

RECEIVED ON
22 FEB 2013 (13-15)
LAND CHARGES

Lucy Blyth
Performance and Information Team Leader

Ashfield District Council as a Local Land Charge

Would you please register the above Section 106 Agreement (Town & Country Planning Act 1990) between:
! W Westerman Limited
and !! Ashfield District Council

DATE: 22/02/2013 REF: V/2011/0560

TO: LOCAL LAND CHARGES
FROM: PLANNING AND BUILDING CONTROL SUPPORT TEAM
LEADER
SUBJECT: LAND EAST OF SUTTON ROAD AND SOUTH OF KINGS
MILL ROAD EAST SUTTON IN ASHFIELD

ASHFIELD DISTRICT COUNCIL
MEMORANDUM

5106/423

2013

day of February

THIS AGREEMENT is made the 15th

BETWEEN:

- (1) W. WESTERMAN LIMITED (Company Registered Number: 00406312) whose registered office is at 158 Bye-Pass Road, Chilwell, Nottingham, NG9 5HQ ('the Owner')
- (2) ASHFIELD DISTRICT COUNCIL of Council Offices, Urban Road, Kirby-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 and 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 Clause 6 and the Fourth Schedule

- 1.3 "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

- 1.4 "the Application" means the Planning Application dated 18th October 2011 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2011/0560

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 Site Plan

1.6 "Children's Play Area" means a metal fenced area of public open space with safety gates for toddlers which has a minimum area of at least 250m² equipped with at least 6 pieces of suitable and mixed play equipment for toddlers surfaced with a wet pour safety surface and equipped with a litter bin and bench and an adjoining area of at least 592m² equipped with at least 5 pieces of suitable and mixed play equipment for children up to age 11 with a grass safety mat surface

1.7 "Commencement of the 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 Development

1.8 "Commencement of Development on Phase 2" means the date on which any action which satisfies the definition of Commencement of Development is carried out on Phase 2 and "Commence Development on Phase 2" shall be construed accordingly

1.9 "Dwelling(s)" means a residential unit or units constructed pursuant to the Planning Permission being either Affordable Housing Units or Non-Affordable Housing Units

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 Sutton-in-Ashfield

1.11 "Education Need" means the provision of 29 additional primary places at the Greenwood Primary School necessitated by the Proposed Development

1.12 "Education Contribution" means a payment to be made pursuant to paragraph 3 of the First Schedule of this Agreement and to be dealt with in accordance with the provisions of the Third Schedule.

1.13 "Eligible Household(s)" means a person or household identified in accordance with the Registered Provider's selection criteria as being in need of affordable housing

1.14 "Intermediate Housing" means housing at prices and rents above those of social rent, but below market price or rental, and including shared equity/ownership products (e.g. Homebuy), or other low cost homes for sale and intermediate rent.

1.15 "Master Plan" means the drawing and explanatory details numbered 4417-P-03 Rev B submitted with the Application a copy of which is attached to this Agreement

1.16 "MUGAs" means two adjacent multi-use games areas one of not less than 45 metres by 37 metres and the other of not less than 18.5 by 37 metres surfaced with level free draining tarmac, lined for football, netball and basketball, with goal posts and solid backed basketball hoops, and each protected by a perimeter fence not less than 2 metres high on the sides and 3 metres high on the ends which is to be robust, galvanised and powder coated with at least two entry gates for each pitch

1.17 "Non-Affordable Housing Units" means the Dwellings to be constructed on the Application Site which are to be offered for sale at 100 per cent of the then prevailing Open Market Value excluding the Affordable Housing Units

1.18 "the Obligations" means the planning obligations contained or referred to in the First, Fourth, Fifth and Sixth Schedules to this Agreement

- 1.19 "Occupation" means occupation for the purpose 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 and "Occupy" "Occupied" and "Occupant" shall be construed accordingly
- 1.20 "Open Market Value" means the estimated price or premium for which the sale of the freehold estate or the grant of a long leasehold interest in land (not being a rack rented lease) for the use thereof specified in this Agreement should complete on the date of valuation between a willing buyer and a willing seller in an arms length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion
- 1.21 "Open Space Plan" means the drawing numbered 4417-P-22 dated October 2012 submitted with the Application a copy of which is attached to this Agreement
- 1.22 'Phase 1' means that part of the Proposed Development for which full planning consent is sought by the Application which is to be carried out on that area of the Site edged blue on the Phasing Plan
- 1.23 'Phase 2' means that part of the Proposed Development for which outline planning consent is sought by the Application which is to be carried out on that area of the Site edged green on the Phasing Plan
- 1.24 "Phasing Plan" means the drawing numbered 4417-P-21 dated October 2012 submitted with the Application a copy of which is attached to this Agreement
- 1.25 "the Planning Permission" means the grant of Planning Permission pursuant to the Application
- 1.26 "the Proposed Development" means a hybrid full and outline application for a mixed-use development consisting of a residential development of up to 225 dwellings, community sports facilities and open space uses as more particularly described in the Application

