

Application to Mendip
District Council for Local
Green Space Designation in
respect of
Fortescue Fields West
Norton St Philip

Fortescue Fields West

General Information

We, the undersigned, being members of Fortescue Fields Management Company Ltd and residents of the development known as Fortescue Fields (FF) wish to apply for Local Green Space Designation in MDC's Local Plan Pt 2 for the field known as Fortescue Fields West (FFW). This application is supported by NSP PC. Letters of support for Green Space Designation have been received from David Warburton (MP for Somerton and Frome) and also from CPRE Somerset (Appendix 1).

Location plans and co-ordinates attached (Appendix 2).

Photographs of the site are attached (Appendix 3)

The field is owned by Lochailort Investments Ltd of London SW1A 1LD who are aware of our application. Maintenance of the field together with the footpath situated on it is however the responsibility of FF ManCo Ltd of which we are members and will control on the sale of the last unit on the Fortescue Fields Development (Appendix 4 secs 1&3; Appendix 5 secs 1.1, plan 3, 5th schedule ; Appendix 6).

We have reviewed in detail the national and local guidance on LGS and understand that, as set out in the National Planning Policy Guidance (Para. 77) LGS designation should be used:

~where the green space is in reasonably close proximity to the community it serves;

~where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquility or richness of its wildlife; and

~where the green area concerned is local in character and is not an extensive tract of land.

We also understand from the National Planning Practice Guidance that the LGS designation is a way to provide special protection against development for green areas of particular importance to local communities, but that it should be consistent with local planning for sustainable development in the area and should not be used to undermine identified development needs.

The site is approx 1.3 hectares/ 3.1 acres and as such is not an extensive tract of land. Until its purchase by Lochailort Investments Ltd it had for many years been used to graze horses. Since then the field has not been grazed or tended and is overgrown and neglected.

The site serves the whole village as it lies between Church Mead, an important amenity space and Fortescue Fields South (which is the subject of a separate application for LGS). A footpath links Church Mead to the north with Fortescue Street to the south. Maintenance of the footpath is the responsibility of FF ManCo Ltd of which we are members and will control on the sale of the last unit on the Fortescue Fields Development(Appendix 4 secs 1&3; Appendix 5 secs 1.1,plan 3, 5th schedule ;Appendix 6).

Planning History

The field was the subject of an unsuccessful planning application for up to 49 houses (refused by Mendip BC in 2014) and a related appeal in 2015. (Appendix 7). The site has been put forward by the owner for planning consideration in MDC LP 2. (appendix 8-ref NSP 012).

Local Nature of Proposed Site

The site, although not in the Village Conservation Area, lies along its boundary on three sides. It forms part of its setting. It borders the southern flank of Church Mead, a hugely important village amenity and an integral part of the character and appearance of the Conservation Area and indeed the village. The site forms a transition between the village and the adjacent open countryside. It

cannot be described as anything other than local in character.

Need for Designation of Site as LGS

There is a very strong feeling in the village that this site should be protected for its historic and local significance as a LGS to ensure it maintains its character and special importance into the future. It has been and indeed remains under threat from housing development. The local community, the Council and Appeal Inspectors have all agreed without any doubt that its significance to the village as an undeveloped, open green space is too great to allow it to be altered. Whilst we are not simply seeking to allocate this site to protect it from development (noting that NSP has no requirement to provide further housing during the Plan period in any case), we would draw the Council's attention to a very recent village survey, taken in February 2015, where 96% of the 200 respondent households (65% of the village took part) were against development on this important greenfield site (Appendix 9).

We have also carried out an online and paper survey specific to the proposal to apply for Green Space Designation for FF West. We have received 171 responses from households (over 45% of the village households) of whom 169 (98%) were in favour of FF West being designated a Local Green Space. None were not in favour and 2 (1%) responded 'don't know'. We also received 41 comments. The results together with comments are attached (Appendix 10).

Local Significance

This area holds particular local significance to the village. Church

Mead is a much used and hugely important village asset. FFW provides a quintessentially English setting to the Mead, the Parish Church, George Inn and views out of the village across the open countryside. For these reasons it holds substantial local significance as an open green space and must be protected.

Historic Significance

The site is an undeveloped greenfield site.

The FFW site falls within the setting of the Conservation Area and a number of significant heritage assets, including the Grade I listed George pub and the Church of St Philip and St James (Grade II* listed). (Appendix 11). The site makes an important and positive contribution to the setting of these heritage assets. Indeed, the Appeal Inspector concluded in the 2015 decision that any development on this site would have a considerable adverse impact on the setting and significance of the Conservation Area, completely altering its historic development pattern and plan form with significant consequences for one of the most important and clearly cherished views into and out of the Area. The Appeal Inspector considered altering this site from green open space to the built development proposed would be on a scale of harm that *“verges on substantial. There would be corresponding harm to the established character and appearance of the area more generally....(the site) lies immediately adjacent to but outwith the Conservation Area boundary here and thus lies within its setting. Church Mead is an integral part of the character and appearance of the Conservation Area, forming a transition between the village and the adjacent open countryside. It is adjoined by built development to the north/northeast (centred on the George Inn) and to the west (around the church). Whilst the Conservation Area is generally inward looking, its significance also derives from outward views afforded by its elevated position*

in the landscape. That is amply demonstrated in the sudden, quintessentially English view out from the George car park and the summit of Bell Hill over the lower slopes, including Church Mead which forms an important visual link between the centre of the village and the countryside beyond. I am in no doubt that the open undeveloped nature of the site has a positive role in the significance of the Conservation Area, allowing for an appreciation and understanding of the historic evolution of Norton St Philip. As a consequence (of development) Church Mead would be enclosed on all sides by built form and the crucial link through to the open countryside beyond would be obliterated” (Appendix 7 secs 52,53,54)

This demonstrates the considerable value given to the FFW site as an undeveloped local green space which must be protected given its historic significance.

It is clear that the local community, the Council and an Appeal Inspector consider that this site has considerable historic significance and must be protected in its current open and green state to protect the surrounding heritage assets and the character and historic development of NSP.

Wildlife

This site plays an important role for wildlife and biodiversity, providing a corridor through the village.

This was set out in the Government’s report ‘Making Space for Nature’ (2010) with a need for areas of good quality and connected habitat to allow species to move, survive and thrive. Any development of this site would fragment and isolate the village’s green spaces and important links to the open countryside. This site with its established trees and hedgerows

provides a natural diverse wildlife habitat with many and frequent sightings of badgers, bats, owls together with many other species of birds and insects.

Summary

This is a site that contributes very significantly to the character and appearance of Norton St Philip and its Conservation Area including the Grade 1 listed George Inn and Grade 2* Parish Church. The footpath across the site gives unbroken views to the west.

Designation as a LGS would be of huge benefit to the village now and for the future, providing lasting relief from the threat it is currently under.

