appropriate Accommodation as if in substitution for references to the Parish of Holbrook there shall be substituted reference to "one of the parishes of Stutton Tattingstone Wherstead Freston Woolverstone Chelmondiston and Harkstead"
2. If upon any of the Dwellings for Rent becoming available for occupation whether on practical completion of the Development or at any time subsequently and the Association (or any other Registered Social Landlord who owns the Land for the time being) is unable to fill any vacancy arising in accordance with the provisions set out Paragraph 1 of the Second Schedule or Paragraph 1 of the Third Schedule within a period of four weeks then the Association may rent the Dwelling for Rent to a person who cannot afford to purchase a low cost dwelling and who is considered by the Association to be in need of such accommodation and for whom the accommodation is Appropriate Accommodation
3. Where there are two or more applicants applying to rent any of the Dwellings for Rent (who meet the local lettings criteria as detailed in Paragraph 1 of the Second Schedule) preference must always be given to the applicant who has the highest housing need according to the Council's allocations policy current at that time



THE COMMON SEAL OF )  
BABERGH DISTRICT COUNCIL was )  
hereunto affixed in the presence of: )

*Masennell*

Authorised Officer

THE COMMON SEAL )  
ORWELL HOUSING ASSOCIATION )  
LIMITED was hereunto affixed in the )  
presence of:- )

Secretary

Member

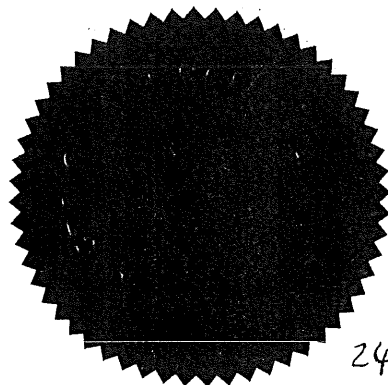
Member

SIGNED as a deed by the )  
said COLIN MANN )  
in the presence of:- )

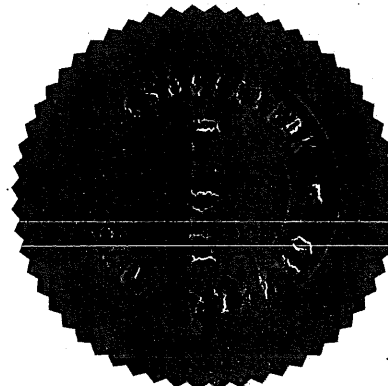
*J. A. Nicholson*

JOHN ANDREW NICHOLSON

41 BARRACK SQUARE,  
MARTLESKAM HEATH  
IPSWICH IP5 3RF



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07/01



(08.08)

*Colman*