1.27 "Registered Provider" means a provider of social housing for the time being entered on the register of providers of social housing maintained pursuant to Section 111 of the Housing and Regeneration Act 2008

1.28 "the Site Plan" means the plan attached to this Agreement and marked 'Site Plan'

1.29 "Social Rented Housing" means rented housing owned and managed by Registered Providers, for which guideline target rents are determined through the national rent regime or provided under equivalent rental arrangements agreed by the local authority or with the Homes and Communities Agency as a condition of grant funding

1.30 "Sports Pitches" means the rugby pitches and cricket pitch shown coloured green on the Master Plan

1.31 "a Subsequent Application" means any application for the approval of reserved matters following the issue of the Planning Permission

Recitals

2.

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 481332

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 Policy HG6 (Public Open Space) and TR6 (Transport Provision) and the Council has adopted a Supplementary Planning Document entitled 'Affordable Housing' in July 2009

2.5 The Council resolved on 25th July 2012 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

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

Enabling Powers

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

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.

Conditionality

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

Covenant

6.1 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

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 include their successors in title and assigns

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 No person shall be liable for breach of covenant contained in this Agreement 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

7.4 The provisions of the Second Schedule shall apply to any monies paid pursuant to paragraph 1 of the First Schedule and the provisions of the Third Schedule shall apply to any monies paid pursuant to paragraph 2 of the First Schedule

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

7.6 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

7.7 Provided that the Council shall use its reasonable endeavours to resist any attempt by others to seek an order for revocation or modification of the Planning Permission (but provided always that the District Council may lawfully resist such attempt(s) without fettering its discretion or affecting the proper exercise of its statutory duties including those under the Act and the Conservation of Habitats and

Species Regulations 2010) in the event that the Planning Permission is modified or revoked pursuant to the review provisions in Regulation 69 of the Conservation of Habitats and Species Regulations 2010 and s.97 of the Act the Owner shall not apply to the Council for compensation pursuant to s.107 of the Act in respect of such revocation or modification

7.8 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

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

7.10 The covenants in this Agreement shall not be enforceable against individual purchasers or lessees of Dwellings on the Application Site constructed pursuant to the Planning Permission or against any statutory undertakers in relation to any part of the Application Site acquired by them for electricity sub-stations gas governor stations or pumping stations or against anyone whose only interest in the Application Site or any part of it is in the nature of the benefit of an easement or covenant

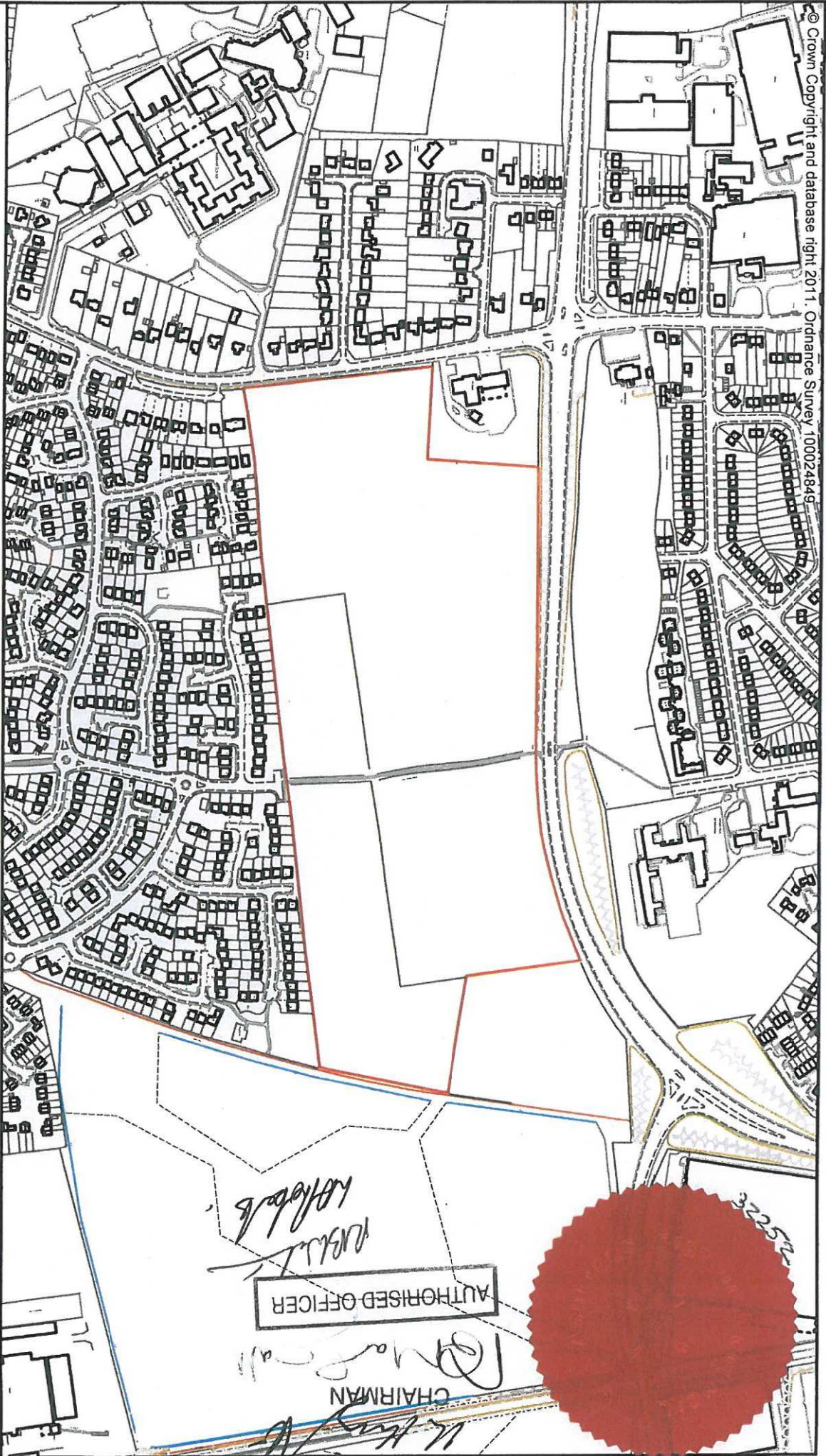
7.11 Any reference to any statutory body (other than the parties to this Agreement) shall include any body to which (whether before or after the making of this Agreement) the relevant powers or duties of that statutory body shall be transferred.