Signed

Alf Menzies	16 FortescueStreet, Norton St Philip	BA27PE
Liz and Christian Hjelm	23	
Lesley and Bryan Baker.	31	
Kevin and Bryony Malone.	33	
John& Hazel Weiss	47	
George and Amanda Hitchins	29	
John& Alison Dixon	26	
Frank Weisinger.	24	
Chris& Andreaia Stephenson.	25	
Chris and Mandie Scully	22	
Rupert Johnson	6	
Alastair and Helen Dixon.	28	
David Dent	51	
Iain Martindale	14	
Malcolm and Trish Lynn.	20	
Debbie and Tony Browne.	77	
Keith and Gill Hodge.	45	
Alan and Jude Tadd.	75	
Tim Davies.	35	
Laura Quinn.	10	
Shona&Peter Cornthwaite.	27	
David and Jeanette Hare.	18	
Alex&Catherine Shakespeare	39	

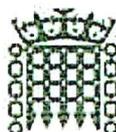
Graham&Susan Stuart	73
Ron&Anne Holder	69

Contacts: Lesley Baker, 31 Fortescue Street, Norton St Philip BA2 7PE.
lesleybaker1@hotmail.com
George Hitchins, 29Fortescue Street, Norton St Philip BA2 7PE
georgehitchins@btinternet.com
Alf Menzies, 16 Fortescue Street, Norton St Philip BA2 7PE
alfmenzies@msn.com

List of Appendices

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& Prof Lewis, CPRE Somerset**
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- 4. Articles of Association Fortescue Fields ManCo Ltd**
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- 6. Land Registry plans**
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- 8. Development Site Options August 2015**
- 9. NSP Residents Survey Feb 2015**
- 10. NSP Residents Survey Nov 2015**
- 11. Conservation Area & Listed buildings NSP**

DAVID WARBURTON MP



HOUSE OF COMMONS

LONDON SW1A 0AA

Mendip District Council – Planning Department
Cannards Grave Road
Shepton Mallet
BA4 5BT

27th November 2015

Dear Sirs

I am writing to draw your attention to an application by Fortescue Fields Residents for a Local Green Site Designation in Mendip District Council's Local Plan 2 which is supported by the Norton St Philip Parish Council.

The site, part of which lies in the Village Conservation Area, includes Fortescue East, Fortescue West and Fortescue Ponds. I understand that parts of the site have already been deemed unsuitable for development at a planning appeal earlier this year and previously in 2001. The three fields as a whole represent an important feature in the village providing a transition from countryside to built development and safeguard views of a Grade 1 listed public house and a Grade 2 listed Church. A 15m tree belt will be built to replace a previous tree belt under a Tree Protection Order and the site is soon to be managed by the Fortescue Fields Management Company who will maintain footpaths links thus providing an amenity for the whole village.

I hope that you will forgive my writing, but having looked at my constituents' submission in detail I hope that you agree with me that a LGS designation would be an excellent outcome for the village of Norton St Philip and will help preserve the bucolic setting of a quintessentially Somerset village.

Yours faithfully

David Warburton

David Warburton MP
Member of Parliament for Somerset and Frome

Email: david.warburton@parliament.uk
www.davidwarburton.org.uk



President
Roger Martin

Chairman
Prof. Chris Lewis CBE

Please reply to:-
Prof. Chris Lewis
25 Packsaddle Way, Frome
Somerset BA11 2SU
Tel: 01373 303233
Email: cglewis42@gmail.com
www.cpresomerset.org.uk

29 November 2015

George Hichins
Norton St Philip (by e-mail)
georgehichins@btinternet.com

cc (by e-mail) CPRE Somerset, NSP Parish Council, Mendip DC Planning Policy Team

Dear George,

NORTON ST PHILIP APPLICATIONS FOR LOCAL GREEN SPACE DESIGNATION FOR THE LAND KNOWN AS FORTESCUE FIELDS EAST, WEST AND PONDS FIELD

I am pleased to be able to tell you that CPRE Somerset supports the application for Local Green Space Designation for the land in Norton St Philip known as Fortescue Fields East, West and Ponds, close to the centre of the village.

Norton St Philip has long suffered from overambitious housing development due to a combination of circumstances. These include the lack of any green belt in the whole of Somerset: a long time without a Mendip Local Plan and the leapfrogging effect across the green belt in Bath and North East Somerset, close to Norton. Few of the new houses have been occupied by locals. In 2014, The CPRE National president Sir Andrew Motion visited Norton St Philip to see for himself how current planning laws had transformed the village. He later used Norton as an example of how pressure of developers combined with the planning process was changing many such villages far more than anyone had either planned or realized.

Planning permission for housing on these fields does not currently exist, having been refused recently on appeal. However, the continued pressure of population growth, coupled with the new planning legislation currently going through Parliament means that there is a strong likelihood that planning permission will be given at some time in next ten years. To maintain the position of Norton as a heritage Mendip village it is essential that some permanent designation of green spaces within the village is now given.

The Somerset Branch of the Campaign to Protect Rural England exists to promote the beauty, tranquility and diversity of rural England by encouraging the sustainable use of land and other natural resources in town and country.

A company limited by guarantee. Registered in England number 04755482.
Registered Office: Rosewood Cottage. Main street, Barton St David, Somerton, Somerset. TA11 6BZ.
Registered Charity number 1100860.

The current LGS applications satisfy the specified criteria: they are not extensive in nature: they are close to the community that they serve and they have a particular heritage significance: The Ponds Field in particular is rapidly becoming an important village amenity and its footpaths are extensively used: The West Field provides a very English setting to Church Mead, the Parish Church, the George Inn and the views across to Falkland and beyond. The East Field is partly within the Village Conservation Area and is visually important as a transitional space between the built environment and the open countryside. Taken as a whole these three fields add an oasis of tranquility and are integral to the character of the village.

Also relevant are natural aspects of the site. The East Field, in particular will abut a tree corridor which will form an important landscape feature providing screening on the village countryside boundary and a habitat for wildlife. The other fields also form a wildlife and biodiversity corridor through the south and west of the village.

The proposed LGS sites also have historical significance, as was stated by the inspector when refusing the appeal to allow planning permission. They make a positive contribution to the setting of nearby heritage assets and frame the historical sky-line of the village when viewed from the open countryside to the south and west.

I trust Mendip DC will take into account our views when considering this application.

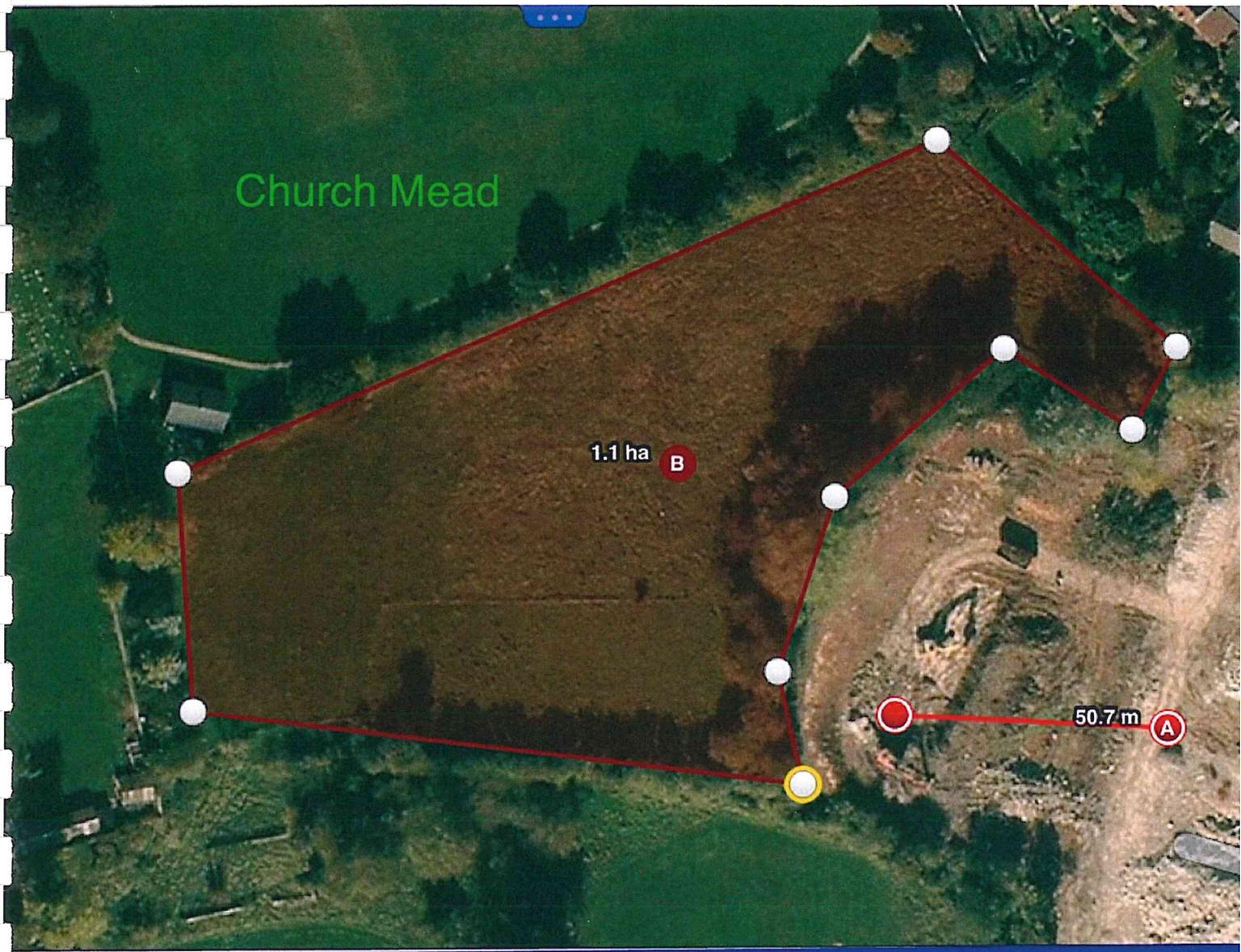
I am

Yours sincerely,

Chris Lewis CBE
Chair, CPRE Somerset



Fortescue Fields West



Lat51.299771 Long-2325985

Fortescue Fields West



Footpath linking Fortescue St and Church Mead showing East flank of site

View from footpath to west showing Church tower



Access site to West



Accross
Chuch
Mead.Site
behind
hedgerow
centre left

Looking
North accross
site to Church
Mead
Pavilion



THE COMPANIES ACT 2006

COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

AMENDED MEMORANDUM AND ARTICLES

-OF-

ASSOCIATION

-OF-

FORTESCUE FIELDS

MANAGEMENT COMPANY LIMITED

No.: 08105848

Incorporated: 14 June 2012

THE COMPANIES ACT 2006

A COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION

OF

FORTESCUE FIELDS
MANAGEMENT COMPANY LIMITED

Each Subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

Name of each subscriber

Authentication of each subscriber

Fairfield Company Secretaries Limited

11 June 2012

THE COMPANIES ACT 2006

A COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

OF

FORTESCUE FIELDS

MANAGEMENT COMPANY LIMITED

DEFINED TERMS

1. In these articles:

"Act" means the Companies Act 2006;

"clear days" in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which, it is to take effect;

"common areas management plan" means a fully detailed management plan for the maintenance in perpetuity of all carriageways, footways, landscaping, non-adopted open space and any non-adopted common infrastructure situate on the development and the tree belt, the footpaths and the drainage basin all of which is identified in the section 106 agreement entered into on 24th February 2011 and further identified under the application bearing Council reference 2010/0493.

"Company" means FORTESCUE FIELDS MANAGEMENT COMPANY LIMITED

"Council" means Mendip District Council";

"development" shall have the meaning assigned to it in article 3 hereof but shall only include that part of the development known as Fortescue Fields registered at the date of the incorporation of the Company under freehold title numbers WS60032 in the name of the owner and ST176932 in the name of Lochailort Investments Limited;

"director" means a director of the Company and includes any person occupying the position of director, by whatever name called;

"dwelling" means any residential unit comprised on the development in accordance with planning permissions with reference numbers 2010/0493, and 2010/0494 and the Section 106 Agreement dated 24th February 2011 made between (1) Mendip District Council (2) Somerset County Council and (3) Lochailort Investments Limited or any supplemental permissions or variations thereof applied for by or on behalf of the owner;

"dwelling holder" means the person persons or body who holds or hold a leasehold or freehold estate in any dwelling comprised in the development, such leasehold interest to be for a term exceeding 7 years, and so that whenever two or more persons are for the time being joint holders of such

a leasehold or freehold estate in any dwelling they shall for all the purposes of these articles be deemed to constitute one dwelling holder;

"executed" includes any mode of execution "member" shall be that person persons or body described in article 6 hereof.

"month" means calendar month;

"office" means the registered office of the Company;

"owner" means Bloor Homes Limited;

"seal" means the common seal of the Company, if used;

"secretary" means any person who may be appointed to perform the duties of the secretary of the Company;

"United Kingdom" means Great Britain and Northern Ireland;

2. In these articles:

(a) the model articles shall not apply, except where expressly stated or modified within this document;

(b) expressions referring to writing, shall, unless the contrary intention appears, be construed as having the meaning given in section 1168 of the Act;

(c) unless the context otherwise requires, words or expressions contained in these articles bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these articles become binding on the Company.

(d) Any reference in these articles to the provisions of any Act includes any statutory modification or re-enactment thereof for the time being in force.

OBJECTS

3. The Company is established for the purposes of managing and maintaining land works, facilities and premises and any carriageways, footways, services and service media works and facilities within, serving and/or relating to the development (whether on or off site) and whether constructed and laid, under the planning permission bearing Council reference 2010/0493 and which development is intended to be known as Fortescue Fields, Townend, Norton St Phillip, Bath, Somerset and which objects shall include, without prejudice to the generality, the management maintenance and upkeep of the landscaping, the tree belt, pumping station (if any), drainage basin and any other non-adopted open space or non-adopted common infrastructure on the development set out within the common areas management plan.

The Company shall enforce the collection of any and all service charges in respect of the development or any dwelling thereof.

COMMON AREAS MANAGEMENT PLAN

4. Prior to first occupation of any of the dwellings on the development the owner and/or the Company shall submit to and obtain the approval of the Council in writing (such approval not to be unreasonably withheld or delayed) to the common areas management plan.