7.12 Any notice consent or approval to be given pursuant to the terms of this Agreement by any party shall not be unreasonably withheld or delayed and the parties to this Agreement hereby agree to act reasonably in carrying out their functions and obligations as described in this Agreement

8. Costs

8.1 The Owner shall on the execution of this Agreement pay the Council's costs incurred in the preparation and settlement of this Agreement in the sum of £8,798.60.

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



Section 106 Plan
Land East of Sutton Road and South of Kings Mill Road East, Sutton in Ashfield
V/2011/0560



Scale: 1 to 5000
Date: 01 Nov 2011

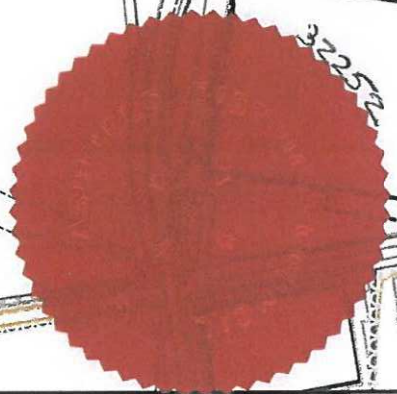


Ashfield

AUTHORISED OFFICER

CHAIRMAN

W. King
W. King



ILLUSTRATIVE MASTERPLAN

LARWOOD PARK

HOME OF ASHFIELD RUGBY FOOTBALL CLUB, KIRKBY IN ASHFIELD

AUTHORISED OFFICIAL COPY



Legend

- A** Site access to development from Sutton Road (B6018)
 - B** Site access to development from Wentworth Road
 - C** Pedestrian / cycle access from A38 & Clare Road - link to Sutton in Ashfield
 - D** Pedestrian / cycle access from Sutton Road (B6018) - link to the proposed Sports Club / Pitches.
 - E** Pedestrian / cycle access from Penny Emma Way - link to Sutton Parkway Employment Park and Railway Station
 - F** Pedestrian / cycle access - link to Kirkby in Ashfield, former Kirkby Summit Colliery Spoil Heap and Drifts Close Play Area
 - G** Main Street with dedicated 2m wide cycleway
 - H** Sutton Middle Lane - Existing pedestrian / cycle route enhanced
 - I** Sports Pitches: 2 x Rugby Pitches and 1 x Cricket Pitch
 - J** Proposed Pavilion
 - K** Multi-Use Games Area (MUGA)
 - L** Multi-Use Area including Netball
 - M** Car Park
 - N** Additional Overspill Car Park
 - O** Pedestrian Priority Crossing
 - P** Existing Informal Woodland Track
 - Q** Proposed Balancing Pond
 - R** Proposed Extended Informal Woodland Track
 - S** Services Infrastructure (Sub-station, Pumping Station, Gas Governor)
 - T** Existing Rugby Pitches
- Landuse Budget**
- I** Residential Area = 7.42 Ha (up to 225 dwellings, 30 dwellings/Ha)
 - J** Proposed Sports Club (Pitches, Viewing Stand, Multi-use Area and Car Park) = 4.13 Ha
 - K** Proposed Green Infrastructure (Public Open Space and Structural Landscapes) = 2.07 Ha
 - L** Existing Woodland Buffer = 1.75 Ha
 - M** Proposed Hedgerow and Hedgerow Tree Planting
 - N** Proposed Play Area
- Total Site Area (red line) = 15.37 Ha