Following approval of the common areas management plan by the Council at all times after the first occupation of any of the dwellings the owners shall procure that the Company shall implement, and thereafter at all times maintain at its own expense, the common areas management plan to the reasonable satisfaction of the Council.

The Company shall report to the Council at the end of each financial year with a copy of its accounts and a report of its actions taken to comply with the common areas management plan for the current year and proposed activity for the following year and shall take into account any recommendations made by the Council in respect thereof.

LIABILITY OF MEMBERS

5. The liability of each member is limited to £25, being the amount that each member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for:

- (a) payment of the Company's debts and liabilities contracted before he ceases to be a member;
- (b) payment of the costs, charges and expenses of winding up.

MEMBERSHIP

6. The subscribers to the Company and each such other person who is admitted to membership in accordance with these articles and also such pairs or groups of persons who together are admitted to membership in accordance with these articles shall be members of the Company. If two or more persons are together a dwelling holder they shall be entitled to make written application for membership of themselves together as one member of the Company.

7. Every dwelling holder shall become a member of the Company and be bound by these articles and abide by any regulations made by the Company.

8. Any member who is not a subscriber to the Company and every pair or group of persons who are together a dwelling holder shall deliver to the Company written application for membership in such form as the directors require, executed by such person or pair or group of persons.

9. The provisions of section 115 of the Act shall be observed by the Company.

10. No-one shall be admitted to membership of the Company other than the subscribers to the Company, any person nominated by any of the said subscribers to succeed as a member of the Company any of the said subscribers, any person nominated by such nominee or by any subsequent nominee or by any other

nominee who shall have become a member of the Company in accordance with this article or by any of the said subscribers to succeed such original or any subsequent nominee respectively as a member of the Company and all or any of the dwelling holders.

11. The Company must admit as a member of the Company every person who is a dwelling holder and also every pair or group of persons who are together a dwelling holder, and who is or are or shall have become entitled to be admitted as a member of the Company and shall have complied with any of the signature provisions set out in article 6 in these articles.

12. Where two or more persons are together one member of the Company:-

(a) their obligations under article 5 hereof shall be joint and several; and

b) the one of them whose name appears before the name or names of the other or others of them in the register of members of the Company shall exercise the voting and other powers vested in such member and shall alone be the one of them who may be a director of the Company. Provided always that upon receipt by the Company of and in accordance with written request executed by such persons there shall be changed the order in which their names appear in the register of members.

13. (a) A dwelling holder shall cease to be a member of the Company on the registration as a member of the Company of his or her, their or its successors in title to his, her, their or its dwelling and shall not resign as a member of the Company while holding, whether alone or jointly with another or others a leasehold or freehold estate in any dwelling comprised in the development.

(b) The subscribers or any member of the Company who is not also a dwelling holder shall cease to be a member of the Company on ceasing to be a director of the Company.

(c) The subscribers or any member of the Company who is not also a dwelling holder and who shall not have become a director of the Company shall cease to be a member of the Company upon being succeeded as a member of the Company by a person nominated in accordance with Article 10 in these articles.

(d) Membership shall not be transferable and shall cease on death of the member or, in the case of a pair or of a group of persons being together a member, on death of the survivor or last survivor, as the case may be, of such pair or group of persons.

(e) Upon any future conveyance, transfer or assignment of any of the dwellings the dwelling holder shall procure the relevant purchaser to enter into a covenant to become a member of the company.

GENERAL MEETINGS

14. The Company will not be required to hold an annual general meeting every calendar year but may do so if believed appropriate and necessary and in accordance with the Act.

15. Any other general meetings called at the discretion of the directors or members to comply with the requirements of the Act or any other legislation affecting the development shall be called as an extraordinary general meeting.

NOTICE OF GENERAL MEETINGS

16. An annual general meeting and an extraordinary general meeting called for the passing of an ordinary resolution or a special resolution shall be called by fourteen clear days' notice but may be called by shorter notice if it is so agreed by 90% of the members.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.

17. Notice of every general meeting shall be given in any manner hereinbefore authorised to:-

(a) every member except any member who has not supplied to the Company an address within the United Kingdom for the giving of notice to such member;

(b) every person being a legal personal representative or trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting except any such person who has not supplied to the Company an address within the United Kingdom for giving notice to such person:-

(c) the auditor or auditors of the Company;

(d) The director or directors of the Company.

No other person shall be entitled to receive notice of any general meeting.

18. The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

19. No business shall be transacted at any meeting, other than the appointment of a chairman, unless a quorum is present. Two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation shall be a quorum.

20. If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the directors may determine.

21. The chairman, if any, of the board of directors or in his absence some other director nominated by the directors shall preside as chairman of the meeting, but if neither the chairman nor such other director (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing

to act, the directors present shall elect one of their number to be chairman and, if there is only one director present and willing to act, he shall be chairman.

22. If no director is willing to act as chairman, or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman.

23. The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

24. A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded:-

(a) by the chairman; or

(b) by at least two members having the right to vote at the meeting;

or

(c) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting;

and a demand by a person as proxy for a member shall be the same as a demand by the member.

25. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

26. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

27. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

28. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall be entitled to a casting vote in addition to any other vote he may have.

29. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

30. No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.

31. A resolution in writing in accordance with the Act shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more members.

VOTES OF MEMBERS

32. Subject as hereinafter provided and to the provisions of article 28 in these articles, on a show of hands, every member present, in person or by proxy, or being either an incorporated or unincorporated body or association by a duly authorised representative at a general meeting, shall have one vote, subject to the following:

(a) If any member owns more than one dwelling then they are restricted to one vote in total and not one vote for each dwelling.

(b) No member shall be entitled to vote at any general meeting or on a resolution in writing unless all monies then due and payable by them to the Company have been paid.

(c) Only dwelling holders from the sheltered housing units may vote upon those areas and services independently funded by charges payable by those living in the sheltered housing units.

(d) Until every dwelling comprised in the development has been sold each member who is a subscriber to the company or who is a person nominated as a member in accordance with article 10 in these articles shall have five hundred votes at that meeting.

33. A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or other person authorised in that behalf appointed by that court or by a member acting through his attorney appointed and empowered by a properly executed and, if required, registered enduring power of attorney, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote shall be deposited at the office, or at such other place as is specified in accordance with the articles for the deposit of instruments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.

34. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.

35. An instrument appointing a proxy shall be in writing, executed by or on behalf of the appointer. A proxy need not be a member of the Company.

36. The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors may:

(a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

(b) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or

(c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the secretary or to any director;

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

37. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

DIRECTORS

38. Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall not be subject to any maximum but shall be not less than two, with at least one director representing the sheltered housing.

39. The first directors shall be two representatives of the owner and they will remain in office until they serve notice on the company of their resignation. Any member who is a corporation may nominate as a director of the Company in its place a duly authorised representative.

40. No person who is not a member of the Company or one of two or more persons who together or collectively are a member of the Company or who shall have been nominated in accordance with article 6 in these articles shall in any circumstance be eligible to hold office as a director of the Company.

ALTERNATE DIRECTORS

41. Any director (other than an alternate director) may appoint any other director, or any other member approved by resolution of the directors and willing to act, to be an alternate director and may remove from office an alternate director so appointed by him.

42. An alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointer is a member, to attend and vote at any such meeting at which the director appointing him is not personally present, and generally to perform all the functions of his appointer as a director in his absence but shall not be entitled to receive any remuneration from the Company for his services as an alternate director. But it shall not be necessary to give notice of such a meeting to an alternate director who is absent from the United Kingdom.

43. An alternate director shall cease to be an alternate director if his appointer ceases to be a director; but, if a director retires by rotation or otherwise but is reappointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an alternate director made by him which was in force immediately prior to his retirement shall continue after his reappointment.

44. Any appointment or removal of an alternate director shall be by notice to the Company signed by the director making or revoking the appointment or in any other manner approved by the directors.

45. Save as otherwise provided in the articles, an alternate director shall be deemed for all purposes to be a director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the director appointing him.

POWERS AND DUTIES OF DIRECTORS

46. Subject to the provisions of the Act, the articles and to any directions given by special resolution, the business of the Company shall be managed by the directors who may exercise all the powers of the Company. No alteration of the articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this regulation shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

47. The directors may, by power of attorney or otherwise, appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

DELEGATION OF DIRECTORS' POWERS

48. The directors may delegate any of their powers to any committee consisting of one or more directors. They may also delegate to any managing director or any director holding any other executive office such of their powers as they consider desirable to be exercised by him. Any such delegation may be made subject to any conditions the directors may impose and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with two or more

members shall be governed by the articles regulating the proceedings of directors so far as they are capable of applying.

49. The directors shall have power from time to time to adopt and make, alter or revoke bye-laws for the regulation of the Company provided such bye-laws are not repugnant to the articles of association of the Company. Any resolution of the directors for the adoption, making, alteration or revocation of such bye-laws shall be subject to confirmation by special resolution of the Company at a general meeting or by special written resolution and, if it be not so confirmed, shall cease to have effect at the conclusion of that meeting or signing of the written resolution by the last to sign it. All such bye-laws for the time being in force shall be binding upon all members until the same shall cease to have effect as hereinbefore provided or shall be varied or satisfied by a special resolution of the Company. No member shall be absolved from such bye-laws by reason of his not having received a copy of the same, or of any alterations or additions thereto, or having otherwise no notice of them.

APPOINTMENT AND RETIREMENT OF DIRECTORS

50. At least two representatives of the owner will remain in office as a director until the last dwelling on the development has legally completed, whereupon they may serve notice on the Company of their resignation and replacement directors may be appointed by the members.

51. No person other than a member of the company may be appointed or reappointed as a director of the Company, either at a general meeting or on the recommendation of the directors. At the first general meeting any member who is willing to act as a director and is permitted by law to do so may be appointed to be a director by:

- (a) ordinary resolution, or
- (b) by a decision of the directors.

52. Subject as aforesaid, the Company may by ordinary resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director and may also determine the rotation, if any, in which additional directors are to retire.

53. The directors may appoint a member of the Company who is willing to act to be a director, either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed any number fixed by or in accordance with the articles as the maximum number of directors. A director so appointed shall hold office until the next following general meeting and if not reappointed at such general meeting, he shall vacate office at the conclusion thereof.

54. Subject as aforesaid, a director who retires at a general meeting may, if willing to act, be reappointed. If he is not reappointed, he shall retain office until the meeting appoints someone in his place, or if it does not do so, until the end of the meeting.

DISQUALIFICATION AND REMOVAL OF DIRECTORS

55. The office of a director shall be vacated if:-

- (a) he ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director; or
- (b) he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (c) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months; or
- (d) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or
- (e) he resigns his office by notice to the Company; or
- (f) he shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated; or
- (f) he is removed from office by a resolution passed pursuant to Section 168 of the Act; or
- (g) he ceases to be a member of the Company.

56. The Company may by special resolution remove any director before the expiration of his period of office and may by an ordinary resolution or by a special resolution appoint another member as a director in his stead.

REMUNERATION OF DIRECTORS

57. The directors shall be entitled to such remuneration as the Company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day.

DIRECTORS' EXPENSES

58. The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings or otherwise in connection with the discharge of their duties.

DIRECTORS' APPOINTMENTS AND INTERESTS

59. Subject to the provisions of the Act, the directors may appoint one or more of their number to the office of managing director or to any other executive office under the Company and may enter into an agreement or arrangement with any director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a director. Any such appointment, agreement or arrangement may be made upon such terms as the directors determine and they may remunerate any such director for his services as they think fit. Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim to damages for breach of the contract of service between the director and the

Company. A managing director and a director holding any other executive office shall not be subject to retirement by rotation.

60. Subject to the provisions of the Act, and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:-

(a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;

(b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested; and

(c) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

61. For the purposes of this article:

(a) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified; and

(b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

DIRECTORS' GRATUITIES AND PENSIONS

62. The directors shall not provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any director who holds or who has held but no longer holds any executive office or employment with the Company or with any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary, nor for any member of his family (including a spouse and a former spouse) nor for any person who is or was dependent on him, and shall not (whether before or after he ceases to hold such office or employment) contribute to any fund nor pay premiums for the purchase or provision of any such benefit.

PROCEEDINGS OF THE DIRECTORS

63. Subject to the provisions of the articles, the directors may regulate their proceedings as they think fit. A director may, and the secretary (if any) at the request of a director shall, call a meeting of the directors. It shall not be necessary to give notice of a meeting to a director who is absent from the United Kingdom. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote. A director who is also an alternate director shall be entitled in the absence

of his appointer to a separate vote on behalf of his appointer in addition to his own vote.

64. The quorum for the transaction of the business of the directors may be fixed by the directors and unless so fixed at any other number shall be two. A person who holds office only as an alternate director shall, if his appointer is not present, be counted in the quorum.

65. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.

66. The directors may appoint one of their number to be the chairman of the board of directors and may at any time remove him from that office. Unless he is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he is present. But if there is no director holding that office or if the director holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the directors present may appoint one of their number to be chairman of the meeting.

67. All acts done by a meeting of directors, or of a committee of directors, or by a person acting as a director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.

68. A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held and may consist of several documents in the like from each signed by one or more directors; but a resolution signed by an alternate director need not also be signed by his appointer and, if it is signed by a director who was appointed an alternate director, it need not be signed by the alternate director in that capacity.