ES/2/26

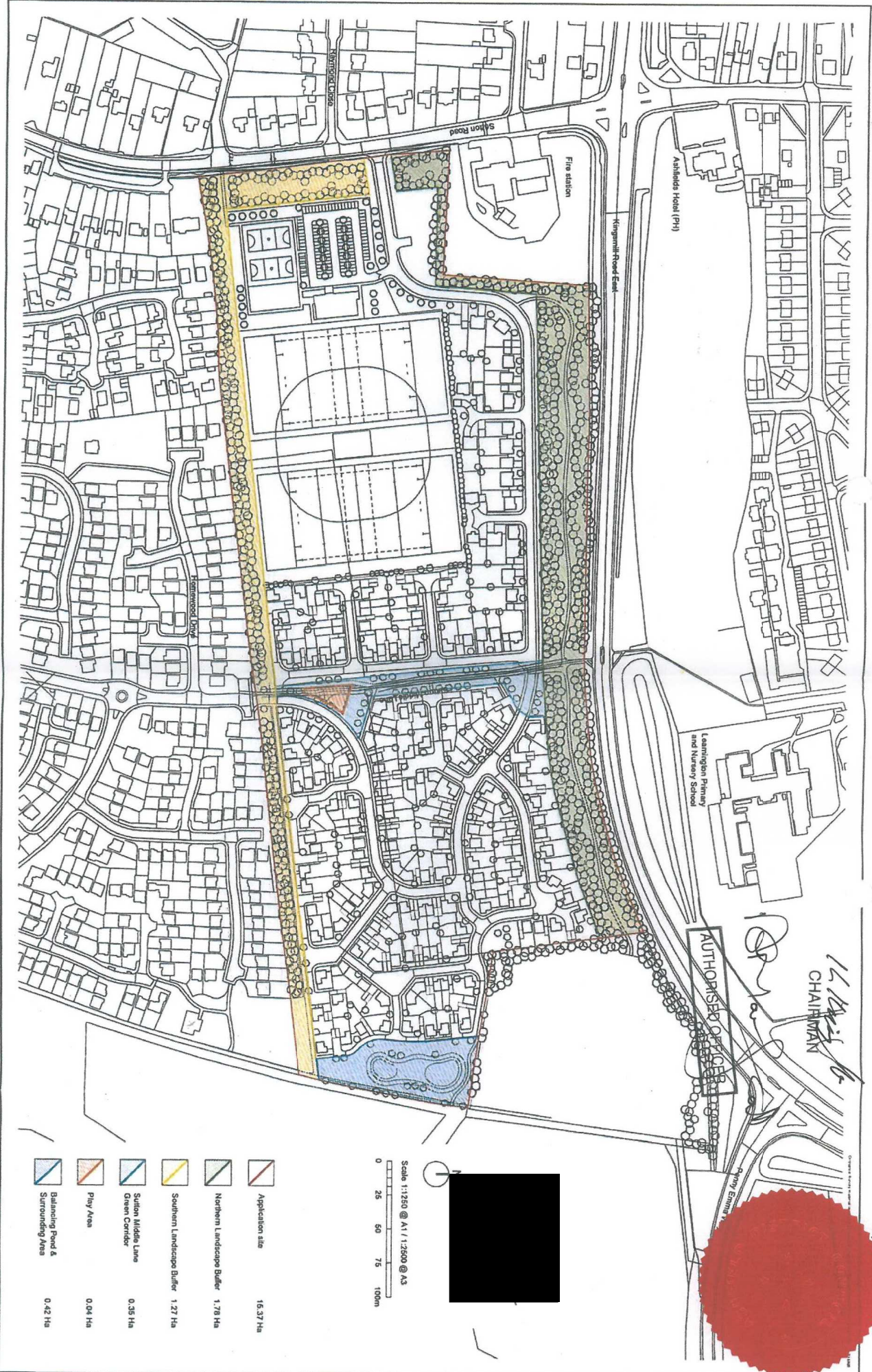
R.B. White
W.B. White



SCALE: 1:500

DRAWING: 4417-P-03 Rev B

MASTER PLAN



12/10/12
 CHAIRMAN

AUTHORISED OFFICER

Lamington Primary
 and Nursery School

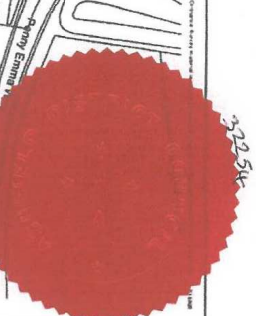
Ashfields Hotel (PH)

Fire station

Sutton Road

11/11/12

Larwood Drive



Scale 1:1250 @ A1 / 1:2500 @ A3
 0 25 50 75 100m

	Application site	15.37 Ha
	Northern Landscape Buffer	1.78 Ha
	Southern Landscape Buffer	1.27 Ha
	Sutton Middle Lane Green Corridor	0.35 Ha
	Play Area	0.04 Ha
	Balancing Pond & Surrounding Area	0.42 Ha

Western Homes
 Sutton Middle Road
 Kirby in Ashfield

LARWOOD PARK HOME OF ASHFIELDS RUGBY FOOTBALL CLUB
OPEN SPACE PLAN

October 2012
 4417-P-22



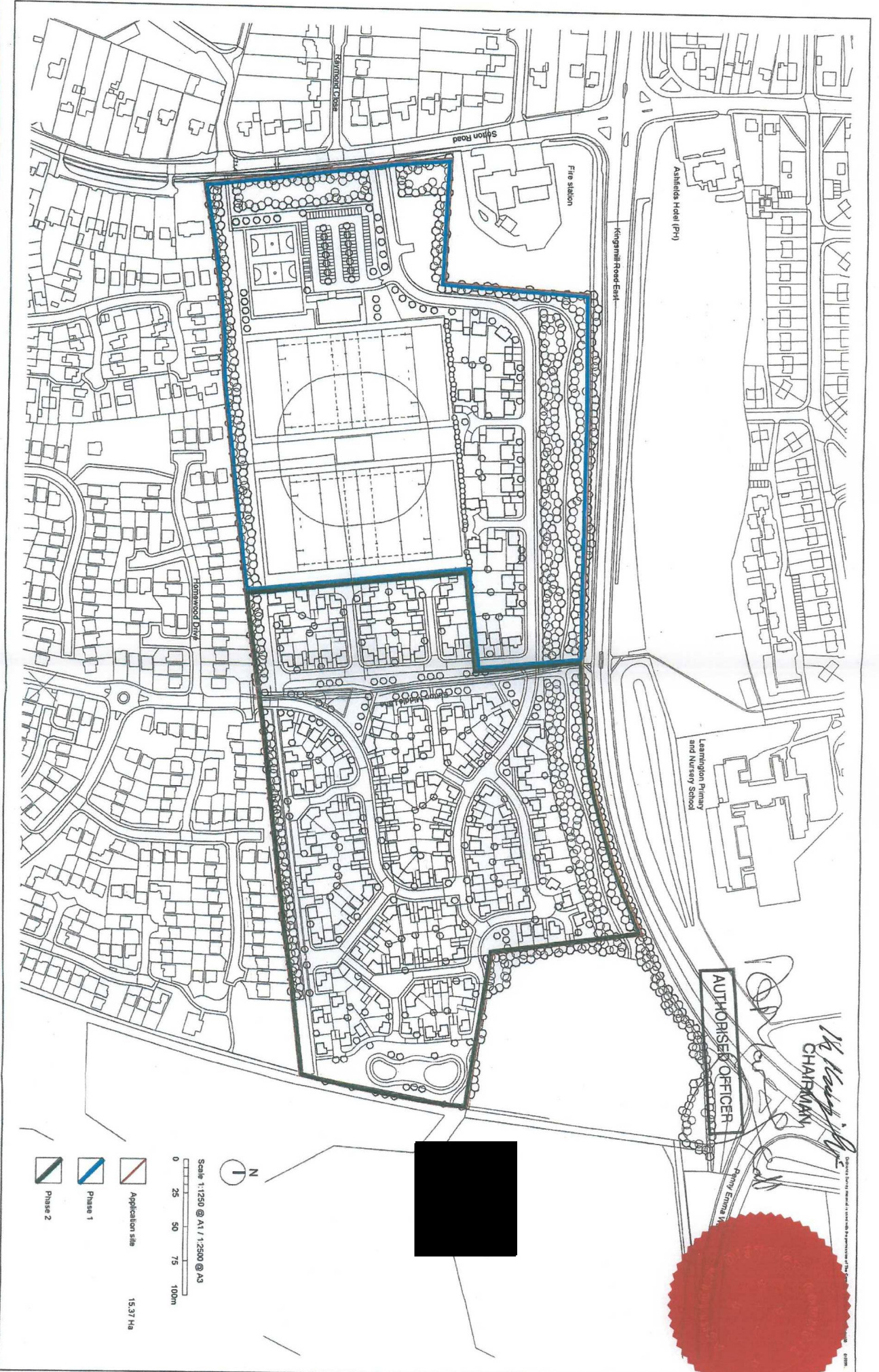
Project Manager: [Name]
 Design Manager: [Name]
 Planning Manager: [Name]
 Environmental Manager: [Name]
 Technical Manager: [Name]
 Surveying Manager: [Name]
 Quantity Surveyor: [Name]
 Planning Officer: [Name]
 Environmental Officer: [Name]
 Technical Officer: [Name]
 Surveying Officer: [Name]
 Quantity Surveyor: [Name]