69. Save as otherwise provided by the articles, a director shall not vote at a meeting of directors or of a committee of directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the Company unless his interest or duty arises only because the case falls within one or more of the following paragraphs:-

(a) the resolution relates to the giving to him of a guarantee, security, or indemnity in respect of money lent to, or an obligation incurred by him for the benefit of, the Company or any of its subsidiaries;

(b) the resolution relates to the giving to a third party of a guarantee, security, or indemnity in respect of an obligation of the Company or any of its subsidiaries for which the director has assumed responsibility in whole or part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;

(c) his interest arises by virtue of his subscribing or agreeing to subscribe for any debentures of the Company or any of its subsidiaries, or

by virtue of his being, or intending to become, a participant in the underwriting or sub-underwriting of an offer of any such debentures by the Company or any of its subsidiaries for subscription, purchase or exchange;

(d) the resolution relates in any way to a retirement benefits scheme which has been approved, or is conditional upon approval, by the Inland Revenue for taxation purposes;

(e) his interest or duty arises by virtue of his holding or having held office as a director of any company holding a legal estate in the whole or any part of the development or by virtue of his being or having been an employee of any company of which the holding company as defined in Section 1159 of the Act is also the holding company as so defined of a company holding a legal estate in the whole or any part of the development.

For the purposes of this regulation, an interest of a person who is, for any purpose of the Act (excluding any statutory modification thereof not in force when this regulation becomes binding on the Company), connected with a director shall be treated as an interest of the director and, in relation to an alternate director, an interest of his appointer shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise.

70. A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.

71. Only a Director from the sheltered housing units may vote upon those areas and services independently funded by charges payable by those living in the sheltered housing units.

72. The Company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the articles prohibiting a director from voting at a meeting of directors or of a committee of directors.

73. Where proposals are under consideration concerning the appointment of two or more directors to offices or employments with the Company or any body corporate in which the Company is interested the proposals may be divided and considered in relation to each director separately and (provided he is not for another reason precluded from voting) each of the directors concerned shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning his own appointment.

74. If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive.

SECRETARIAT

75. Subject to the Act, any secretary appointed by the directors for such term and at such remuneration (if any) and upon such condition or conditions as they may think fit, may be removed by the directors. The directors may appoint two or more persons to act as secretaries of the Company and such persons shall each have the same powers and authority and the provisions of the memorandum and

articles of association of the Company shall apply to each and every one of them as if each and every one of them were the sole secretary of the Company.

MINUTES

76. The directors shall cause minutes to be made:

- (a) of all appointments of officers made by the directors; and
- (b) of all proceedings at meetings of the Company, and of the directors, and of committees of directors, including the names of the directors present at each such meeting.

THE SEAL

77. If the Company has a seal it shall only be used with the authority of the directors or of a committee of directors. The directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a director and by the secretary or second director.

ACCOUNTS

78. The directors shall cause accounting records to be kept in accordance with the Act, or other legislation for the time being applicable to the Company.

79. The accounting records shall be kept at the registered office of the Company or, subject to the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the officers of the Company.

80. The books of account shall be open to the inspection of any member of the Company on reasonable notice.

81. The directors shall issue to all members an income and expenditure account for the period to the last preceding accounts, together with a balance sheet. Every such balance sheet shall be accompanied by reports of the directors and accountant.

AUDIT

82. Once at least in every year the accounts of the Company shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by one or more properly qualified accountant or auditor.

83. Auditors shall be appointed and their duties regulated in accordance with the Act.

NOTICES

84. Any notice to be given to or by any person pursuant to the articles shall be in writing (as defined within section 1168 of the Act) except that a notice calling a meeting of the directors need not be in writing.

85. Any notice by the Company to any member or to any other person on whom any notice is to be served may be served by delivering such notice to such member or said other person personally, electronically or by delivering such notice or sending it by post in a prepaid envelope addressed to such member or said other person to the address in the United Kingdom last supplied to the Company by such member or said other person for the giving of notice to such member or said other person.

86. A member present, either in person or by proxy, at any meeting of the Company shall be deemed to have received notice of the meeting, however given, and where requisite, of the purposes for which it was called.

87. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

88. Electronic notice will be deemed to be served if issued in accordance with section 1168 (3), (4) and (5) of the Act.

INDEMNITY

89. Subject to the provisions of the Act but without prejudice to any indemnity to which a director may otherwise be entitled, every director or other officer or auditor of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.



DATED 24th February 2011

- (1) Mendip District Council
- (2) Somerset County Council
- (3) Lochailort Investments Limited

SECTION 106 AGREEMENT
RELATING TO LAND AT TOWNEND NORTON ST PHILIP BATH
SOMERSET

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This Agreement is made as a Deed on *the twenty fourth day of February* 2011

BETWEEN:

- (1) Mendip District Council of Council Offices, Cannards Grave Road, Shepton Mallet, Somerset BA4 5BT (the "Council"); and
- (2) Somerset County Council of County Hall Taunton TA1 4DY (the "County Council")
- (3) Lochailort Investments Limited (Co. Regn. No. 05605197) whose registered office is at 10 Culross Street Mayfair London W1K 2DX (the "Owner").

BACKGROUND:

- (A) The Council is the Local Planning Authority under the provisions of the Act for the area in which the Land is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The County Council is a local planning authority the local highway authority and the local education authority for the area in which the Land is situate and by whom the obligations in Part 2 of the Third Schedule are enforceable
- (C) The Owner is the owner in fee simple in possession of the Land free from incumbrances.
- (D) The Owner has submitted to the Council the Application seeking planning permission for the Proposed Development on the Land.
- (E) The Council has resolved to grant the Planning Permission pursuant to the Application subject to completion of this Deed under the statutory powers referred to in Clause 2 of this Deed.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following definitions shall apply:

"Act" means the Town and Country Planning Act 1990 (as amended).

"Affordable Housing" means affordable housing which meets the requirements of the Mendip Local Plan, Planning Policy Statement 3 (2006) and the Council's adopted Supplementary Guidance on Affordable Housing, and which comprises Rental Units let in accordance with the Homefinder Somerset Common Lettings Policy (or any guidance notes or circulars or policies which may supersede them) and Shared Ownership Units.

"Affordable Housing Land" means the land edged orange on Plan 2.

"Affordable Housing Units" mean the eight units of Affordable Housing to be located on the Affordable Housing Land 5 of which will be 3 bedroom houses and 3 of which will be 2 bedroom houses and which are shown coloured brown on Plan 2

"Application" means the planning application reference number 2010/0492 submitted to the Council for planning permission to develop the Land for (as subsequently varied) the construction of 51 new dwellings (including affordable and sheltered housing provision) a shop 3 commercial units (A1/B1/A2) with associated access parking and landscaping.

"Commencement of the Development" means the carrying out of a material operation within the meaning of Section 56(4) of the Act in respect of Development other than (for the purposes of this Agreement 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 and erection of site huts, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, and landscaping and "Commence Development" and "Commencement" shall be construed accordingly.

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“**Commercial Units**” means the 2 units shown coloured purple on Plan 2 to be used and marketed in accordance with the Sixth Schedule

“**the Common Areas Management Plan**” means a fully detailed management plan for the maintenance in perpetuity of all carriageways footways landscaping non-adopted open space and any non-adopted common infrastructure situate on the Property and the Tree Belt the Footpaths and the Drainage Basin to the satisfaction of the Council which Plan shall include full details of the maintenance programme the constitution of the Management Company and the form of transfer imposing the Rentcharge on the Units which Plan may be varied from time to time with the prior consent in writing of the Council (such consent not to be unreasonably withheld or delayed).

“**Community Facilities Contribution**” means the sum of thirty thousand pounds (£30,000) to be paid by the Owner to the Council in accordance with part 1 of the Third Schedule and to be applied by the Council towards the Church of St Philip and St James in Norton St Philip for community benefit

“**Development**” means the development of the Property pursuant to the Planning Permission.

“**Drainage Basin**” means all those surface water drainage facilities authorised by planning permission reference 2010/0493~~4~~

“**Dwelling**” means a dwelling to be constructed on the Property in accordance with the Planning Permission.

“**Education Contribution**” means the sum of seventy three thousand five hundred and forty two pounds (£73,542) to be paid by the Owner to the County Council in accordance with Part 2 of the Third Schedule and to be applied by the County Council towards the provision of education facilities at Norton St Philip School

“**Education Index**” means the General Building Cost Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

“**First Occupation**” means the date on which a completed Dwelling is first occupied or used for the purposes of the Development (which for the avoidance of doubt shall exclude use for construction marketing and security and use for the purposes of an occupier/tenant fitting out of such Dwelling).

“**Footpaths**” means the lengths of path to be laid out by the Owner between points A-B and C-D on Plan 3 in accordance with the specification set out in Part 1 of the Seventh Schedule unless otherwise agreed with the Council and which shall be maintained in accordance with the Common Areas Management Plan by the Management Company

“**Index**” means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

“**Local Connection**” means a connection to the parish of Norton St Philip as set out in Fourth Schedule part 4

“**Management Company**” shall mean the company to be established in accordance with and to fulfil the functions described in Fifth Schedule

“**Market Building**” means the ground floor of the unit shown coloured purple on Plan 2

“**Marketing**” means using all reasonable endeavours to complete the freehold sale of or to enter into a lease or tenancy or an agreement for sale lease or tenancy in respect of the Commercial Units or the Market Building or the Shop and shall include placing the Commercial Unit or Market Building or Shop with a reputable agent operating in the area experienced in the sale or letting of similar properties and “Market” shall be construed accordingly.

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"Monitoring Fee" means the sum of five hundred pounds (£500) to be paid by the Owner to the Council in accordance with clause 24.2 and to be applied by the Council towards the costs incurred in monitoring compliance with the terms of this Agreement

"Off-site Play Space Contribution" means the sum of twenty four thousand pounds (£24,000) to be paid by the Owner to the Council in accordance with the Third Schedule part 1 and to be applied by the Council towards the provision or improvement of an off-site children's play area in Norton St Philip.

"Open Market Dwelling" means a Dwelling other than an Affordable Housing Unit.

"Open Market Value" means the open market value of all or any of the Affordable Housing Units having regard to all relevant circumstances on the assumptions that:

- (a) the Affordable Housing Units are provided for private open market sale on a private residential estate with vacant possession; and
- (b) that no restrictions relating to Affordable Housing apply thereto.

"Plan 1" means the location plan numbered 1 and annexed hereto.

"Plan 2" means the plan numbered 2 annexed hereto

"Plan 3" means the plan numbered 3 annexed hereto

"Planning Permission" means the permission reference ~~2009/1532~~ 2010/0493 to be granted by the Council pursuant to the Application.

"Property" means the freehold land as shown for identification purposes edged in red on Plan 1 and more particularly described in the First Schedule.

"Pumping Station" means the pumping station to be constructed as part of the Development to serve the Development and which shall be maintained by the Management Company under the Common Areas Management Plan but the cost of which will not form part of the calculation of Rentcharge payable by any of the Affordable Housing Units

"Qualifying Resident" means a person who is in housing need (such need being defined in accordance with the application criteria for the Homefinder Somerset Register and the criteria applied by the RSL).

"Rental Units" means the 6 no. Affordable Housing Units being plots numbered 1-6 inclusive on Plan 2 which shall be let by an RSL

"Reasonable Offer" means an offer which reflects the open market freehold value or the open market rental value for the Shop or the Market Building or a Commercial Unit (as the case may be) made by a purchaser or tenant that is able to proceed to enter into an agreement for sale or for lease and which provides a reasonable profit on the development of (as may be) the Shop the Market Building or the Commercial Units

"Relevant Unit" means any of the Units or the Shop or the Market Building or either of the Commercial Units

"Rentcharge" means the perpetual yearly variable estate rentcharge imposed on each Unit to cover the total annual costs of complying with the obligations under the Common Areas Management Plan and calculated and payable pro rata by floor area for each individual Unit such rentcharge to include the administrative and management costs of the Management Company once established in consideration of the Management Company covenanting to perform its obligations under the Management Scheme Provided Always that no Affordable Housing Unit shall be liable for payment of any proportion of the cost of the running maintenance repair or renewal of the Pumping Station