OPEN SPACE PLAN

Westerman Homes
 Sutton Middle Road
 Kirby in Ashfield

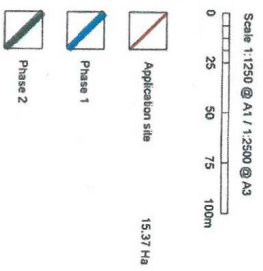
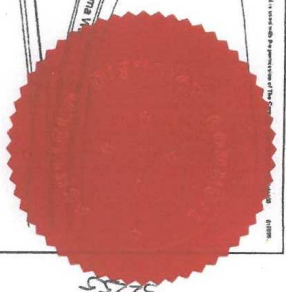
**LARWOOD PARK
 PHASING PLAN**

HOME OF ASHFIELD RUGBY FOOTBALL CLUB



AUTHORISED OFFICER

M. Keating
CHAIRMAN



October 2012
 4417-P-21

fpcr

Westerman Homes
 Planning Department
 1, 12500 12772
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PHASING PLAN

FIRST SCHEDULE

THE OBLIGATIONS

The following payments shall be made to the Council:

1. Prior to the Commencement of Development for integrated transport improvements and initiatives within the administrative district of Ashfield the sum of ONE HUNDRED AND EIGHTEEN THOUSAND SEVEN HUNDRED AND TWENTY POUNDS (£118,720.00) ("the Transport Contribution")

2. As a contribution towards meeting the Education Need the sum of THREE HUNDRED AND THIRTY-TWO THOUSAND ONE HUNDRED AND NINETY-FIVE POUNDS (£332,195.00) (the "Education Contribution") payable in the following instalments:

2.1 £33,219.50 prior to the first Occupation of the 73rd Dwelling to be Occupied on the Application Site

2.2 £99,658.50 prior to the first Occupation of the 100th Dwelling to be Occupied on the Application Site

2.3 £99,658.50 prior to the first Occupation of the 150th Dwelling to be Occupied on the Application Site

2.4 £99,658.50 prior to the first Occupation of the 180th Dwelling to be Occupied on the Application Site

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

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

Where:-

P = the amount payable pursuant to 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 February 2013.
B = the RPI figure for the month in which the relevant payment is
made or (if earlier) falls due to be made
But so that if at any time B shall be less than A the amount
payable [P] shall nevertheless be paid in full without reduction

PROVIDED ALWAYS that :

(a) if such sum(s) or any part thereof shall not be paid before the due date it shall carry interest at 4% over Bank of England base rate per annum from the due date until actual payment and no further dwelling beyond the relevant trigger point for any payment to be built upon the Application Site shall be first occupied whilst such sum(s) or any part thereof (including interest as aforesaid) remains unpaid.

(b) payment of the commuted sum(s) shall not in itself constitute Commencement of the Development for the purposes of implementing the Planning Permission

SECOND SCHEDULE

TREATMENT OF THE TRANSPORT CONTRIBUTION

The following provisions shall apply to any sum paid pursuant to paragraph 1 of the First Schedule:-

1. Any Transport 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 purposes herein specified

2. The Transport Contribution shall only be spent for the purposes mentioned in Policy TR6 of the Council's Local Plan Review

3. If any part of the Transport Contribution has not been used by the Council by the fifth anniversary of the date on which payment was made then upon receipt by the Council of written notice by the Owner requiring that such Transport Contribution 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 a Transport Contribution spent by the Council after the fifth 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. At any time prior to the fifth anniversary of the making of a Transport Contribution the Council shall upon written request by the Owner supply to the Owner reasonable short particulars of any expenditure from that Transport Contribution 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 such Transport Contribution has been expended

5. 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

TREATMENT OF EDUCATION CONTRIBUTION

Where in this Agreement reference is made to the 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 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 on 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

FOURTH SCHEDULE

AFFORDABLE HOUSING OBLIGATIONS

1. The Owner shall not Commence Development on Phase 2 other than that which may lawfully be carried out without reserved matters approval pursuant to the Planning Permission until the Council has approved one or more Subsequent Applications which make provision for Affordable Housing Units (comprising a mix of single and two storey dwellings) in accordance with the following formula:

$$R = \frac{H + 23}{10}$$

where

R = the required number of Affordable Housing units

H = the total number of Dwellings for which consent is sought on Phase 2 in the Subsequent Application(s)

Thereafter such units shall be constructed in accordance with the plans submitted with the Subsequent Applications and approved pursuant to it or them 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

- 2.1. be built out to a standard capable of meeting the requirements of the Homes and Communities Agency (or any authority which hereinafter assumes the Agency's statutory duties and functions) and which are subsidised housing which meets the needs of Eligible Households at a cost low enough for them to afford, determined with regard to local incomes and local house prices, in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it); and

- 2.2. 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. The Owner shall not permit the first Occupation of more than 100 of the Non-Affordable Housing Units to be built on the Application Site pursuant to the Application until the Affordable Housing Units to be erected on the Application Site have been transferred in accordance with paragraph 4 to a Registered Provider drawn from a list of Registered Providers approved in writing by the Council.