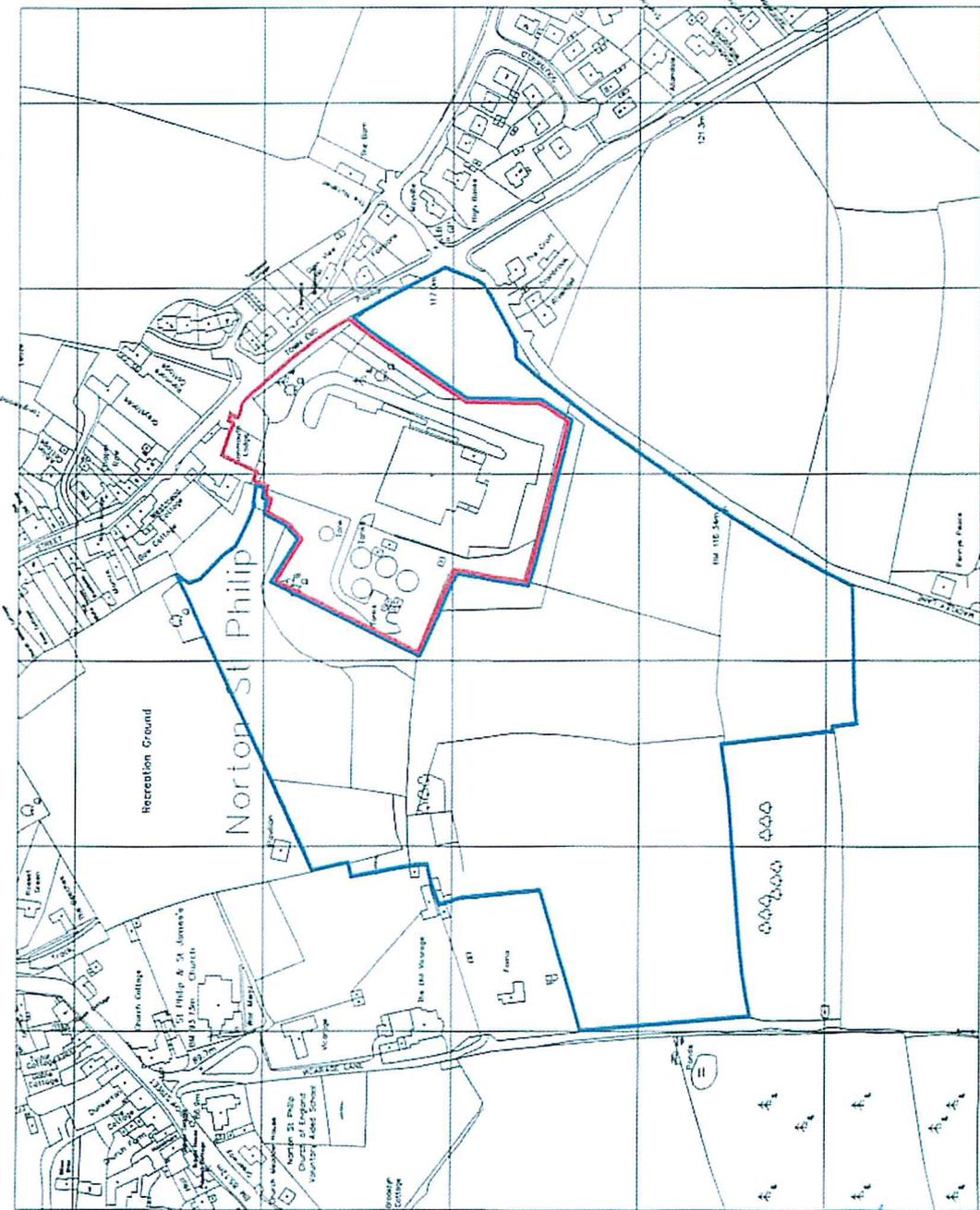
9182

PLAN 1

Do Not Scale

Notes

JTA
Authorised Officer



BA

Handwritten signature and initials in blue ink.

REVISIONS

REV | DATE | BY | DESCRIPTION

THE JTS PARTNERSHIP
 Chartered Valuation Surveyors • Town Planning Consultants
 100, The Drive, Larch Wood, Bournemouth, Dorset BH11 8JH
 Tel: 01202 722664 Fax: 01202 722667
 www.jts-partnership.co.uk

Site: Poultry Processing Facility
 High Street/Town End
 Norton St Philip
 Bath
 Somerset
 BA2 7LY

Client: Lochallart Investments Ltd
 Site Location Plan

Drawn by: RJD
 Checked by: RLD
 Signed by:

Date: April 2009
 Scale: 1:2500
 Drawing Number: 0/A3

JTS/6518/01B

PLAN 3

91684

JJA
Authorised Officer

Section 106 Agreement Footpath and
Facilities Plan - Plan 3

-  Existing Public Footpath
-  Proposed new footpath to connect
with existing public rights of way
-  Proposed Bridleway
-  Proposed Youth Play Facility
-  Proposed Allotments

DR



Amended

“RSL” shall mean a Registered Social Landlord registered accordingly under Sections 1 and 56 of the Housing Act 1996 (“the 1996 Act”) or any successors in function.

“Services” means pedestrian and vehicular access, foul and surface water sewerage, mains, water, gas, electricity and telecommunication service systems.

“Shared Ownership Units” means the 2 Affordable Housing Units being plots numbered 7 and 8 on Plan 2 which shall be transferred by the Owner to an RSL and thereafter the maximum share to be sold on the initial tranche shall not exceed 50% share of the equity which shall be leased to a person in Housing Need and the remaining equity shall be rented from the RSL at an affordable rental level (in accordance with the Homes and Community Agency's target rent levels published from time to time) and where the purchaser is permitted (if they so wish) to staircase (incrementally) over a time (with a corresponding reduction in rent in proportion to the staircasing)

“Shop” means the retail unit to be constructed as shown coloured green on Plan 1 and to be marketed in accordance with the Sixth Schedule

“Tree Belt” means the area shown edged in blue on Plan 2 which is to be subject to a landscaping scheme to be submitted to the Council and implemented in accordance with condition 27 of the Planning Permission and which shall be maintained in accordance with the Management Scheme by the Management Company

“Unit” means an individual Open Market Dwelling or Affordable Housing Unit and “Units” shall be construed accordingly

“Unlet” means that no transfer lease or tenancy nor any agreement for sale lease or tenancy has been entered into in respect of (as the case may be) the Shop or Market Building or relevant Commercial Unit

Construction of this Deed

- 1.1.1 Where in this Agreement 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 Agreement.
- 1.1.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.1.3 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 interchangeably in that manner.
- 1.1.4 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 against each individually unless there is an express provision otherwise.
- 1.1.5 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.
- 1.1.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 1.1.7 Any covenant by the Owner to do an act or thing may be deemed to include an obligation to procure that the act or thing is done.

2 **STATUTORY POWERS**

The conditions covenants obligations restrictions and terms in this Agreement in favour of the Council and the County Council are made as planning obligations with the Council and the County Council in pursuance of Section 106 of the Act Sections 8 and 9 of the Housing Act 1985, Section 2 of the Local Government Act 2000, Sections 111 and 120 of the Local Government Act 1972 (and all other enabling powers) and are intended to bind the Property and every part of it and to be enforceable without limit of time by the Council and the County Council against the Owner and successive owners of the Property and any person deriving title from the Owner.

3 **GRANT OF PLANNING PERMISSION**

The Council is willing to grant planning permission for the Development subject to the completion of this Agreement and hereby agrees to issue the Planning Permission as soon as practicable after completion.

4 **SUBSTANTIVE COVENANTS**

4.1 The Owner hereby covenants with the Council to comply with the obligations and provisions specified in the Third Fourth and Fifth Schedules hereto.

4.2 The Owner hereby covenants with the County Council to comply with the obligations and provisions specified in Part 2 of the Third Schedule

4.3 The Council and the County Council hereby covenant with the Owner to comply with their respective obligations and provisions specified in the Eighth Schedule hereto.

4.4 The provisions of this Agreement shall take immediate effect on the date hereof save for the obligations contained in Clauses 4.1 4.2 and 4.3 of this Agreement which are conditional upon and shall not become operative until (a) the grant of Planning Permission and (b) Commencement of the Development.

5 **THIRD PARTY RIGHTS**

It is not intended that any third party shall have the right to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 even if the terms are expressed to be for their benefit and nor shall any third party have the right of veto over any future variations of this Agreement but for the avoidance of doubt the exclusion of the application of that Act shall not prevent any future successor in title to any of the parties to this Agreement (or in the case of the Council and the County Council any successor in statutory function) from being able to benefit from or to enforce any of the obligations in this Agreement.

6 **EXECUTED AS A DEED**

The parties hereto intend this Agreement to take effect as a Deed.

7 **JOINT AND SEVERAL COVENANTS**

For the avoidance of doubt in the event that ownership of the Property shall after the date hereof be divided then (in the absence of written agreement from the Council and (until payment of the Education Contribution) from the County Council and subject in any event to Clause 10.2) the covenants contained herein shall be joint and several as between the owners except that the covenants in the Fourth Schedule shall only apply to the owners and/or the occupiers of the Affordable Housing Units or the Affordable Housing Land.

8 **CONFIRMATION OF INTERESTS**

8.1 The Owner hereby confirms that apart from the parties hereto there are no other persons with a legal or equitable interest in the Property or any part thereof.

8.2 The Owner hereby agrees to hold the Council and the County Council harmless and shall keep it fully indemnified from and/or against any claim for compensation and any other claim