4. The transfer(s) to the Registered Provider shall be in a form approved by the Council's Solicitor and on terms that will ensure that 75% of the Affordable Housing Units are made available as Social Rented Housing with the remaining Affordable Housing Units being provided by way of Intermediate Housing

5. Beginning not later than the date of Commencement of Development on Phase 2 the Owner shall enter into negotiations with a Registered Provider or Providers drawn from the Council's approved list or such other Registered Provider(s) as may be approved in writing by the Council for the transfer to that Registered Provider or Providers of the Affordable Housing Units. 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 Application Site but no approved Registered Provider has been approved by the Council or no Registered Provider is willing to take a transfer of the Affordable Housing Units on the Application Site by the date when 100 of the Non-Affordable Housing Units have been occupied the restrictions on transfer 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 Provider and upon such terms as the Council acting reasonably may agree and upon the making of such a transfer the restrictions on occupation of the Non-Affordable Housing Units on the Application Site 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 such units to

8.1. a Registered Provider on such terms as may be agreed between the Owner and the Registered Provider; 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; or

8.4. a person or persons approved by the Council as being on the housing register for the time being of the Council 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 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 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-paragraphs 8.4 and all of its sub-sub-paragraphs and 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:-

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by the applicant for registration or his conveyancer that provisions of paragraph 8.4 of the Third Schedule an Agreement [] and made under Section 106 of the Town and Country Planning Act 1990 between W. Westerman Limited (1) and Ashfield District Council (2) have been complied with"

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

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 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 10 years of the date of the last such payment then those 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 The covenants within this Schedule are not intended to bind:

11.1 any person owning the freehold or leasehold of an individual Affordable Housing Unit including any mortgagee of any such person save where an Affordable Housing Unit is acquired by such person pursuant to the provisions of paragraphs 8 and 9 above in which case the restrictions in paragraphs 8 and 9 shall apply; or

11.2 a tenant of an individual Affordable Housing Unit exercising a right to buy from a Registered Provider or right to acquire from a Registered Provider pursuant to any statutory right to acquire;

11.3 any mortgagee in possession exercising a power of sale under their mortgage or any purchaser from or successor to such mortgagee or any receiver appointed by such mortgagee in possession

FIFTH SCHEDULE

1. Not more than 10 Dwellings anywhere on the Application Site may be first Occupied until the Owner has laid out the Sports Pitches seeded to the approval of the Council

2. Not more than 23 Dwellings anywhere on the Application Site may be first Occupied until the Council has approved the Sports Pitches as being ready for public use

3. Thereafter the Owner shall maintain the Sports Pitches in a condition suitable for use as a games and informal recreation area for a period of not less than 80 years

4. No Dwelling constructed on Phase 2 may be first Occupied nor may any facilities built at first floor level or above in the pavilion shown on the Master Plan be brought into use until the Owner shall have laid out the MUGAs in approximately position shown on the Master Plan and the Council shall have approved the same as suitable for public use thereafter the Owner shall maintain the MUGAs in a condition fit for public use for a period of not less than 50 years

5. After the Sports Pitches and the MUGAs have been approved by the Council as ready for public use the owner shall permit access to and use by the general public of the said facilities at all times except when and to the extent that facilities are required for use by (or permitted by) the Owner for a competitive sporting match or sports team training session

6. Without prejudice to paragraph 4 above the use of the facilities by the general public may be made subject to such reasonable restrictions and charges as the Owner and the Council may from time to time agree

7. Nothing in this Agreement shall constitute a dedication of any part of the Application Site as public land under any enactment and nor shall it constitute a dedication of any part of the Application Site as a village green or other common land

8. For the purposes of this Schedule only 'Owner' shall mean the owner for the time being of the Sports Pitches and the MUGAs and shall exclude the owner of any other part of the Application Site (but for the avoidance of doubt the restrictions contained in paragraphs 1 2 and 4 shall nevertheless be binding on any Owner of the remainder of the Application Site until the Council's approvals have been given)

SIXTH SCHEDULE

PUBLIC OPEN SPACE

1. The Owner shall not Commence Development on Phase 2 other than that which may lawfully be carried out without reserved matters approval pursuant to the Planning Permission until the Owner has agreed a scheme with the Council ('the Agreed Scheme') which provides:

- 1.1 the timetable and specification for laying out and the future maintenance of an area of land on the Application Site in the approximate locations and of the approximate total areas shown and shaded dark green, light blue and dark blue on the Open Space Plan to be used as public open space ('the POS') and

- 1.2 the timetable and specification for the provision and future maintenance of a Children's Play Area

- 1.3 for the POS and the Children's Play Area to be permanently available for public use (which in the case of the Children's Play Area may be age restricted) not later than one or more trigger points related to the Proposed Development as specified therein

- 1.4 details of the future maintenance provisions for the Children's Play Area and any sum as shall be required for the ongoing future maintenance of the Children's Play Area if it is to be transferred to the Council

- 1.5 details of the future maintenance provisions for the POS and any sum as shall be required for the ongoing future maintenance of the POS if it is to be transferred to the Council

2. The Agreed Scheme shall thereafter be implemented by the Owner who shall improve the POS and create the Children's Play Area in accordance with the requirements of the Agreed Scheme. Where the Agreed Scheme specifies that some stage within the carrying out of the Proposed Development on Phase 2 may not be passed until some stipulated step in the Agreed Scheme

has been completed the Owner shall not permit the Proposed Development to proceed beyond the stage until the said step has been completed to the approval of the Council

3. In the event that the Agreed Scheme shall provide for the transfer to the Council of the POS and/or the Children's Play Area together with a payment in lieu of the future costs of its maintenance the provisions of paragraphs 4 to 11 inclusive of this Schedule shall apply to such transfer

4. At any time after the Owner shall in its opinion have complied with those parts of the Agreed Scheme which shall therein be specified as the pre-requisites of the transfer of the POS and/or the Children's Play Area to the Council ('the Requirements') it may invite the Council in writing to make an inspection of the POS and/or the Children's Play Area for the purposes of this Sixth Schedule and the Council shall as soon as practical thereafter arrange for such inspection to be made by the Council's Surveyor

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

5.1 give his written certificate that the Requirements have been complied with and that the POS and/or the Children's Play Area is ready to be transferred to the Council, or

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

5.3 forthwith serve his certificate pursuant to paragraph 5.1 or his report pursuant to paragraph 5.2 as the case may be on the Owner and the Council

6. If the Council's Surveyor shall have given his certificate pursuant to paragraph 5.1 then the Owner shall proceed to transfer the POS and/or the Children's Play Area to the Council in accordance with paragraphs 7 - 11 following but if the Council's Surveyor shall have given a report pursuant to paragraph 5.2 then the Owner shall comply with the requirements of the

report and invite the Council in writing to make a further inspection of the POS and/or the Children's Play Area whereupon the Council shall as soon as practical thereafter arrange for such further inspection to be made the Council's Surveyor and so on as often as may be necessary (mutatis mutandis) until the Council's Surveyor shall give his certificate pursuant to paragraph 5.1

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

8. The Owner shall pay as a debt to the Council the reasonable costs of the Council's Surveyor incurred in making any inspection of the POS and/or the Children's Play Area for the purposes of this Sixth 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

9. Not later than two months after the Council's Surveyor shall have given his certificate pursuant to paragraph 5.1 the Owner shall transfer the freehold interest with Title Absolute of the POS and/or the Children's Play Area to the Council such transfer (s) to contain covenants to the following effect:-

9.1 The POS shall be used solely as a landscaped open space area and the Children's Play Area shall be used solely as a park or playground

9.2 The Council shall take reasonable steps to ensure that use of the POS and/or the Children's Play Area shall not give rise to a statutory nuisance affecting existing or proposed residential occupiers of the Proposed Development

9.3 No development shall take place on the POS and/or the Children's Play Area other than for the purpose of protecting them as a landscaped open space area or park or playground as appropriate

and if at the date of transfer the POS and/or the Children's Play Area 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 POS and/or the Children's Play Area from the nearest public highway

10. On the date of transfer the Owner shall pay to the Council such sum as a maintenance payment as the Agreed Scheme may provide

11. The Owner shall also on the date of transfer pay the reasonable legal costs of the Council relating to the transfer of the POS and/or the Children's Play Area

SEVENTH SCHEDULE

1. The Owner shall not Commence Development on Phase 2 earlier than two years after the date on which the Planning Permission is issued other than that which may lawfully be carried out without reserved matters approval pursuant to the Planning Permission

2. If, earlier than two years after the date on which the Planning Permission is issued, planning consent is granted for the construction of an access road to the Application Site from Penny Emma Way, Sutton-in-Ashfield, paragraph 1 above shall cease to have any application in respect of work carried out pursuant to any Subsequent Application that includes provision for an alternative access to the Application Site to be taken via such road from Penny Emma Way

**EXECUTED AS A DEED by the said
W. WESTERMAN LIMITED
acting by two Directors or a
Director and its Secretary**

**EXECUTED AS A DEED by
ASHFIELD DISTRICT COUNCIL
having affixed its COMMON SEAL
to this deed in the presence of**

Director

Director / Secretary

